

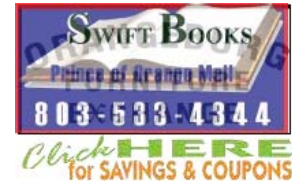


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## Free religious speech for students in school?

By NAT HENTOFF Monday, April 12, 2010

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Like Jefferson and Madison, I strongly believe in separation of church and state. And if a principal were to mandate school-directed prayer in classrooms, then that would be a violation of that separation. However, if at commencement, a valedictorian speaks of what God and Christ have meant to her life, that is her First Amendment right to free speech! The Roberts Supreme Court does not appear to agree.

Last November, the Supreme Court refused to hear an appeal by Brittany McComb who — as a 2006 valedictorian at Foothill High School in Nevada — had her microphone cut off by school officials when she started to speak about how God and Christ had taught her to experience something greater than herself, inspiring her to rise above her early high school failures.

Brittany had been forewarned. Her high school required a prior draft copy of commencement speeches, and censored all references in hers to her religious faith. She went ahead anyway because, as a student of the First Amendment, she knew she was speaking as an individual — and not on behalf of the state as represented by officials of her public high school.

With the help of the Rutherford Institute, headed by John Whitehead — a premier protector of all rights in the Bill of Rights — Brittany appealed the literal cutting off of her First Amendment rights ("Brittany McComb v. Gretchen Crehan").

The "liberal" 9th U.S. Circuit Court of Appeals supported the school's censorship because she was "proselytizing." But Brittany was speaking for, and about, herself. She was not trying to convert anyone.

When I often write that the Constitution is my only Bible, I'm telling the reader where I'm coming from — not that he or she should join me as a non-believer in God. I'm not proselytizing either.

Brittany's appeal came to the Supreme Court, which refused to hear it. There was no written dissent by any of the Roberts' Court justices.

Thomas Jefferson, in his "Notes on the State of Virginia" (1782), emphasized that the government has no authority over the natural rights of conscience: "The legitimate powers of government extend only to such acts as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg."

The censored Brittany McComb did not injure anyone, but her public high school unconstitutionally deeply injured her free-speech rights — an injury in which the Supreme Court has become complicit.

Here is another case that came before the Supreme Court in March of this year. At the Henry M. Jackson High School in Snohomish County, state of Washington, the senior members of the school's woodwind ensemble are allowed to choose a song from their repertoire to perform at graduation ceremonies. In 2006, they unanimously chose "Ave Maria" -- in a purely instrumental performance, with no lyrics.

The superintendent of schools refused to permit the performance because "Ave Maria" is religious in nature and its presence might have offended members of the audience. Welcome to Political Correctness (a.k.a.: Discarding Free Speech) 101.

Kathryn Nurre, a member of the school's wind ensemble, fully aware that school authorities had violated her free-speech rights, contacted First Amendment warrior John Whitehead and the Rutherford Institute. In September, 2009, the "liberal" 9th U.S. Circuit Court of Appeals again upheld the censoring school system's invoking a right that cannot be found anywhere in the Constitution — the "right" not to be offended.

Dissenting Judge Milan D. Smith declared that "if the majority's reasoning on this issue becomes widely adopted, the practical effect will be for public school administrators to chill — or even kill — musical and artistic presentations by their students in school-sponsored limited public fora where those presentations contain any trace of religious inspiration, for fear of criticism by a member of the public, however extreme that person's views may be. The First Amendment neither requires nor condones such a result."

When I first heard of this case, "Nurre v. (Superintendent Carol) Whitehead," I was sure that at least the

requisite four members of the Supreme Court would vote to hear Nurre's appeal. But John Paul Stevens, Ruth Bader Ginsburg, Stephen Breyer, Anthony Kennedy, Antonin Scalia, Clarence Thomas (who has a sound record on the First Amendment), Sonia Sotomayor and Chief Justice John Roberts were silent.

The only dissenter from the "conservative" Roberts Supreme Court's refusal to even hear "Nurre v. Whitehead" was Justice Samuel Alito, who channeled Jefferson and Madison, saying:

"When a public school purports to allow students to express themselves, it must respect the students' free speech rights. School administrators may not behave like puppet masters who create the illusion that students are engaging in personal expression when in fact the school administration is pulling the strings."

I was greatly heartened when, after the fear generated by 9/11 led to government assaults on the Bill of Rights, Justice Anthony Kennedy went to a number of high schools to warn that "The Constitution needs renewal and understanding each generation, or it's not going to last."

With regard to the First Amendment, from which all our individual liberties against government flow, Justice Kennedy and seven of his colleagues need a renewal of their understanding of the First Amendment in our history — including its vital role in teaching students why they are Americans.

I'm sure Kathryn Nurre would be glad to assist the eight justices in their remedial education. Meanwhile, in how many public school civics classes will "Nurre v. Whitehead" and "McComb v. Crehan" be discussed? I'm not optimistic.

And where is former constitutional law professor **Barack Obama**? He is also among the silent. And where was the ACLU in these two denials of who we are as Americans? John Whitehead deserves the ACLU's Medal of Liberty.

Nat Hentoff is a nationally renowned authority on the First Amendment and the Bill of Rights. He is a member of the Reporters Committee for Freedom of the Press, and the Cato Institute, where he is a senior fellow.

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