

hospital case, either overruled or in some manner changed the ruling in the Horace Mann case, would it not be true therefore that it is the later case—*Truitt v. Taves*—which really interprets the First Amendment of the United States as it is applied by the Court of Appeals today?

DELEGATE J. CLARK (presiding): Delegate Kiefer.

DELEGATE KIEFER: Delegate Gallagher, you are a smarter constitutional lawyer than I am. All I can tell you is this: There are very seldom exact cases that duplicate each other. Each of these cases take care of a particular and peculiar set of facts, and I would assume that in arriving at any particular decision that would face the court on any particular set of facts it would take into consideration all of the previous decisions. That is the best I can do for you.

If you want me to try to guess what the Court of Appeals is going to do or the Supreme Court is going to do, I can do lots of things but that is not one of them.

DELEGATE J. CLARK (presiding): Delegate Gallagher.

DELEGATE GALLAGHER: I am not trying to fence with you. I am simply asking if an earlier case is overruled in a later case by the Supreme Court, must you not take into consideration the state of the law after the later case?

I think we both agree the answer is yes.

DELEGATE J. CLARK (presiding): Delegate Kiefer.

DELEGATE KIEFER: Except where I part with you slightly is that I do not believe the latter case has the same set of facts.

DELEGATE J. CLARK (presiding): Delegate Gallagher.

DELEGATE GALLAGHER: I have one further question, and that is this.

The Horace Mann case, as you and your Committee know so well because you studied it, involves four institutions of higher education, and the Maryland Court of Appeals by a four to three decision decided that three of those four institutions were so sectarian that to grant money to them on the part of the State would be a violation of the establishment of religion clause of the First Amendment of the Federal Constitution.

It also decided that one of those institutions, Hood College, although religious con-

nected, was not so sectarian in nature as to violate the First Amendment when the State made a grant.

Would it be fair to say, therefore, that the Court of Appeals in the Horace Mann case made specific determinations with respect to four institutions of higher learning and said in fact, and literally, that each educational institution would have to be judged individually by an examination of that educational institution.

DELEGATE J. CLARK (presiding): Delegate Kiefer.

DELEGATE KIEFER: That is correct, and it also set up specific tests against which it viewed each of the four institutions.

DELEGATE J. CLARK (presiding): Are there any further questions on this section?

Delegate Hardwicke.

DELEGATE HARDWICKE: Chairman Kiefer, did the Committee not hear testimony to the effect that the Court of Appeals of Maryland would be free to interpret this language differently from the interpretations of the U. S. Supreme Court so long as its interpretations were more restrictive?

DELEGATE J. CLARK (presiding): Delegate Kiefer.

DELEGATE KIEFER: Yes, this is of course true.

DELEGATE J. CLARK (presiding): Delegate Hardwicke.

DELEGATE HARDWICKE: So would it not be a fair conclusion to say that the intention of the Committee in including this language was to permit flexibility and growth in the law and judicial interpretations, but not tie it down in any way to any present state of the law?

DELEGATE J. CLARK (presiding): Delegate Kiefer.

DELEGATE KIEFER: This is correct, plus the additional fact that, as you all well know, we are talking about judicial interpretation. There is no reason why the legislature cannot, for particular and peculiar circumstances, set up whatever kind of more restrictive law it may want.

We felt in this Committee, however, we wanted to state the basic concept of separation of church and state, and this is what we did in what we thought was the most effective method possible without putting