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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF ALAMEDA

3 BEFORE THE HONORABLE RAYMOND MARSH, JUDGE

4 DEPARTMENT NO. 30

5 ---o0o---

6
7 LESLIE ANN BENNETT and
8 WILBUR MILLER,

9 Plaintiffs,

10 vs.

No. H 91312-6

11 LIVERMORE UNIFIED SCHOOL
12 DISTRICT, et al.,

JUDGE'S DECISION

13 Defendants.

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 (Decision only)

16
17 COURTHOUSE, HAYWARD, CALIFORNIA

18 THURSDAY, JUNE 9, 1983

19
20 A P P E A R A N C E S:

21 Attorneys for Plaintiff:

MARGARET CROSBY and
AMITAI SCHWARTZ,
American Civil Liberties Union
Foundation of Northern California
1663 Mission Street, Suite 460
San Francisco, Calif. 94103

22 Attorneys for Defendant:

County Counsel
County of Alameda
1221 Oak Street, Suite, 463
Oakland, Calif. 94612
BY: RICHARD RUNDSTROM,
Senior Deputy County Counsel
and
DIANNA THURSTON,
Deputy County Counsel

P R O C E E D I N G S

THE COURT: All right, having considered the documents and the arguments, I'm convinced that counsel for the petitioner is right, ^{that} but there has been a lot of legal activity in this area in the last 10 years, which frankly, I wasn't intimately familiar with until I began to look at these cases.

When I first started reading these documents, I had a feeling like I was in some kind of time warp, because I can remember studying these issues when I was in school and then not much since then, and it kind of surprised me ^{that} people were so litigious about this kind of an issue today. But they obviously are, so it's important to both sides as to how these things go. But there's no question ^{that our forefathers} about what the ^{is framing} framework of the constitution ^{because of a} or the recent history or contact with the system of theocracy ^{adopted} ~~adopting~~ provisions, in effect, as the decisions and commentators ^{have described it,} erecting a wall between the church and the state, and there has also been a ^{counter strain} counterstatement throughout history and our culture ^{which is} with evidence ^{by} with things like the phrase, "In God We Trust" on coins and the congressional addition of the words, "Under God" ~~to the~~ ^{and the} pledge of allegiance, ^{to the} ~~to the~~ ceremonial invocation of some Legislatures and the like. And some of the decisions have either avoided ^{the issue} or decided that the complaint didn't rise to constitutional dimensions under a kind of de minimis theory, that it simply wasn't important enough to receive treatment by the court by way of any interference. There's no question that those cases exist, too. And so, I'm asked to be a sooth-

1 sayer and to decide what I think the Appellate Court^{of this state} would do
2 in this situation with this precise issue, and frankly, I
3 don't feel any more capable of predicting how they'll rule on
4 it than anyone else in this room. The problem is that because
5 of my function, it is my decision about that that's going to
6 control what happens tomorrow. It is not a decision that
7 I can avoid making.

8 However, in addition to attempting to decide who has
9 the greater likelihood of prevailing in deciding an issue
10 revolving around a request for a restraint, I also have to do
11 what is called "balance the equities." That means that I
12 have to consider what the effect of an improperly ~~granted~~ ^{granted}
13 or ~~denial of the~~ ^{denied} requested restraint will have on each side.
14 Insofar as the petitioner is concerned, I have no reason to
15 doubt their good faith. They would be required to either
16 attend the ceremony with an offensive, to them, religious
17 invocation or to decide ~~to~~ ^{not} to attend the graduation ceremony
18 which is the natural culmination of their four years of high
19 school, if I improperly deny the restraint.

20 ~~If I improperly deny the restraint~~ -- On the other
21 hand, if I improperly grant it, the respondent would be im-
22 posed on by having a graduation ceremony with the absence of
23 a prayer. It seems to me that what I'm attempting to balance
24 here is an asserted consitutional right versus something
25 amounting almost to an esthetic preference.

26 It may well be that if I grant the restraint, the
27 respondent's students or the students that voted in favor
28 of having that portion of the ceremony will not be as pleased

with the graduation ceremony as they would with its inclusion. But that doesn't seem to me to weigh or to be as entitled to the weight to be given by a court ^{to} in an asserted constitutional right. And for those reasons, I come down in favor of granting the restraint.

Now, I'm a little uncertain as to what form that should be. And it seems to me since the ceremony is going to occur tomorrow, it doesn't make any ~~sence~~ ^{sence} to issue only a Temporary Restraining Order. There may as well be a Preliminary Injunction and let it go forward with regard to declaratory relief.

Does anyone have any serious quarrel with that ~~stan-~~ ^{statement?} dard?

MR. RUNDSTROM: I can't think of any problems with it, Your Honor.

MS. CROSBY: No.

THE COURT: Then with regard to the argument that it is not of an emergency nature and it can be litigated after this ceremony, ~~and~~ that's undoubtedly true insofar as the school district is concerned and so far as our society in general is concerned, but it's not true as far as Leslie Ann Bennett and Wilbur Miller are concerned. It is their graduation ceremony that's going to take place tomorrow.

And since it's my conclusion that number one, they are probably in a position to prevail on the issue, and number two, that the equitable balancing is in their favor, I'm inclined to believe that it is an appropriate time for the Court to assert its interdiction here and to direct that the

1 respondent school district and its responsible members who
2 are named as respondents not lend their prestige or authori-
3 zation or authority to the graduation ceremony containing any
4 religious invocation.

5 The issue fundamentally comes down to whether or not
6 such a public school district can do that; *Albert, it's a*
7 voluntary one-time occasion, *but* ~~that~~ I think clearly the answer
8 is that the constitution says no.

9 So the Preliminary Injunction is granted.

0 MR. RUNDSTROM: Your Honor, my clients have asked me
1 for one point of clarification because they think the district
2 administration is pretty sure they're going to be questioned
3 when they get back.

4 THE COURT: Sure.

5 MR. RUNDSTROM: When you phrased your order, you
6 prohibited any religious invocation. Would you retain that
7 to prohibit a moment of silence if the moment of silence was
8 not announced for any religious purpose? If it was for a
9 moment of reflection?

0 MS. CROSBY: Your Honor, the petitioners would oppose
1 that in the sense that we don't have an abstract moment of
2 silence that has been proposed by the students out of the
3 context of this litigation. The purpose is to replace a
4 religious ceremony with a religious moment of silence. And
5 while some of the constitutional objections are less apparent
6 in the sense there's no audible prayer, that mars the ceremony
7 for the dissenting students. It is still a moment that has
8 been designed for worshipful thinking in our view. And again,

1 since the purpose of the establishment clause is to prevent
2 any involvement of the school authorities with religion; we
3 do think it would be inappropriate. We're not here on a --

4 THE COURT: Let me have a moment of silence.

5 MR. RUNDSTROM: Your Honor, before you have it, it is
6 our understanding that the named student petitioners herein
7 suggested this in an alternative to having an invocation.

8 THE COURT: Well, my restraint is in the terms sought
9 by the petitioner. The District is restrained from lending
10 their authority or directly or indirectly permitting the in-
11 clusion of any religious invocation of any form at the
12 official graduation ceremony.

13 Now, I'm not deciding the issue with regard to a
14 moment of silence because it's not before me properly, briefed
15 or extensively argued.

16 I believe that there could be a secularly introduced
17 and directed moment of silence. I just had one. So I'm
18 not going to find, or I'm not going to be receptive to any
19 contention that there's been any contempt of ^{court} ~~conduct~~ if a
20 moment of silence is utilized in the graduation ceremony,
21 unless it's on its face obviously introduced as a religious
22 ceremony.

23 MR. RUNDSTROM: Thank you.

24 THE COURT: Does that answer the question?

25 MR. RUNDSTROM: Yes. Thank you, Your Honor.

26 THE COURT: So ordered.

27 MS. CROSBY: Procedurally, is the form of order
28 that we submit --

THE COURT: No, I'm probably going to modify it to some degree, but I'm not prepared to do that right now on the record.

The order is I orally announce that it is granted, and I'll deal with that in chambers with counsel, if you'd like.

MR. SCHWARTZ: Thank you, Your Honor.

---o0o---

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

I, MICHELLE D. CRAFT, a Pro Tem Reporter in the County of Alameda, CSR No. 5954, do hereby certify that the above is a true and correct transcription of my shorthand notes of the above-entitled proceeding.

Dated this 9th of June, 1983.


MICHELLE D. CRAFT, CSR NO. 5954

RECORD GRANTABLE FOND

Religion vs. diversity issue divides educators

Hayward High School Principal Howard Moffitt calls himself a "practicing religionist" and says he prays often. But he does not favor prayer in public schools.

"Why parade something that's reverent and sacred before others to whom it isn't?" Moffitt asked. "It's almost like the biblical injunction that says 'Don't cast your pearls before swine.'"

Few public school educators interviewed on the subject think prayer should be part of the school day.

There are the exceptions, like Guinn Boggs, a basketball coach at Fremont's Washington High School who says his life revolves around his faith in Jesus Christ.

"I don't break my life into sections. When I teach I hope the message of Christ comes through in my attitude," said Boggs, who is convinced the 1963 U.S. Supreme Court decision barring school prayer was wrong.

"I would do anything I could —

sign petitions, whatever it takes — to get prayer back into school," he said. "The battle lines are being drawn. As time goes on Christians will become more visible in their protest of laws that are anti-Bible and anti-God."

Robert Coney, Alameda County superintendent of schools, recalls a time when communities had no difficulty imposing elaborate religious standards.

"When I was growing up back in the Midwest there were communities that were very religious and they wanted prayer in their schools," he said. "The public schools were seen as an adjunct to the religious life of the community."

"But that changed as we became multiracial, multicultural, multi-ethnic, multilingual and multi-religious and . . . so this makes for a conflict."

Although he thinks communities should be allowed to have some kind of "non-denominational prayer or expression of religious

belief," the schools "should not be in the prayer business."

Bringing back school prayer would not restore homogeneity to communities, according to Ronald Stewart, Contra Costa County superintendent of schools.

In the 1940s, said Stewart, there was a national, if unstated, policy concerning the role of education in society: The schools reinforced the teachings of the church and the family.

Merely reintroducing school prayer would not recreate that situation, he said.

But religion is not banned from all schools.

Lawrence Fischer, a teacher at American High School in Fremont, protested to administrators earlier this year when he observed students passing out Bibles on campus. He found that the Fremont Unified School District allows religious groups to distribute literature as long as they don't try to win converts.

"I'm very much against having religion encouraged by the schools because even silent prayer subtly turns into 'you are supposed to pray,' and I don't think kids, especially elementary kids, would be too vocal about complaining," he said.

"We've got kids who pray in non-traditional ways — facing west, using a mat, on their knees — and I don't think teachers would tolerate that," he said. Prayer "would be just another way to get Christianity into the schools."

Don French, a Christian and a teacher at Washington High School in Fremont, disagrees. In the past he has supervised a before-school prayer session and he often talks to student members of his Christian youth fellowship group about religion on campus. He said students were very respectful when others were praying.

"If people study what went on back when this was brought up I think they'll find that it was in-

tended not to protect the state from the church but to protect church from the state," French said. "We tend to get that backwards, I think."

Nevertheless, French would not want to devote precious school time to prayer. "But I don't see anything wrong with prayer before or after school if kids want to get together," he said.

Even without prayer, Moffitt says, schools deliver important moral messages.

"We try to teach respect for your fellow human beings and try to teach them honesty," he said, but "not from the structure of religion."

Staff writers Dave Boltano, Richard Colvin, Michael Collier, Lori Eickmann, John Oliver, Rosanne Pagano and James Rainey contributed to these stories.

JUN 8 1983

votes 3-2 to allow invocation

Legal challenge of graduation prayer expected

Granada students, Diane, Leslie Bennett and Ellen, had protested the invocation on the grounds that prayer at a public school function violates constitutional guarantees of separation of church and state. School members rejected a proposal by Trustee Joyce Wycoff to read an inspirational poem or recitation and allow those who want to pray a moment of silence afterward.

Voting for the invocation were Trustees Lynne Stein, Manuel Prado and board President Betty Carrell. Opposing the recommendation were Mrs. Wycoff and Trustee Joyce Brown.

Mrs. Carrell said she did not want to cancel the invocation because doing so might amount to censorship.

Prado said the invocation would not violate the Constitution because the graduation is not a worship

service.

Trustees made their decision before a sometimes emotional crowd of more than 150 people.

A large number of speakers testified both for and against allowing the invocation.

Miss Brown told the board that the U.S. Supreme Court has ruled that officially sponsored prayers don't belong in public school classrooms.

"Prayers of thanks belong in the

privacy of one's heart or one's home but no one has the right to pray aloud to all present at the same ceremony," she said, "thus implying all share the same form of worship."

The protesting students contend that the invocation to be delivered by student/Todd Ferro cannot be non-denominational.

The invocation question should be determined on the legal issue and not simply the wishes of the majority,

said student Steve Bradley.

"Constitutional law has been questioned here," he said. "At no time in history has constitutional law been decided by majority belief."

The invocation was approved at a recent meeting of Granada seniors by a vote of 35-11. Most of the speakers Tuesday night seemed to favor the invocation. Teri Ryan, Granada student body president, told the trustees that supporters had gathered 77 signatures.

Attorneys in the Alameda County Counsel's office have advised the school district that the invocation would not be unconstitutional.



lated

Religious leaders' views range from pro-prayer to separatism

There is a schism among area religious leaders over whether prayer should be recited in public classrooms.

Clerics swing from the fervently pro-prayer stance of Hayward's Rev. Elliott Paulsen to the separatist views of San Leandro Rabbi Ira Book and Union City Buddhist leader Hoshu Yoshida Matsubayashi.

For Paulsen, founder of the American Heritage Christian Schools in Hayward, the June court decision prohibiting graduation prayers at Granada High School in

Livermore "strikes at our constitutional freedoms."

"The courts should be as responsive to those who want prayer as to those who don't," added Paulsen, now retired as pastor of Fairway Park Baptist Church.

"The Declaration of Independence proclaimed life, liberty and the pursuit of happiness. Whenever you order Christians not to pray, you're not making them happy. Christians everywhere in the Livermore Unified School District are guaranteed the right to pray silent-

ly."

Rabbi Book of Temple Beth Shalom says prayers have no place in public schools' everyday curriculum, but doesn't object to graduation invocations.

"Graduations are celebrations," said Book, "and invocations are a message of congratulations for human accomplishment and the human spirit."

The classroom prayer issue is altogether different, he added. "Just what is a classroom prayer? A Moslem or a Jewish child in a

classroom where there is a Christian prayer will feel very out of place.

"The lesson of Granada is that the children got a sense of using the American political system to express themselves," Book said. "It's better that way than by evangelism or graffiti."

The Rev. Matsubayashi of the Southern Alameda County Buddhist Church in Union City took the Granada High ruling very seriously.

"I was asked to give the invocation at the adult education school

graduation of the New Haven Unified School District," he said. "Because of the court decision, I turned down the request."

Matsubayashi added he thinks religious offerings in public schools are unconstitutional.

But Dr. William Whitaker, pastor of First Baptist Church of Dublin-San Ramon, says that religious freedom is at stake.

"I feel that this (invocation issue) is just another attack against our religious freedom. We're seeing it

all over the country.

"I see a move toward religious suppression."

Joe Schofield, associate pastor of Neighborhood Church in Castro Valley, said he'd like to see prayers in school, but would much rather see families praying together at home.

Students should be given the choice of praying at school, Schofield said. But he added: "If you pray at home, it's not as devastating not to have (school) prayer as a lot of people think."

School prayer

County history of issue

Continued from page 1

School district attorneys argued graduation was voluntary and that no church-state issue was involved because the event happened outside school hours.

Not every complaint reaches court.

A man, who said he had read about the Livermore invocation case, called to complain about commencement prayers to San Ramon Valley School District Superintendent Allan Petersdorf this month, and Petersdorf simply and firmly said it was too late to change things. "I told him I appreciated his concern, but that the plans were established," said Petersdorf.

"A majority of the population here feels it is all right," Petersdorf said. "We rotate the duty among different ministers and priests. It would not be a popular thing to challenge."

The issue of holding baccalaureate at school was raised in Southern Alameda County in 1963, when teachers wondered if it was permissible to hold a ceremony with prayer on school grounds. Then state Attorney General Stanley Mosk wrote that such programs are attended because of their "religious purpose" and as such, may not take place at school without violating the U.S. Constitution.

Shortly after the 1963 decision, the state Department of Education attempted to end the worry that the ruling meant the classrooms were open to the teaching of secularism or atheism.

Leaders in the department wrote that "our schools should have no hesitancy in teaching about religion. We want the children of California to be aware of the spiritual principles and faith which undergird our way of life."

A 1980 case involved the Rev. Larry Beckmannk, who had assured school officials his talk before a high school student assembly in San Leandro would not be religious. When Beckmannk took the platform, however, officials said he began promoting Christianity as the only religion.

The issue prompted Alameda County schools Superintendent Robert Coney to write a memo alerting principals of Beckmannk's previous religious speech at a public school.

East Bay delegation sees 'a dead issue'

Call it silent dedication, devotion or whatever you like, but East Bay representatives say there is not a prayer that Congress will pass a constitutional amendment allowing school religious activities.

"A dead issue" is how it is described by Rep. Don Edwards, D-San Jose. "There will be very little movement in the House for a constitutional amendment to allow prayer in the public schools."

Such amendments are now before Congress. They would require a two-thirds vote for passage. Legislatures of two-thirds of the states would then have to approve the amendment before it would be added to the Constitution.

As a member of the House Subcommittee on Civil and Constitutional Rights, Edwards has been a central figure in the school prayer debate.

"This argument has gone back to the beginning of the history of this country. Patrick Henry was for prayer in the schools and Thomas Jefferson and others opposed it because they thought it would ruin the schools," he said. "It violates the First Amendment. It's as open and shut as that."

Rep. George Miller, D-Martinez, calls prayer in the schools "a phony issue."

He claims President Reagan's announcement last year of his support for a school prayer amendment did a "serious disservice to the American people."

The proposal gave people a false sense of hope because political realities in Congress dictate that an amendment cannot pass, Miller said.

Rep. Fortney Stark, D-Oakland, shares his East Bay colleagues' opposition to school prayer.

"If you could allow (prayer), then you would allow Congress to prescribe the prayer," he said. "That would strike fear into many people's hearts — if Congressmen went around writing prayers."

Stark said he was "fairly impressed" with the students of Granada High School in Livermore who sued in June to keep an invocation out of their graduation ceremony. "That's democracy at work," he said.

But Stark said when there are no objections from participants, invocations might continue to be delivered. "The invocation in itself is not of such tremendous consequence that the Constitution will come crashing down if an invocation is given."

The American Civil Liberties Union, which came to the aid of the students in the Livermore case, has put limited effort into fighting the school prayer proposals.

"I think there are people who are very serious about it," said Margaret Crosby, ACLU Northern California staff attorney. "But with all the other priorities, there really isn't much threat (of passage of an amendment) right now."



Len Cook — staff photo

LuWana DeYoung and her daughter Tam, 9, oppose prayer in school.

Moment of silence: Can it substitute?

Can a moment of silence substitute for prayer at graduation ceremonies and in the classroom?

Helen Boyer of Fremont, president-elect of the Kennedy High School parents' club, thinks it can.

"We need some type of personal meditation to begin the day," said Mrs. Boyer.

Granada High School graduate Darren Dickman, 18, of Livermore, said he regrets that a judge banned the invocation at his school's commencement exercises this month. Dickman, who said religion is important to him, added that a few silent moments would have been a good alternative.

"I would want to pray," he said. "But those people shouldn't have to hear it if they don't believe."

But Dickman's girlfriend, Laura Halpin, who was senior class president at Granada, doesn't see silence as an acceptable compromise.

"I don't think you can compromise God," she said. "What about the freedom of speech for those of us who want to pray? It just seems like God is not available anymore to anybody."

Marilyn Bolingbroke, president of the San Ramon Valley High School parent club, agreed. She opposes prayer in the classroom because "there should be a separation of church and state," but prefers a prayer rather than a moment of silence at graduations because it is traditional and the commencement

"is not a classroom situation."

Cindy Bolingbroke, 15, who will be a junior at the high school next year, said, "At our ceremony this year, we had (an invocation), and it was really nice. It sets the mood."

Indeed, most parents and students questioned said prayer should be part of school activities in some instances. But most were more favorable toward graduation invocations than prayer in the classroom.

Bob Moore, whose son, Tim, attends Tennyson High School in Hayward, said he saw nothing wrong with having an invocation at commencement ceremonies because "we have them at baseball games and conventions. It doesn't hurt anybody."

LuWana DeYoung, president of the Marshall Elementary School parent club in Castro Valley, said prayer doesn't belong in the classroom, but argued that graduation ceremonies are "more family-oriented" than educational.

What about the constitutional separation of church and state?

"Church and state are so intermingled already," she said. "Public schools loan books to private schools, they rent closed (public) schools to private ones. Are they going to take 'In God We Trust' off of coins?"

Mrs. DeYoung's daughter, 9-year-old Tam, also said prayer shouldn't be allowed in school because "I work in school. It should be in a church."

In the town of Livermore, California, three students at the local high school objected to the traditional reading of an invocation at the graduation ceremony. Their objection was based on their claim that the reading of an invocation would be a violation of the separation of church and state.

They took their case through the school's grievance policy, and the school's principal upheld the invocation. The three appealed the principal's decision to the School Board, where the invocation was again upheld. They appealed the decision of the School Board to the Superintendent of Schools, who also upheld the invocation.

The next day, the American Civil Liberties Union, on behalf of the three students, took the case to the Alameda County Superior Court. There, Judge Raymond Marsh ruled with the ACLU (against the invocation) and issued a preliminary injunction affecting the three county high schools.

The Livermore School District on June 9, 1983, appealed Judge Marsh's decision to the California Court of Appeals. The Court of Appeals on that day upheld the decision against the invocation, by a 3-2 vote, without comment. The School District appealed to the California Supreme Court on the next day (June 10, 1983), which was the day of the graduation ceremony, but the Supreme Court refused to hear the case. The ceremony was held without the invocation, and the student who had originally been selected to read the invocation read a poem instead.

However, during the ceremony, a plane flew over the ceremony, trailing behind it a banner which read: "God Bless The Graduates". No one has discovered to date the person responsible for the banner, and no one has come forward to take credit for it.

The ACLU has indicated that it will seek a permanent injunction concerning future incidents of school ceremony invocations in the fall.

THE WHITE HOUSE

WASHINGTON

June 27, 1983

MEMORANDUM FOR MORTON BLACKWELL

FROM: KEN STRIBLING

SUBJECT: Livermore graduation incident

Attached is the information that you wanted on the Livermore case.

This information was obtained via telephone conversation with Dave Boitano, who is the Education Writer for the Livermore Tri-Valley Herald, a daily newspaper in that area. (His number is 415-447-2111).

He has agreed to send me a copy of the article covering the story, as well as a special section that they ran on prayer in public schools.

I have forwarded a copy of the attached sheet to Congressman Kemp's office with a FYI attached from you.

Please inform me if I can pursue this matter any further.

*To Ken
Return
with
clippings
& info
from
Court*

In the town of Livermore, California, three students at the local high school objected to the traditional reading of an invocation at the graduation ceremony. Their objection was based on their claim that the reading of an invocation would be a violation of the separation of church and state.

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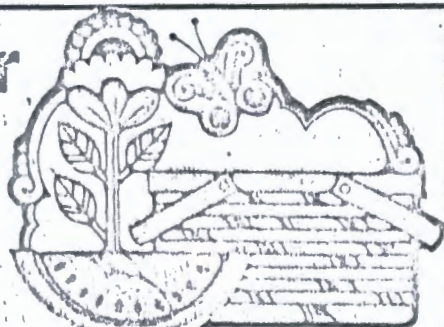
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The joys of summer

A guide to the hottest movies,
concerts, books and festivals

See Family Weekly, inside



Hideaways honeymooners love

See Travel

Invaders clinch division title

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The Herald

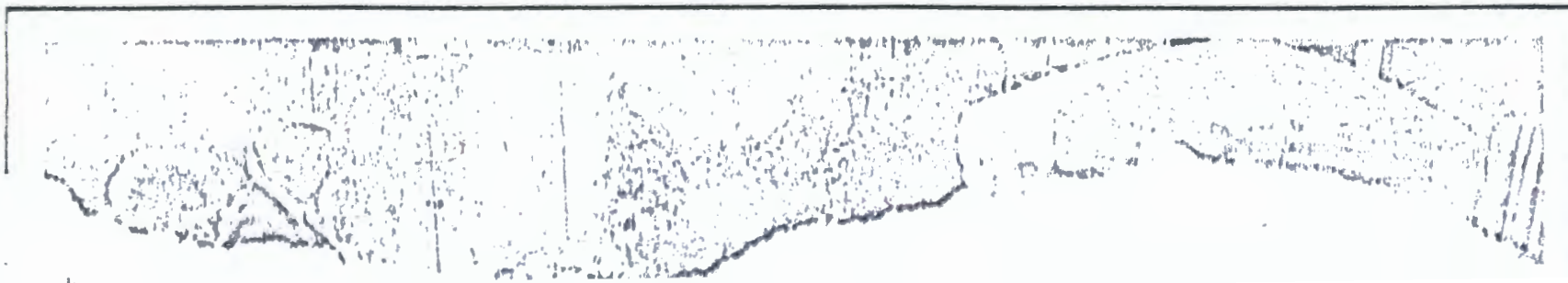
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