Report from the Capital

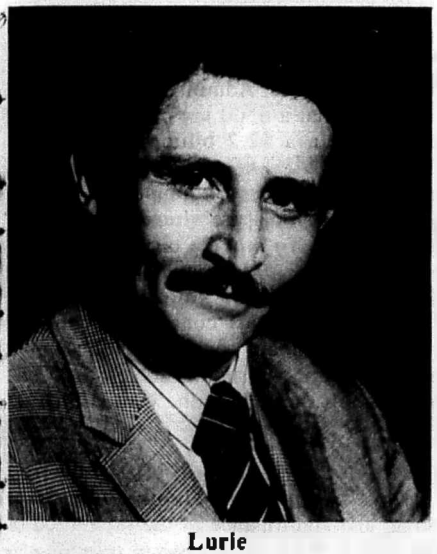
October-November 1977

IRS Official Denies Rule Restricts Freedom

By Stan L. Hastey

WASHINGTON—A high-ranking tax official said here that the Internal Revenue Service (IRS) rule requiring some church-related agencies and institutions to file financial information returns does not infringe on the separation of church and state.

Alvin D. Lurie, assistant commissioner of the IRS for employee plans and exempt organizations, told participants at a conference on taxation and the free exercise of religion that the rule on "integrated auxiliaries" promulgated earlier this year was designed to inhibit the "proliferation of the phoney church" and not to help the churches define their mission.



Lurie

The controversial ruling has been assailed by numerous religious groups, including the Southern Baptist Convention, which condemned the requirement at its annual session in Kansas City in June.

In addition, the Baptist Joint Committee on Public Affairs (BJCPA) has helped lead the fight against the new rule since it was first proposed by IRS in February 1976.

After the original announcement in the *Federal Register* that IRS intended to define the term "integrated auxiliaries," more than 80 religious bodies protested formally in testimony submitted to the powerful executive agency. Fifteen of those groups, including the BJCPA, sub-

(See OFFICIAL, p. 12)

Wrap-up

Tax Views Clash at BJCPA Religious Liberty Conference

By W. Barry Garrett

WASHINGTON—Conflicting ideas clashed often at the Religious Liberty Conference on "Taxation and the Free Exercise of Religion" here.

There was unanimous agreement that government should not restrict freedom of religion. But there were sharp differences about the effect and ultimate outcome of federal tax policy as implemented by the Internal Revenue Service (IRS).

There was a general feeling at the end of the conference that both government and "churches" had much more homework to do in working out tax policies relating to religion and religion-related agencies.

The conference was the 16th sponsored by the Baptist Joint Committee on Public Affairs of which James E. Wood, Jr. is executive director. One hundred and forty-four persons participated in the conference. These included high-ranking government officials, denominational executives, constitutional lawyers, pastors and laity.

The conference attracted participants from seven national Baptist bodies. Also present were persons from the National Council of Churches, Roman Catholics, Jews, Unitarians, Christian Scientists, Seventh-Day Adventists, Lutherans, Methodists, Mormons, Church of the Brethren and Mennonites. This was the first time the Baptist religious liberty conference was opened to representatives of other faiths.

Wood, in discussing the IRS ruling on "integrated auxiliaries" of churches, charged that this regulation "must be regarded as a serious encroachment of government on religion and an exercise of political authority totally unacceptable to the churches . . . . The IRS has violated both the letter and the spirit of the First Amendment."

(Many church groups have felt that the IRS regulation defining "integrated auxiliaries" resulted in a definition of the church and its mission by government. They feel that the nature and mission of the church or churches is out of bounds for government and should remain exclusively for the churches to decide.)

Later, Alvin D. Lurie, assistant commissioner of the IRS for employee plans and exempt organizations, in a policy level speech to the conference, denied that the rule infringes on separation of church and state. In fact, he said, that the rule finally agreed upon by IRS was in response to the protests of the churches and that the IRS officials thought that the finalized rule would be acceptable to the churches.

Conference participants were unable to cross-examine Lurie on his views, because his appearance before the conference came with the understanding that he would not respond to questions from the audience. In a discussion period, however, Gary Nash, counsel for the Southern Baptist Annuity Board, wondered why IRS wrote the rule the way it did, if indeed the intent was as Lurie explained.

Both Lurie and Laurence N. Woodworth, assistant secretary of the treasury for tax policy, who spoke at the opening session, left the doors open for future negotiations with the churches for changes

(See WRAP-UP, p. 12)

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From the Desk of the Executive Director

Tax Credit Legislation For Church Schools

By James E. Wood, Jr.

The introduction of the Tuition Tax Credit Act of 1977 (S.2142) on September 26, 1977, by Senators Daniel P. Moynihan (D-N.Y.) and Bob Packwood (R-Ore.) to provide $4.7 billion of federal funds to nonpublic schools—from elementary through university—deserves careful attention and review by the American people. It represents a serious challenge to basic public policy as we have known it in the American experience and to the American tradition of church and state. Co-sponsored by forty-one members of the U.S. Senate, the bill is described, even by its chief sponsors, as "a revolutionary concept" in American education.

Wood

I

The bill permits a taxpayer to claim a tax credit of one-half for amounts paid as tuition to provide education for one's self, one's spouse, or one's dependents, up to a $500 maximum per student. The act offers tax credit for tuition paid to elementary and secondary schools, colleges and universities, whether public, private, or church-related. It is to take effect in 1980. Public hearings are expected to begin in or after January 1978.

In introducing the legislation, both Senators Moynihan and Packwood stressed their concern for nonpublic schools and the imperative of preserving them in order that pluralism in American education be preserved and that any monopoly on American education by public schools and state universities be averted. "Private institutions without the strictures of public governmental pressures," Senator Packwood declared, "sometimes speak to more select needs and interests than public institutions. A smaller constituency affords parents a greater voice in the educational process and a higher degree of accountability." That is to say, nonpublic schools are able to retain a *private* character and a *private* accountability not accorded public education. While such arguments are by no means new for private support of nonpublic schools, they are hardly the arguments usually given in support of tax funds for the support of nonpublic schools.

Three important differences are noted in the Tuition Tax Credit Act of 1977 from similar proposals offered in recent years in both the Senate and the House of Representatives. The bill provides for a tax credit, as opposed to a tax deduction as offered in most other bills. In the case of a tax credit, a specified amount may be subtracted from one's taxes to be paid the federal government, whereas in the case of a tax deduction plan a specified amount of money is deducted from one's taxable income. Thus, the amount allowed for a tax credit actually becomes a reimbursement from the federal government for one-half of tuition, up to $500, which was spent by the taxpayer for each member of the family. The present bill also provides that for families too poor to pay income taxes, refund from the government of up to 50 percent of the tuition will be paid for each member in school. Finally, the bill allows twice the tax credit other similar bills have provided and no limitations on annual income are required for eligibility for receiving the tax credit provided by the bill.

II

Part of the genius and political appeal of the tax credit plan is that it offers direct financial benefit both to taxpayers and to nonpublic schools. As in the past, the clear intent of such legislation is to aid nonpublic schools, almost 90 percent of which at the elementary and secondary level are parochial and almost 90 percent of these are Roman Catholic. Having been repeatedly thwarted by the U.S. Supreme Court since 1971 in prohibiting the use of public funds to church schools, advocates of public funds to church schools can be expected to give vigorous support to this tax credit legislation to accomplish through congressional statute that which the U.S. Supreme Court has previously declared to be unconstitutional.

The Carter Administration has indicated its firm opposition to proposals for tax credits for college tuition and related expenses. Earlier in the summer, the Administration declared that tax credits are "one of the least effective" and "surely one of the least equitable" means of aiding nonpublic institutions, students, and middle income families. Administration estimates in May of this year indicated that a $500 tax credit for higher education alone would result in a $2.2 billion loss at 1977 levels of income.

This renewed drive for tax credits for nonpublic schools comes at a time when public schools are already in the vast majority of cases underfinanced. To provide tax credits, up to several thousands of dollars, to middle and upper-income American families who are the real bulwark of America's nonpublic schools raises serious questions concerning congressional efforts at tax reform. No doubt such legislation would encourage, and generally result in, substantial increases in tuition costs for nonpublic schools throughout the United States.

III

The Tuition Tax Credit Act of 1977 (S.2142) should be a matter of grave concern to all Baptists and all other Americans who espouse the meaning and significance of the separation of church and state as essential to the free exercise of religion and a free society. The bill is a threat to the basic guarantees of the First Amendment and its consequences on the future course of American public policy are incalculable. The proposed legislation is to be deplored all the more in view of the repeated decisions of the U.S. Supreme Court during the last six years in opposition to all forms of tax aid to nonpublic schools. Throughout the years, the Baptist Joint Committee has vigorously expressed its opposition to tax funds in support of church schools as being incompatible with the First Amendment—the free exercise of religion and separation of church and state—and has expressed its support of a public policy which requires public accountability and control with the use of public funds. Thus, on October 3, 1977, the Baptist Joint Committee unanimously expressed its opposition to the Tuition Tax Credit Act of 1977.

To suggest, as Senator Daniel P. Moynihan did on September 26, 1977, that all who oppose tax aid for church schools

(See TAX CREDITS, p. 9)

washington observations

news views trends

SOME CONFUSION has arisen in recent days over the role of the Baptist Joint Committee on Public Affairs in opposing H. R. 41, a bill which, if passed, would place certain controls on charitable solicitations through the mail and over the airwaves. Although the BJCPA opposes H. R. 41 as a violation of separation of church and state, it does not consider the measure to be an attack on the religious community, as charged recently in a widely-distributed communication from the National Religious Broadcasters.

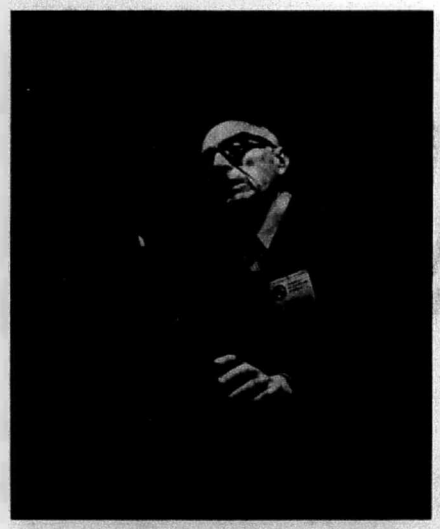
THE PRIMARY reason for the introduction of the measure was the revelation of dishonest fund raisers, some of them religious. According to James E. Wood, Jr., executive director of the BJCPA, the bill's objective "is valid for the protection of the public." The BJCPA has unsuccessfully sought to have churches and associations and conventions of churches exempted from the measure's provisions.

NEXT MONTH'S Report from the Capital will carry a full report.

THE U.S. DISTRICT COURT for New Jersey ruled on October 19 that federally-funded programs to teach Transcendental Meditation in that state's public schools violate the Establishment Clause of the First Amendment. In October 1976, the BJCPA unanimously resolved to oppose all such programs.

FORTY-THREE U. S. Senators have introduced a massive tax credit bill designed to aid private schools from the elementary level through college. The announcement of the plan was made by Senators Daniel P. Moynihan (D-N.Y.) and Bob Packwood (R-Ore.). For an analysis of the measure, you will want to read the article by the executive director beginning on page 2 of this issue.

IN THE WAKE of this fall's 16th Religious Liberty Conference on "Taxation and the Free Exercise of Religion," a number of Baptist state conventions have adopted strong statements opposing the Internal Revenue Service's definition of "integrated auxiliaries" of churches.



Two prominent constitutional lawyers, Leo Pfeffer (l) and Charles M. Whelan (r), presented contrasting views during the 16th Religious Liberty Conference. Pfeffer is professor of political science at Long Island University, while Whelan is professor of law at Fordham University School of Law.

Whelan, Pfeffer Differ on Church Exemption

By Don McGregor

WASHINGTON—Trustees of some religiously affiliated organizations such as colleges, hospitals, and children's homes may be shocked to learn they are liable for income taxes prior to Dec. 31, 1975, according to Father Charles M. Whelan, professor of law at the Fordham University School of Law.

Whelan was speaking before the 16th Religious Liberty Conference, Oct. 3–5, sponsored by the Baptist Joint Committee on Public Affairs.

The sponsoring agency is supported by contributions from eight Baptist bodies in the United States and one in Canada. James E. Wood, Jr. is the executive director.

Whelan, a Catholic, was engaged in a debate of sorts with Leo Pfeffer, who is chairman of the Department of Political Science at Long Island University and special counsel for the American Jewish Congress. The two were espousing different sides of a church tax discussion.

Whelan spoke on "Definitional Problems in the Internal Revenue Code," and Pfeffer spoke on "The Special Constitutional Status of Religion."

Whelan said that the old concept that the government would not tax churches has been replaced by the concept that the government will define church organizations so as to tax those which have unrelated sources of income. Those organizations of church bodies which find themselves classified other than as the church could also find themselves liable for income taxes not only since Dec. 31, 1975, when the new concept went into effect, but also before that period and since 1950, he declared.

Whelan pointed out, however, that the Internal Revenue Service move to tax these organizations is not attributed to hostility. It is an attempt by the Congress, the Department of the Treasury, and the IRS to deal with a serious and intricate problem. It is a bungling attempt, he said, because the writers of the material attempting to deal with the churches do not understand the nature of the churches.

He suggested that the American churches should get together and form a committee which would come up with drafts of formulae that would explain the historical position of the church. He added that it is essential that churches resist the IRS attempt to define the nature of the church through its integrated auxiliary regulation. He said the ability of the IRS to define an integrated auxiliary of the church gives the tax agency the ability to dip into the affairs of the church, but that church organizations will have to file

(See LAWYERS, p. 9)

Don McGregor is editor of The Baptist Record, the weekly publication of the Mississippi Baptist Convention.

Treasury Official Says Abuses Forced IRS Rule

By Carol B. Franklin

WASHINGTON—Laurence N. Woodworth, assistant secretary of the treasury for tax policy, asserted that government has been forced into defining religion in a speech to a Baptist conference here.

Woodworth cited a case where an individual started his own church. "Whether that constitutes a religion or whether it doesn't, the government is forced into trying to draw a line somewhere there, otherwise, anybody can step in and call anything they're engaged in a religious activity," he said.

Woodworth was the kick-off speaker at the three-day conference on "Taxation and the Free Exercise of Religion" sponsored by the Baptist Joint Committee on Public Affairs. James E. Wood, Jr., is executive director.

Woodworth, a Baptist minister's son, pledged to work with church organizations in dealing with the difficulties raised by federal regulations which define "integrated auxiliaries" of churches. Numerous religious groups have protested the regulations of the Internal Revenue Service which distinguish between activities of churches which are "exclusively religious" and those which are not, charging that this puts government in the position of defining "church" and "religious."

Woodworth suggested that the definition of "integrated auxiliary" could possibly be changed to some extent. He did not specify how it might be changed.

He asked for a detailed analysis and interpretation of the various points of view on "integrated auxiliaries" represented at the conference. "I for one would be glad to look at your proposals . . . myself and give you a considered response," he said.

Woodworth told conference participants that Form 990, an information form required of all charitable and religious tax exempt organizations, is necessary for church-related institutions because it would be "difficult" to ask the non-religious organizations to file and exempt religious groups. (BPA)

Conable Favors Repeal Of Controversial Rule

By Carol B. Franklin

WASHINGTON—"I enjoy an occasional opportunity to kick Treasury in the face," a powerful congressman told participants in a Baptist conference on "Taxation and the Free Exercise of Religion" here.

Rep. Barber Conable (R-N.Y.), ranking minority member of the House Ways and Means Committee, which must consider all tax legislation, said he would be glad to consider introducing a bill into the Congress which would repeal the 1969 provision which added the term "integrated auxiliaries" of churches to the tax code.

The Internal Revenue Service, a subdivision of the Treasury Department, issued regulations defining "integrated auxiliaries" after Congress used that language. Numerous religious groups have protested the regulations, claiming that by defining what is an integrated auxiliary of a church, government has stepped into unconstitutional territory and tried to define religion. Not only do the churches disagree with the definitions the IRS has offered, they object to government assuming the right or ability to do so at all.

Conable also noted that most taxpayers assume that "tax reform" means "tax relief." "That isn't so," he said. "We, in Congress, mean 'revenue neutral' when we talk about tax reform. What we give you in apples we'll take away in oranges."

To illustrate his point, Conable explained that raising the standard deduction, a priority of the Administration, would probably hurt charitable giving. As the standard deduction rises, more taxpayers use that rather than itemizing their tax returns. The tax incentive for charitable giving is therefore decreased, Conable suggested.

On the other hand, a proposal that may be a part of President Carter's tax reform package would replace the charitable deduction with a tax credit for charitable giving, Conable said. This would be allowed on top of the standard deduction. He theorized that this would encourage increased charitable contributions.

John W. Baker, associate director of research services of the Baptist Joint Committee on Public Affairs, asserted that "inequality of treatment is built into the

(See CONABLE, p. 9)

Should the Churches Be Taxed? Dean Kelley, Hope Eastman Disagree

By Stan L. Hastey

WASHINGTON—Opposing viewpoints on the question of whether churches should be taxed conflicted here during a conference on "Taxation and the Free Exercise of Religion."

Participants at the conference sponsored by the Baptist Joint Committee on Public Affairs heard Dean M. Kelley, staff associate for religious and civil liberty of the National Council of Churches (NCC) defend the historic tax exemption enjoyed by the churches. Arguments favoring the taxation of churches were advanced by Hope Eastman, a Washington, D.C. attorney who also specializes in the civil liberties field.

Kelley, author of a recent book, *Why Churches Should Not Be Taxed*, has argued that "religion is entitled to special civil treatment" because it performs a "special function" within society.

To the difficult question of what constitutes a legitimate church, Kelley proposed the rationale that "any organization performing the function of religion—explaining the ultimate meaning of life for its adherents—is entitled to the status of 'church'."

Other safeguards Kelley sees to insure that massive abuses of the special tax status of churches do not occur include the criteria that a legitimate church "will have a body of adherents with sufficient continuity to be identifiable over time and sufficient numbers to support it by their voluntary contributions."

Another strand of Kelley's argument was that government should not be given the role of determining by more "objective" criteria what constitutes a church because of its interest in preserving the status quo.

Eastman, who formerly belonged to the Washington legal staff of the American Civil Liberties Union (ACLU) and was active in the fight against overturning the Supreme Court's prayer and Bible reading decisions, said that in her view "churches should be taxed" to help insure the absolute separation of church and state.

She argued that recent Supreme Court decisions which have supposedly attempted to clarify the special constitutional status of churches have actually created more confusion, with the result that government is now more entangled with the churches than 30 years ago.

This process began in 1947, she said, with the famous Everson decision upheld-

(See CHURCHES, p. 9)

Dean M. Kelley (foreground), staff associate in Religious and Civil Liberty for the National Council of Churches and Hope Eastman, a Washington, D.C. attorney, espoused opposite viewpoints on the question, "Should the churches be taxed?"

Thompson, Patton Defend Churches' Role in Public Life

By Carol B. Franklin and Stan L. Hastey

WASHINGTON—Churches must work corporately if they are to be effective in helping achieve justice in society, William P. Thompson, president of the National Council of Churches and stated clerk of the United Presbyterian Church in the U.S.A., told participants in a Baptist conference on "Taxation and the Free Exercise of Religion" here.

Some of the demands of the gospel may be met by individuals, Thompson said, "but some can only be met on a broader basis: justice is less an attribute or achievement of individuals than it is of systems and structures of society, which can be corrected . . . only by other forces . . ., such as the church, acting with full corporate intention as the obedient Body of Christ."

Thompson asserted that any retreat from corporate participation of the church in public affairs would be regression. "To insist that the church pursue justice and righteousness without affecting the public and law of the land, or to do so only through the intervention of individual members in dispersion, is to condemn it to frustration and futility," Thompson continued.

Despite charges by some that church participation in public affairs is new and improper, Thompson said, "it should be plain that 'attempting to influence legislation' is for the churches not an innovation or an aberration but a part of their obedience. The 'innovation' is that there should be any connection between that aspect of their obedience and tax exemption.

Congressional action in 1934 which added the "substantiality" test to the tax code limits the attempts of nonprofit organizations to influence legislation to a proportion of activities which are not a "substantial part of the activities" of such an organization.

"Substantial" remained undefined until 1976 and, as a result, "many public charities were afraid to engage in any legislative activity, . . . to the greater impoverishment of the public dialogue so essential to effective democratic processes," Thompson said.

In 1976 "substantial" was defined on a sliding scale for nonreligious charities. Churches chose to remain under the old rules, deciding "it was better to live with the devil they knew than the devil they didn't and so remained under the fuzzy ambiguities of present law rather than seeking the deceptive clarities of the new section," Thompson said.

Thompson reminded the conference participants that "the churches were here before the Constitution or the commonwealth. They have dealt with many kinds of empires and economies and survived them all. They will continue to try to carry out their mission in whatever circumstances they find themselves. . . . In the course of that mission, and as an essential part of it, they will try to call the nation to a condition of greater justice, righteousness and compassion, and if that includes 'attempting to influence legislation'—as it invariably will—then so be it."

In another address, a prominent New York attorney who specializes in tax law said that churches should not feel guilty over their exemption from real estate taxes because churches are not "ripping off the taxing authorities" by such exemption.

Frank Patton, Jr., an attorney with the Guild of St. Ives, said further that in his view churches should not make voluntary payments to local governments to compensate for their tax exempt status.

"There is no reason at all for churches to feel they are trampling on the rights of elderly widows and other municipal taxpaying residents," he said.

Patton told conference participants that real estate tax exemption is not "handed out on a platter" by cities and other municipalities, but "it must be worked for."

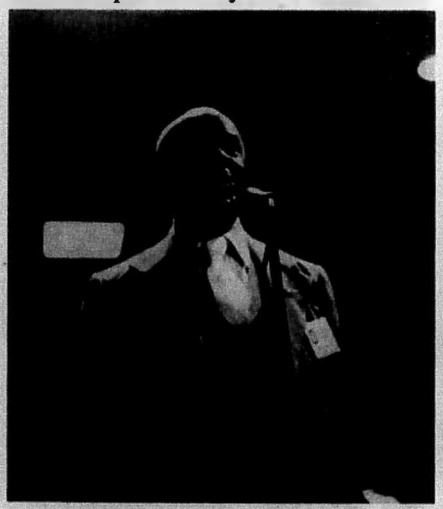
The Union Theological Seminary trustee went on to say that such exemption "is as firmly established in this country as almost any legislative tradition could be" and is practiced in all 50 states. Such a tradition has been established by "enlightened legislatures," which "have recognized through exemption and other tax benefits the importance of churches to society," he said.

Patton reminded his audience that churches constitute only one category of organizations exempt from real property taxes. Others include schools, hospitals, cemeteries, other charitable groups and most of all government itself.

Regarding fire and police protection and the feeling in some circles that churches should make voluntary contributions to help defray those costs to communities, Patton quoted from a U.S. Supreme Court decision in 1971 *(Walz v. Tax Commission)* that such protection amounted to "no more than incidental benefits accorded all persons or institutions."

Patton said that in his view, a "more fundamental" problem is that churches themselves question "whether they really are worth their tax exemptions." He went on to argue that "a vigorous parish may be of inestimable benefit to the community."

(See ROLE, p. 7)



During the conference, participants had several occasions to question speakers. Shown here are Andrew J. Allen (l), pastor of Washington's First Baptist Church, Deanwood and Gary S. Nash (r), general counsel of the Annuity Board of the Southern Baptist Convention.

Two members of Congress appeared at the semiannual meeting of the Baptist Joint Committee on Public Affairs to urge continued support for the cause of human rights. Millicent H. Fenwick (D-N.J.) and John H. Buchanan (R-Ala.), both members of the official U.S. delegation to this fall's Belgrade Conference, urged Committee members to take a firm stance in demanding compliance with the Helsinki Final Act of 1975.

BJCPA Reasserts Human Rights Stance

By W. Barry Garrett

WASHINGTON—Representatives of major Baptist bodies in America strongly supported "human rights" throughout the world during the semi-annual meeting of the Baptist Joint Committee on Public Affairs here.

After hearing a report on the Helsinki accord, signed by 35 nations, and anticipating the assembly of signatory nations at Belgrade for the implementation of the "Helsinki Final Act," the Baptist Joint Committee reiterated its stand for human rights.

Specifically, the Baptists voted "that we affirm our strong belief that all nations which are signatories to the Helsinki accord should seek to show in every way possible respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief."

James E. Wood, Jr., executive director of the Baptist Joint Committee, declared, "The need is for the churches to help furnish direction for, not directives to, the social and political order. Meanwhile, impelled by Christian faith, as Baptists we must not fail now or in the future, to identify ourselves with the cause of human rights for all persons everywhere."

In another action the Baptist Joint Committee expressed alarm at the threats to religious liberty and human rights in the United States if forces to call a constitutional convention to amend the U.S. Constitution are successful. John W. Baker, director of research services for the Committee said, "I don't think that the Bill of Rights and separation of church and state would have a ghost of a chance in a new constitutional convention."

The Committee voted for its staff "to move forward vigorously with a review of concerns that would involve human rights in a constitutional convention" and report back to the March meeting of the Baptist Joint Committee.

Wood also reported to the Committee general alarm among religious groups about declining religious liberty in Egypt. According to Wood, there are pending threats of execution for anyone in Egypt who converts from the Muslim faith to another religion. He said that a delegation of American church people may visit Egypt in December to investigate the violation of religious liberty and human rights there.

In another action, the Baptist Joint Committee rejected a proposal to investigate possible legal action against President Carter for the appointment of a personal representative to the Vatican. Instead the Committee voted to "express its unalterable opposition to the appointment of any representative to the Vatican by the President of the United States."

This is the eleventh time the Baptist Joint Committee during the past 30 years has expressed its opposition to United States diplomatic representation to a religious organization such as Vatican City. The action of the Committee was triggered by President Carter's recent appointment of David M. Walters as his personal representative to the Pope.

The Panama Canal Treaty was discussed at the meeting. Porter Routh, executive secretary of the Executive Committee of the Southern Baptist Convention, and a member of the Baptist Joint Committee, said that he was personally in favor of the Panama Canal Treaty but that he felt such an item is not within the assignment of the Committee. Many others expressed the same view.

In response to the Moynihan-Packwood proposal in the U.S. Senate to provide tax credits for persons paying tuition to private schools, the Baptist Joint Committee reaffirmed its previous positions opposing such tax aids to private and church-related schools.

The Baptist Joint Committee is a denominational agency maintained in the nation's capital by nine Baptist bodies in the United States and Canada. They are: American Baptist Churches in the U.S.A., Baptist Federation of Canada, Baptist General Conference, National Baptist Convention, National Baptist Convention, Inc., North American Baptist Conference, Progressive National Baptist Convention, Inc., Seventh Day Baptist General Conference, and the Southern Baptist Convention. (BPA)

Role

(Continued from p. 6)

As a consequence, he concluded that "churches have, or ought to have, far better things to do with their money than to make payments in lieu of taxes to the local government. If the church is not doing better things with its money, then it ought to re-think its mission." (BPA)

High Court Reconvenes; Takes Numerous Church-State Actions

By Stan L. Hastey

WASHINGTON—Returning for its new term, the U.S. Supreme Court took numerous actions relating to church-state and human rights questions during its first full week of work after the summer recess.

The high court heard oral arguments in two church-state cases, including a challenge by the Calvary Baptist Church of Washington, D.C. to the century-old "mortmain" law in the District of Columbia which makes any bequest to a clergyman or religious organization invalid if made within 30 days of the testator's death.

The other church-state case heard by the justices involves a challenge by a New York parochial school to the state's refusal to reimburse the institution for the cost of services rendered during the second part of school year 1972–73, after a federal court struck down the law permitting such aid. That decision was later affirmed by the Supreme Court.

In another major church-state action, the high court affirmed without comment two lower court decisions upholding college tuition grant programs in North Carolina and Tennessee. Both the U.S. District Court for Western North Carolina and a similar tribunal for Middle Tennessee ruled earlier that tuition grant programs to students attending sectarian colleges does not violate the First Amendment.

The actions come as no real surpise, in view of the high court's decision last year upholding a similar plan in Maryland. Three justices, William J. Brennan, Jr., Thurgood Marshall, and John Paul Stevens, indicated they voted to accept the case for oral argument and a new decision. Four justices must agree to hear a case, however, before it comes to the court.

In other church-state cases, the justices declined to hear:

—A Eugene, Ore. case challenging the constitutionality of that city's erecting a large cross on public land as part of a war memorial.

—An appeal from a church organist in Illinois who claimed she was dismissed from her job at a Methodist church for joining a congregation of another faith.

—A California church property dispute on grounds that the civil courts of that state have no jurisdiction to decide whether a local congregation has departed from the religious tenets of the parent church.

—A challenge to Washington, D.C. housing authorities' designating a piece of condemned land under public domain to be used as an extension of a downtown church's parking lot.

—An appeal by two Louisiana men convicted of violating Sunday closing laws.

—A challenge by students at a Huntington Beach, Calif. high school who were denied permission to conduct meetings of a Bible study club on school premises during the school day or publicize their activities in the school newspaper or on bulletin boards on grounds that such activities violate the "no establishment" clause of the First Amendment.

In a pair of cases involving the rights of homosexuals, the justices also declined to hear appeals of lower court decisions which ruled against them. The court refused to review an order by a local school board in New Jersey that a teacher who became president of a statewide gay organization and who openly promoted the group submit to psychiatric examination. In addition, the justices declined to review the dismissal of a Washington state public school teacher who is a practicing homosexual. Justices Brennan and Marshall indicated they voted to hear the appeals.

In a sex discrimination action, the high court agreed to hear arguments in a California case involving alleged bias in a company pension plan. A federal court of appeals ruled earlier that the company's requirement that women pay larger monthly premiums to the pension fund because their life expectancy is longer than that of males violates both the Equal Pay Act and TitleVII of the Civil Rights Act.

The justices declined to hear a challenge to a federal district court order imposing mandatory quotas on the Chicago police department designed to remedy past race discrimination and likewise declined to set aside an Illinois law which requires that police department promotions be made from a roster of candidates ranked by civil service standards. (BPA)

Six Baptist Ethicists Support Abortion Rights

By Carol B. Franklin

WASHINGTON—Six Southern Baptist teachers and writers of ethics joined 210 other ethicists throughout the nation in supporting legal abortion and Medicaid funding for poor women seeking abortions.

FoyValentine, executive director of the Christian Life Commission, who signed the statement, was present at a press conference for its release. The statement supported the 1973 Supreme Court decision which removed abortion from the criminal law codes.

Also signing the statement were Bob E. Adams, Southwestern Baptist Seminary, Fort Worth, Tex.; Thomas A. Bland, Southeastern Baptist Seminary, Wake Forest, N.C.; Daniel B. McGee, Baylor University, Waco, Tex.; and Paul D. Simmons and Glenn H. Stassen, both of Southern Baptist Seminary, Louisville, Ky.

The "Call to Concern" came at a time when there are massive efforts to amend the U.S. Constitution to prohibit abortions and when Congress is struggling over public funding of abortions for poor women.

The statement criticized the "absolutist position" on abortion which views any termination of pregnancy as "murder or manslaughter" and ignores the diversity of opinion among religious people.

The Roman Catholic bishops came in for specific criticism. "We are saddened by the heavy institutional involvement of the bishops of the Roman Catholic Church in a campaign to enact religiously-based anti-abortion commitments into law, and we view this as a serious threat to religious liberty and freedom of conscience," the statement said.

The 216 signers of the statement stressed "the quality of the entire life cycle, the health and well-being of the mother and family, the question of emotional and economic resources, the cases of extreme deformity."

The 1973 Supreme Court decision referred to in the statement overturned a Texas law which denied the right to abortion except to save the mother's life. The court ruled that such a law violates the due process clause of the fourteenth amendment which protects "the right to privacy, including a woman's qualified right to terminate her pregnancy."

(See ABORTION, p. 10)

Lawyers

(Continued from p. 4)

Form 990 information returns only if they are organized separately.

After Whelan had declared that churches should fight any attempt by the government to make their auxiliaries file tax returns, Pfeffer pointed out that he does not believe that churches should enjoy tax exemption. "They should pay their fair share of the cost of government that serves all," he said.

"Everything costs money. Government programs cost money, and the government has to get its money somewhere. Taxes are the only source," was his observation.

He added that when too many bodies are taken out of the tax structure, government finds itself in trouble.

In continuing his arguments against tax exemption for churches Pfeffer said that not only do churches share in the benefits of the protection of government and therefore should pay their fair share but they also can acquire great amounts of wealth. He added that the power to tax does not imply the power to destroy so long as the tax imposed on the churches is nondiscriminatory.

Pfeffer pointed out that churches must pay a price for tax exemption if they are determined to have it. He said that under present law, which he deplores, churches must abstain from influencing legislation. Unfortunately, he continued, under present law they must only preach on good and evil.

If there is to be a tax exemption, he added, the limit of its tax exemption should be sufficient only to maintain a modest house of worship, but its tax exemption should not be forfeited if it seeks to influence legislation. (BPA)

Conable

(Continued from p. 5)

Internal Revenue Code and into the regulations of the Internal Revenue Service."

Baker stressed that this inequality is not deliberate but rather the result of differences in church structure among American religious bodies which government does not understand.

He described three classes of churches: hierarchical, quasi-hierarchical, and congregational. The organizational structures of these groups range from those with clear lines of control, responsibility, and authority to those without such lines of control, according to Baker.

Most tax regulations, Baker said, fail to take these differences into consideration and thus discriminate against religious groups in all three classes.

Baker suggested that churches must assume responsibility for educating both church members and lawmakers about these differences and challenge unequal treatment wherever it occurs. (BPA)

Churches

(Continued from p. 5)

ing transporation for parochial school students. That decision, which contains one of the strongest statements in favor of absolute separation of church and state in spite of its effect of upholding such transporation, has been eroded steadily by subsequent decisions, Eastman said.

She cited a 1971 decision in a New York church property tax case in which Chief Justice Warren E. Burger wrote that the proper attitude of government toward the churches is one of "benevolent neutrality."

Since that decision, she noted, the court has upheld a variety of plans to aid students attending parochial schools as well as direct government funding of denominational colleges and universities.

She went on to say that those who deny that government is not presently subsidizing religion are not facing the "real world."

Eastman, who has also led out in the struggle for women's legal rights, admitted to some "discomfort" in appearing before the group of 144 church leaders participating in the conference to advocate the removal of tax exemption for churches.

At the same time, she said she was not uncomfortable in advancing the viewpoint that the special tax status of churches amounts to government aid to churches in violation of the U.S. Constitution.(BPA)

Wrap-up

(Continued from p. 1)

in the IRS rule to protect the freedom of religion from government interference.

Lurie said that all rules can be changed and that IRS will probably have to come up with a working definition of "church" sometime in the future. Woodworth suggested that the definition of "integrated auxiliary" could possibly be changed to some extent, although he did not specify how or what it would be. He did say that "I for one would be glad to look at your proposals . . . myself and give you a considered response."

In another clash of views, Dean M. Kelley, staff associate for religious and civil liberty of the National Council of Churches (NCC), and Hope Eastman, a Washington, D.C. attorney, took opposite sides on whether or not churches should be taxed. Eastman asserted that the

(See WRAP-UP, p. 11)

Tax Credits

(Continued from p. 2)

do so as a result of "anti-Catholic bigotry" or from not having "the foggiest idea of what an establishment of religion is" is to impugn the integrity and intelligence of millions of Americans, not to mention the U.S. Supreme Court. It is demagoguery of the worst kind, since it is a deliberate attempt to obscure the real issues of constitutionality, religious liberty, the separation of church institutions from government support, and fundamental principles of U.S. public policy relating to public control with the use of public funds. Regrettably, Senator Moynihan contends that the U.S. Supreme Court, beginning in 1947, "has rewritten the history of the First Amendment."

Many Americans who are genuinely supportive of both the right and role of church schools in our free society are deeply convinced of the rightness of the Supreme Court's consistent opposition to the use of tax funds for nonpublic schools. Of the First Amendment's guarantee of the separation of church and state, Justice Lewis F. Powell observed that it has been "regarded from the beginning as among the most cherished features of our constitutional system," and this concept, the Court has rightly observed, must prevail against the "most appealing" arguments for benefits which inescapably go to the support of church schools.

Since the purpose and primary effect of the proposed legislation is to aid church schools, we sincerely hope that the tax credit proposals now being introduced into the Congress will be decisively rejected by the U.S. Congress as being incompatible with the American tradition of religious liberty and the separation of church and state. Now is the time to make known to members of the 95th Congress, your opposition to S.2142, the Tuition Tax Credit Act of 1977.

Court Hears Arguments in Bakke Discrimination Case

By Stan L. Hastey

WASHINGTON—After listening to two hours of oral arguments in the case of a California man who claims he was denied admission to medical school because he is white, the U.S. Supreme Court is set to decide its most important civil rights case in more than two decades.

Not since 1954, when the high court unanimously declared school segregation by law to be unconstitutional, have the justices been confronted with a more emotion-charged civil rights case.

For the first time, the court will have to decide if "affirmative action" programs designed to help persons belonging to minority groups make up lost ground deny whites the equal protection of law. Ironically, it is the equal protection clause of the 14th Amendment which the courts have most often cited in opening up new opportunities for blacks and other minorities.

The case at hand was originally brought by Allan Bakke, a white man who was twice denied admission to the medical school at the University of California—Davis. He maintained that those denials, in 1973 and 1974, resulted from nothing else than his being white.

The medical school has an affirmative action policy of setting aside 16 of the 100 places in each entering class for blacks and hispanic Americans.

Archibald Cox, one of the victims of the "Saturday night massacre" four years ago during the height of the Watergate scandal, argued before the justices that the ruling of the California Supreme Court throwing out the medical school's admissions policy should be overturned.

"There is no racially blind method of selection," the famed attorney argued, if racial discrimination practiced against minorities for generations is to be eliminated. The discrimination of the past, he said, "isolated certain minorities" and "shut them out" of the opportunities of American life.

Without the affirmative action policy, Cox continued, members of minority groups would be virtually excluded because almost all of them score lower on aptitude tests than do more privileged whites. He noted that before the medical school at Davis began its affirmative action program in 1969, no blacks had been admitted.

Cox also argued that other alternatives "won't work." Among those solutions he rejected are proposals to build more medical schools, do better recruiting among minorities, or treat all economically deprived persons on an equal footing regardless of race. Such proposals are "circumlocutions," he said, which ignore the fact that race itself is the heart of the problem.

Cox argued with passion that affirmative action programs are necessary "so that other, younger boys and girls can see that 'yes, it is possible' " to escape economic and social deprivation.

While Cox's performance before the justices was smooth, his line of argument did appear vulnerable at one point when Chief Justice Warren E. Burger questioned him about the exclusion of other minority groups from the Davis medical school's admission program, including the sizable California Asian-American group.

The case for Allan Bakke, who was admitted to the medical school under a court order after he sued the university, was presented by attorney Reynold H. Colvin, of San Francisco, Calif.

Colvin spent approximately the first twenty minutes of his 45-minute presentation reviewing the facts in the case, prompting justice Lewis F. Powell to remind him that the justices wanted to hear the constitutional arguments from Bakke's side and not a recitation of events surrounding his denials of admission.

The thrust of Colvin's argument was that the admissions policy, while labeled "affirmative action," really amounted to a quota system. What "brings Allan Bakke to this court," he said, is his contention that racial discrimination in reverse prevented him from obtaining a place in the medical school.

In answer to a question by one of the justices about the reverse discrimination charge, Colvin insisted the practice amounts to a quota system because the number of places in the medical school for minority representatives was selected first, followed by the university's filling those places with minority students.

Colvin cited a number of statistics demonstrating Bakke's superiority in grade point average and test scores to each minority member admitted.

"Mr. Bakke was deprived" of an opportunity to enroll, he said, "by reason of his race." Race as such, he went on, is an "improper" criterion.

Charging the university has become "quota-happy," Colvin argued that the degree of economic disadvantage, not race, should be the primary concern of schools in the admissions policies. Such a criterion would allow for individual consideration rather than classifying applicants in racial categories.

In addition to Cox and Colvin, the Solicitor General of the United States, Wade McCree, also participated in the arguments as the chief attorney for the government.

McCree asked the high court to uphold affirmative action admissions policies but also to send the case back to the California Supreme Court for action which would eliminate the troublesome "quota" factor.

McCree insisted during his 30-minute presentation that schools cannot ignore race as a major criterion in determining admissions policies. "To be blind to race today," he argued, "is to be blind to reality."

While specific policy decisions are "best left to the professional judgment of the faculties," he went on, the high court must reach a decision in the case that will help those who have been "held back" to "come up to the starting line."

The high court will probably not announce its decision in the controversial landmark case until sometime next spring. (BPA)

Abortion

(Continued from p. 8)

The court ruled that the decision to terminate pregnancy during the first three months is left to the woman and her physician. In the second three months the state may regulate abortion in the interest of the mother's health. In the last three months of pregnancy the state may regulate or even prohibit abortion because the fetus has the ability to remain alive apart from the mother's body.

The statement calls on leaders of religious groups which support abortion rights to speak publicly "in response to the dangerously increasing influence of the absolutist position."

The 216 leading American ethicists represent a cross-section of religious and ethical thought on the part of those who support the civil rights of women to exercise their own choice in the matter of abortion. They believe that government should not regulate the religious beliefs and practices of people who do not accept the "absolutist position" on abortion. (BPA)

Wrap-up

(Continued from p. 9)

special tax status of churches amounts to government aid to churches in violation of the U.S. Constitution. She cited a long number of Supreme Court cases beginning in 1947 with the Everson school bus case and said that there is more "establishment of religion" in the United States now than in 1947.

Kelley, who recently wrote a book on *Why Churches Should Not Be Taxed*, denied the conclusions of Eastman and argued that "religion is entitled to special civil treatment" because it performs a "special function" within society.

He proposed four criteria to determine for tax purposes what is a church; (1) it must explain the ultimate meaning of life for its adherents, (2) it must have a body of adherents, (3) it must have continuity over time, and (4) it must have sufficient numbers to support it by voluntary contributions.

These criteria, however, were challenged by others in the conference, even though they agreed with Kelly that churches should not be taxed.

Perhaps the most surprising clash of ideas came when a noted Catholic constitutional lawyer and an outstanding Jewish specialist in constitutional law differed on whether or not churches should be taxed.

Father Charles M. Whelan, professor of law at Fordham University, has long been a champion of public aid for parochial schools. Leo Pfeffer, special counsel for the American Jewish Congress, has participated in many of the Supreme Court cases in recent years to prohibit tax aid to church schools.

Whelan said that churches should be tax exempt, and, much to the surprise of many at the conference, Pfeffer argued that churches should not be exempt from taxation. Both men agreed, however, that it is not the business of government to define the nature and mission of the churches.

Defending tax exemption for churches, Whelan asserted that recent moves by IRS to tax churches are not the result of hostility but rather they are bungling efforts by government bureaucrats who do not understand the problem of the churches. He suggested that the American churches should form a committee to come up with drafts of formulae that will be satisfactory to the churches and that will meet the requirements of the government.

Pfeffer asserted that if churches continue to insist on the right of tax exemption they must be willing to pay the price for it. He said under present law tax exemption as a special privilege would require them to abstain from attempts to influence legislation and only preach on good and evil.

He further asserted that if churches are to be tax exempt, the limit of its tax exemption should be sufficient only to maintain a modest house of worship, but it should not be forfeited if they seek to influence legislation.

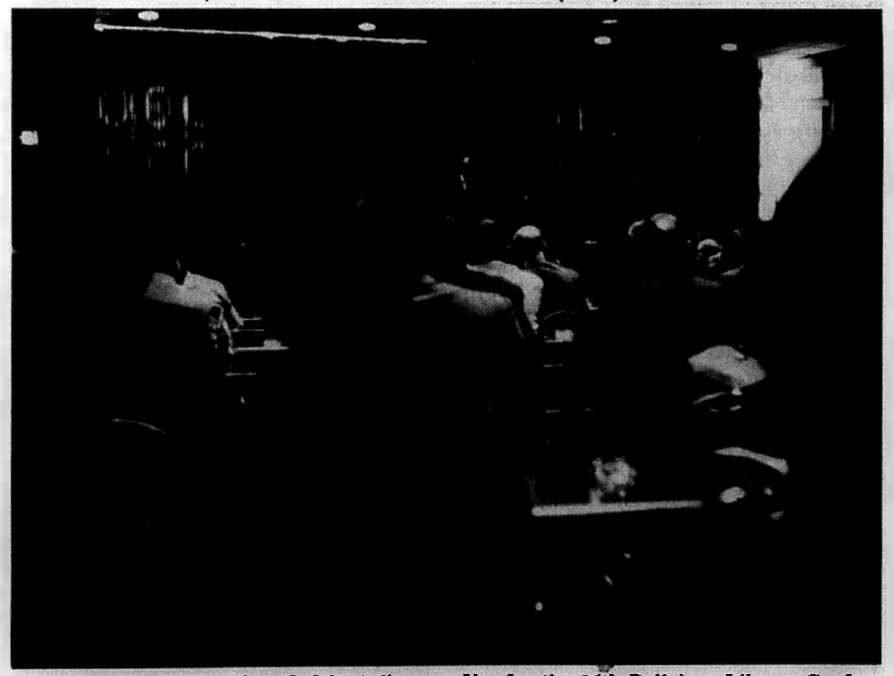
A conflict between the legislative and executive branches of government surfaced during a speech by Rep. Barber Conable (R-N.Y.), ranking minority member of the Committee on Ways and Means of the House of Representatives. The Congressman said he was unaware of the ruling by IRS on "integrated auxiliaries" that has proved so troublesome to the churches. He cited this as an example of bureaucratic treatment of legislation by Congress resulting in conclusions not intended by Congress.

Conable expressed willingness to work with church groups to introduce legislation repealing the 1969 legislation relating to "integrated auxiliaries." "I enjoy an occasional opportunity to kick Treasury in the face," he said.

John W. Baker, director of research services for the Baptist Joint Committee on Public Affairs, in an address on "Hierarchical and Congregational Churches," charged government with "inequality of treatment" because of failure to understand the nature of congregational church polity.

Three classes of churches were described by Baker: hierarchical, quasi-hierarchical and congregational. Most tax regulations, he said, fail to take into consideration the differences between these churches and thus they discriminate against religious groups in all three classes. He suggested an educational program both for churches and government to understand the differences in church structures and the effect these have on tax policies.

In a summary statement on the conference, Wood pointed out that it had resulted in better understanding by churches of some of the problems faced by taxing authorities and a sharper awareness by government officials of the problems faced by churches when tax policies are formulated. He said that although final answers to the problems had not been reached, both the churches and government are in a better position to work together to resolve some of the more difficult problems relating to churches and taxation. (BPA)



144 participants met Oct. 3–5 in Arlington, Va. for the 16th Religious Liberty Conference sponsored by the Baptist Joint Committee on Public Affairs. They heard addresses, cross-examined featured speakers, and grappled with a maze of issues surrounding the theme, "Taxation and the Free Exercise of Religion."

Official

(Continued from p. 1)

sequently appeared during a one-day hearing in June 1976 to object to the proposed regulation.

Between the time the proposed regulation was announced and its implementation last January, IRS made changes in the wording of the regulation. Many church groups feel that the final version of the IRS rule is worse than the original proposal which they so strongly opposed.

In his remarks to the 144 conference participants here, Lurie defended the IRS action, saying that "significant alterations" were made in response to the protests by the churches.

Conference participants were unable to cross-examine Lurie on his allegation, however, because his appearance came with the understanding that he would not respond to questions from the audience. He did remain briefly after the address to field questions from individuals off the record.

Lurie contended in his address that the IRS was forced to define "integrated auxiliaries" after Congress enacted the Tax Reform Act of 1969, a bill which used the controversial term for the first time.

The new phrase was "actually made out of the whole cloth" by Congress at that time, Lurie said, leaving IRS in the position of having to decide what it meant for tax purposes. IRS has simply "carried out an obligation," he said.

The "generating principle" behind the new rule, he said, was that church-related organizations that have "secular counterparts" and who derive a portion of their income from the public at large should be held accountable by being required to file Form 990, an annual financial information form.

Hospitals are among such organizations, Lurie said. Others which do not fall in the protected category of "integrated auxiliaries" are colleges, children's homes, and homes for the aged.

Specifically designated in the protected category are seminaries, mission boards and societies, men's and women's organizations, and youth groups.

Parochial elementary and secondary schools may also enjoy such protection at the discretion of the Secretary of the Treasury.

Lurie stated repeatedly that in making the regulation IRS had no intention of presuming to define the mission of the churches, the charge which best sums up the churches' objections to the rule.

He did say, nevertheless, that IRS will probably have to come up with a working definition of "church" sometime in the future. (BPA)

Wood Disagrees: Charges IRS with "Serious Encroachment . . . on Religion"

WASHINGTON—Definitions of "church" and the mission of the church by the Internal Revenue Service pose a grave threat to religious freedom, according to James E. Wood, Jr., executive director of the Baptist Joint Committee on Public Affairs.

Addressing the Joint Committee-sponsored conference on "Taxation and the Free Exercise of Religion" here, Wood said that current efforts of the IRS to define church and integrated auxiliaries of churches "pose a potential threat to all religious denominations which are involved in the body politic by the removal of the tax exemption and of the tax deductibility of contributions" made to churches.

Wood sketched the history of the Internal Revenue Code's relation to churches since 1934. Most recently, he said, the IRS has issued regulations which "eliminated the 'primary purpose' test and substituted in its place the test of whether the 'principal activity' of an organization or institution claiming to be an integrated auxiliary is 'exclusively religious.' "

This regulation "must be regarded as a serious encroachment of government on religion and an exercise of political authority totally unacceptable to the churches . . . . The IRS has violated both the letter and the spirit of the First Amendment," Wood charged.

"The church has both a right and a responsibility to speak out on public affairs by virtue of its mission and the guarantees of the First Amendment," Wood asserted. "The present IRS policy . . . can only have a chilling and 'inhibiting' effect on the churches in the area of public affairs." (BPA)

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Report from the Capital

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