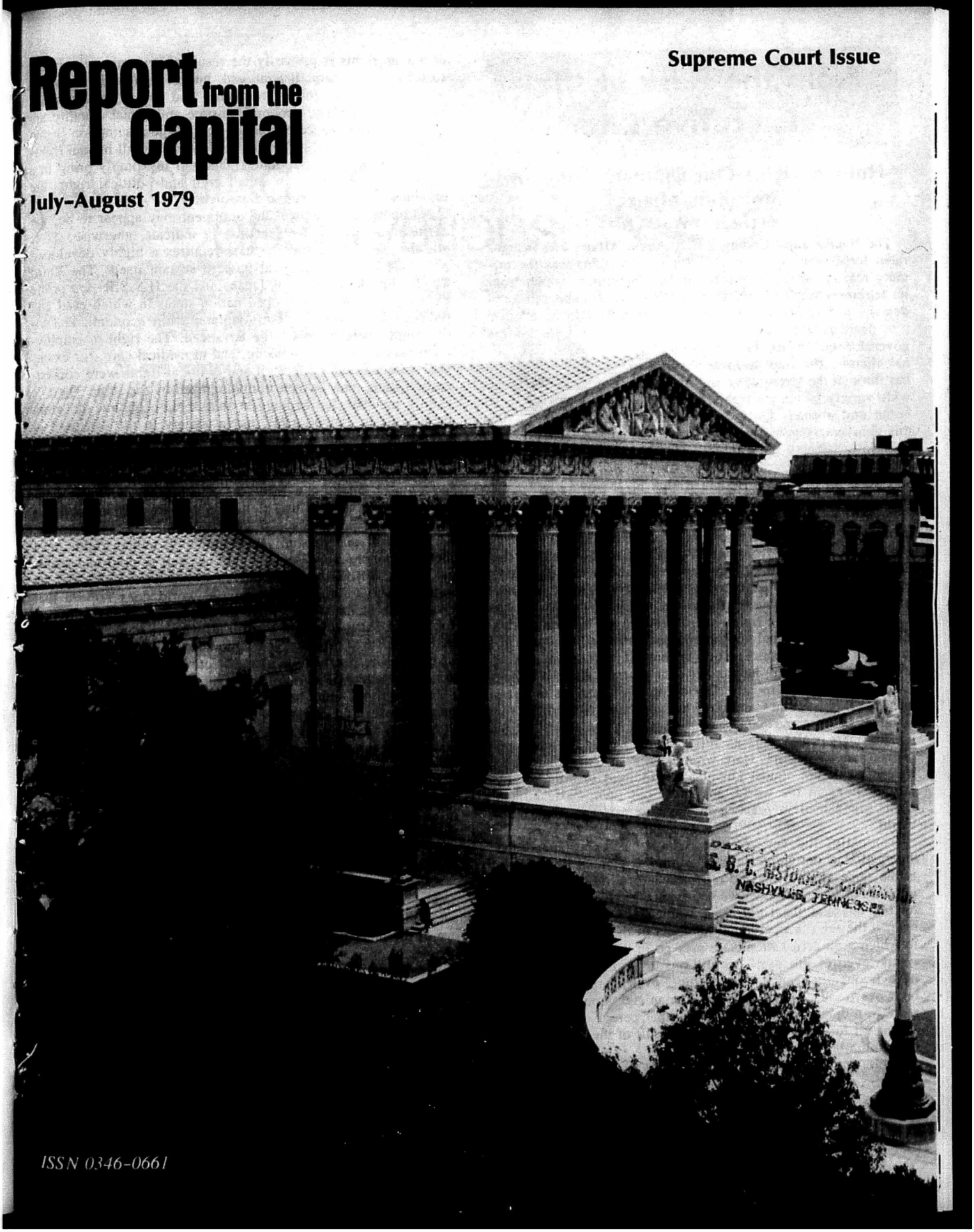
Report from the Capital

Supreme Court Issue

July-August 1979



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From the Desk of the Executive Director

Human Rights-Our Ultimate Concern in Public Affairs

By James E. Wood, Jr.

The Baptist Joint Committee on Public Affairs was inaugurated forty years ago. Concern for human rights was the primary reason for the formation of the Committee, which from its beginning was assigned the task, "to confer, to negotiate, to demand just rights that are being threatened or to have other . . . dealings with our American or other governments." Thus, faithful to its original charter, the Baptist Joint Committee has through the years addressed itself to a wide variety of human rights concerns at home and abroad. Quite appropriately, this anniversary year, we shall sponsor a Religious Liberty Conference, October 1-3, on the theme, "The Role of Church and State on Behalf of Human Rights in National and International Affairs."

Wood

Understandably, this agency has long maintained that religious liberty is the cornerstone of all human rights, and, to quote from one of the earliest statements of the Baptist Joint Committee, "wherever this liberty is questioned, restricted, or denied any group—political, religious, or philosophical—all other human rights are imperiled."

Concern for human rights has dominated the agenda of this agency in both national and international affairs. It has constituted the ultimate concern of our Baptist witness in public affairs—not simply for human rights as abstract ideals but their actual realization in society. During the past year, as in years past, the Baptist Joint Committee has continued to work for the advance of human rights at home and for the elevation of human rights in U.S. foreign policy, in the United Nations, and in international affairs. Here we must acknowledge that while human rights are almost universally espoused in principle by most nations in the world, including our own, basic human rights are denied in practice in the vast majority of today's world.

Ironically, the very century which has experienced the emergence of the Universal Declaration of Human Rights has, at the same time, witnessed repeated and ruthless acts of suppression of human rights by a wide range of governments, both on the left and the right. The Holocaust of Nazi Germany against the Jews is a perennial reminder of the terrifying depths to which a modern nation-state may go in the denial of human rights, even of life itself, to millions of its own citizens. We have frequently seen in this century, even in recent decades, both overt and covert denials of human rights on a wholesale scale to a degree unequaled in any other period of history, by almost all forms of government as a result of the rise of political totalitarianism.

There are those today who decry making human rights a matter of ultimate concern in national and international affairs. Representatives of socialist countries are prone to warn us of the danger of making an idol of human rights. Since the denial of human rights is primarily the result of systemic evils in the structures of society, it is argued, human rights will properly, if not inevitably, follow economic and social development. Within such a view, economic justice and social equality are made the quintessence of human rights. The assumption is that economic and social rights are fundamental to all human rights and therefore these corporate rights will inexorably bring in a society or nation-state in which civil and political rights are ultimately acknowledged and assured.

No matter how rational the argument may appear to be, the existential realities of recent history indicate otherwise. After all, the modern totalitarian state requires a highly developed economic and technological base to sustain itself. The Third Reich, the Shinto State of Japan, and the U.S.S.R. are prime examples of highly developed nation-states in which civil and political rights were flagrantly violated while economic and social rights were by and large advanced. The right to employment, to education, to housing, and to medical care, for example, were assured while civil and political rights were consistently denied, and, in fact, not recognized by the state. There is simply no evidence to suggest that socio-economic development will, in and of itself, move society in the direction of advancing civil and political rights.

To be sure, Americans are still prone to perceive human rights as essentially civil and political rights. We clearly need to comprehend human rights as necessarily including economic, social, and cultural rights, as well as civil and political rights. For to deny the social context of a person is to deny the wholeness of that person. Unquestionably, human rights must include economic and social rights, as well as civil and political rights. Furthermore, the advance of human rights for the vast majority of the peoples of the world does require that changes be made in the structures of society that will provide for greater equality and justice for all who are oppressed by the evils of poverty, disease, and ignorance. But the amelioration of these evils, as noble as that objective may be, provides no assurance that civil and political rights will ensue.

Human rights must be seen as having their own reason for being. These rights must be made indivisible and must become a matter of ultimate concern among all nations. Both freedom and justice must become joined in the struggle for human rights.

Finally, concern for human rights must stand on its own, unencumbered by nationalism or self-serving interests. All too often today, discussions of human rights in international affairs are marked by the tendency to ignore, if not deny, human rights violations in one's own country while readily pointing out human rights violations in other countries.

As Dwain Epps has rightly observed, "Few nations openly oppose the ideals of human rights, yet over the past two decades much more attention has been given to the splinter in the eye of the other than to the log in one's own . . . . Only when nations, people, and churches begin to wrestle with their own problems can progress be made, and only when we strive to support our brothers and sisters in other lands in their similar efforts to achieve greater justice in their own socio-economic, cultural, and political contexts will we be able to say that our commitment to the well-being of all men and women is greater than our will to impose our own patterns on them for better or for worse." Our ultimate concern in public affairs must be for the civil, political, economic, and social rights of all who are oppressed, at home and abroad, based on God's concern for all humanity.

washington observations

news
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trends

ON THE FINAL DAY of its October 1978 term, the Supreme Court ruled that civil courts are not always obligated to defer to the decisions of church courts in settling local church property disputes.

BY THE NARROWEST 5-4 MARGIN, the high court concluded that Georgia state courts may decide which faction of a divided Presbyterian congregation in Macon may lay claim to the disputed property rights.

THE COURT FELL SHORT, however, of awarding the property to the majority faction of the Vineville Presbyterian Church, which six years ago voted to withdraw from the Presbyterian Church in the U.S. Georgia courts must now determine if Presbyterian church polity mandates that the property go to its "loyal" minority rather than to the majority as prescribed in Georgia property laws. (Jones v. Wolf)

IN ANOTHER ACTION before adjourning until the first Monday in October, the justices ruled that neither parents nor judges may exercise an absolute veto over an unmarried, underage woman's decision to have an abortion.

THE HIGH COURT'S JUDGMENT strikes down a 1974 Massachusetts law requiring that unmarried women under age 18 obtain both parents' permission or, failing that, secure permission from a superior court judge to have an abortion.

AT THE SAME TIME, the court declined to declare that all such statues would necessarily violate the constitutional guarantee of privacy as enunciated six years ago when most state abortion laws were struck down. The court virtually invited Massachusetts to amend its statute with the provision that young women be given opportunity in a legal proceeding to demonstrate that they are sufficiently mature and informed to make the decision to have an abortion.

FOUR OF THE JUSTICES indicated displeasure with that portion of the judgment, saying they would have declared the Massachusetts law unconstitutional without the accompanying invitation for the state to try again. (Bellotti v. Baird)

JUSTICE WILLIAM H. REHNQUIST, acting in his capacity as justice for the Ninth Circuit, denied a motion to stay filed on behalf of three persons on whom "service of process" had been made in the name of the United Methodist Church.

THE MOTION, ALSO DENIED by the full court, asserted that the UMC is not a jural entity which can be sued for allegedly improper actions of its member organizations, in this case the bankrupt Pacifica retirement homes in the Southwest.

Warren Burger: Man of Contradictions

By Lyle Denniston

Warren Burger thinks of himself as rigorously moral in an old-fashioned way, but he will never convince some people that he has any scruples at all.

And that is only one of the contradictions.

He is one of the nation's most powerful figures, but one whose true power always remains in question.

His name has been given symbolically to the institution he heads, though very few people there really think of him as a leader.

He can be remote and aloof—even stiffly arrogant. And he can also be engaging, charming—sometimes even tender.

He is one of this city's most private men, yet one who is obsessed with publicity about himself.

This contradiction of a man is the chief justice of the United States, the poor boy from St. Paul who made it all the way from night school to the center seat on the Supreme Court.

Ten years in office, and 71 years old, Warren Earl Burger is still in search of legitimacy for himself. He remains what he has been for a decade: "Nixon's man on the court." To this liberal town, he is Nixon's revenge.

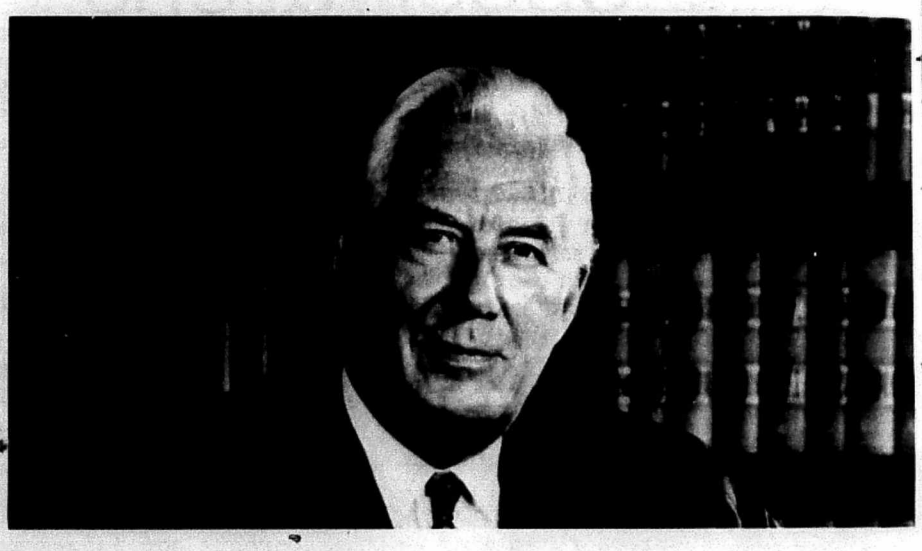
His critics, and there are many, see him as a man occupying a place that ought to have gone to someone else. The best that they will say of him is that he "looks like" a chief justice. But that is not meant to be flattering.

And, to his own everlasting disgust, he never is compared favorably as a judge to others of his time—especially, never to the liberal he succeeded, Earl Warren, and never to his old liberal nemesis and a Washington favorite, David L. Bazelon of the Court of Appeals.

Still, to his everlasting delight, Burger moved up from that court, and Bazelon did not. The Supreme Court is the "Burger court" and has been since he took the oath June 23, 1969.

The "Burger court" is more than a name. It has turned out to be close to what President Nixon had hoped back then, and close to what he expected Burger and the other Nixon appointees would do with it.

Nixon wanted the court turned around from the liberalism of the Earl Warren years, turned back to "strict constructionism"—a phrase that stood for basic social conservatism.



It was that kind of conservatism for which Burger had stood—in a beleaguered minority—in his years on the Court of Appeals here.

Now, 10 years later, the "Burger court" majority votes that way much of the time, and Warren Burger is no longer in a minority.

That is more a testimonial to the voting strength of the whole conservative bloc than to the particular influence of Burger as chief justice. He has cast one of the fairly dependable majority of conservative votes, but the intellectual leadership of the bloc has come from others.

If he is, in fact, a secondary figure in the court's own work, he is a commanding figure, an undenied leader, as head of the whole federal judicial system.

No other chief justice in history has tried more court reform, and none even remotely succeeded with it as he has. From the merest administrative detail to the most vexing problem of keeping up with the rushing tide of lawsuits, Burger has pursued judicial efficiency doggedly.

To judges and lawyers in the habit of tolerating change only in a measured way, the chief justice has been a driving, impatient adversary. To those few on the bench and at the bar who have yearned for reform, he has been ready to lead the march.

His tactics are not always admired: he has nettled members of the Senate and House with occasional strong-arm lobbying, he has managed to malign a good part of the private bar, he has been petty at times with his colleagues and his subordinates, and his sometimes regal manner is too much even for the establishment.

But, like it or not, the American legal community follows Burger when he chooses to lead, and he has gotten almost all of the reforms he has promoted:

- Judges now begin their careers better prepared and they serve at better rates of pay and with more support, human and otherwise, than ever before.
- Courthouse employes of all kinds are better trained and equipped, and the flow of judicial work is noticeably faster in many places.
- Unfit judges, and lawyers who would try a case without knowing how, have felt the sting of ridicule and the threat of real discipline.
- The search has begun, outside regular court procedures, for speedier ways to deal with small but still difficult legal disputes.
- Prison reform has a vocal champion in Burger, and there are some results to show for that. More legal aid is available for inmates, for example.

Lyle Denniston is a staff writer for The Washington Star. *Highly respected by his fellow reporters at the U.S. Supreme Court, he has covered the court for more than a decade. Reprinted by permission of* The Washington Star.

• The U.S. Judicial Conference, policymaker and housekeeper for the federal courts, has been stirred out of inactivity and indifference.

• Congress can no longer buck responsibility for tough issues to the courts, without hearing about it critically from the bench.

However, even Burger himself knows that there has been a cost in all of those labors and successes outside the Supreme Court. He has said that the job of leading the judiciary and being a judge himself at the same time are too much for one to handle; in fact, he has proposed splitting those tasks into two jobs.

Perhaps as a result of his divided attention, the chief justice, within his own court, is only a nominal leader. In fact, insiders there blame him for at least part of the tension and ill humor that obviously exists and that occasionally slips into public view.

He is said to have no close friends among the brethren, and a few of his colleagues are barely able to conceal their suspicion of his motives and their disapproval of his tactics.

There is no doubt that he has made the court operate more efficiently, and he has made part of the courthouse itself into a tourist's museum of justice—with some occasional imperial trappings that make the court seem more austere than it actually is.

A nearly constant worrier about security and secrecy, he has also converted the courthouse's once-open corridors into lanes abbreviated by barricades, baffles and wooden screens, manned vigilantly though genially by police.

The chief justice took a direct role in tracking down recent news leaks about the court's secret deliberations and personally removed the person he considered the source, a court printer.

That Burger has time for such things only adds to the impression that his work as a judge is secondary. There are Burger partisans who insist that he has carried an equal share of the court's judicial work, but nearly every term, most of the other justices write more of the most difficult decisions than he does. (The current term, interestingly, may turn out to be an exception.)

One partial explanation for that, of course, is that he chooses to dissent from some of the few rulings that tend toward the liberal—on the death penalty, abortion, and women's rights, as examples.

Whatever the statistics on his personal workload as a judge, however, Burger's name is associated with some of the key trends in the law that have developed during his 10 years on the nation's most powerful court.

Above all, perhaps, is his own personal dedication to reducing the role of courts in American life—a recurring theme for the present majority.

Burger personally is suspicious of judicial power as a source of social or political reform, and he has a limited view of what should be done with the Constitution to change the way society lives and functions.

He seems to fret that judges, turned loose on constitutional interpretation, get out of control. He spelled out that worry this way in a 1971 opinion:

"In constitutional adjudication, some steps, which when taken were thought to approach 'the verge,' have become the platform for yet further steps. A certain momentum develops in constitutional theory and it can be a 'downhill thrust' easily set in motion but difficult to retard or stop."

The chief justice has illustrated that worry in practice in, for example, the field of women's rights. He was the author of the first modern opinion on that subject—the Reed decision in 1971, which raised new constitutional doubts about laws that classify people according to their sex.

Since then a majority of the court has taken the Reed ruling's premises and spread them fairly widely to advance sex equality—and Burger has refused to go along.

Something of the same thing appeared to be happening as the court tried to hold to its basic constitutional commitment to school desegregation. Burger initially had a major part in keeping that liberal trend growing, when he wrote the famous Swann decision in 1971—the first endorsement of crosstown busing as a desegregation technique, and the first mild support of racial quotas as a desegregation index.

Since then, however, the Chief Justice has been a part of a bloc that has sought to slow the desegregation trend. That effort first emerged most clearly in a Burger opinion in the Milliken case in 1974, making it much harder to integrate the schools inside a city and the surrounding suburbs.

The Chief Justice who emerged in the Griggs case in 1971 as deeply sympathetic toward racial equality on the job has seemed to lose that sympathy in recent years, and now is part of a minority on the court that seems more troubled about "reverse discrimination" against whites—as shown in the Bakke decision last year and the Weber decision this year.

He has been centrally involved, too, in the court's shifting view of press freedom under the First Amendment. After appearing to be a strong defender of press rights—for broadcasters in his CBS opinion in 1973, and for newspapers in his opinions in the Tornillo case in 1974, Nebraska Press in 1976, and Landmark last year — the chief justice is becoming an open adversary of the press, strongly suspicious of its obvious power, and thus unimpressed by its claims to be free of subpoenas and to have full access to government information.

The constants in Burger's opinions for the court over the past decade are his deep hostility to obscene magazines and movies—his Miller opinion in 1973, essentially a sermon on morals, still controls that whole field; his strong skepticism about public aid to parochial schools—his Lemon opinion in 1971 is still the key; and his determined urge to undo as much as possible of the Miranda decision on a suspect's rights at the police station—his Harris opinion in 1971 started that campaign.

The one failed ambition of his 10 years is in his attempt to get the court to overthrow the 60-year-old doctrine that if police get evidence illegally, they can't use it—even if the evidence itself is worthy. A court majority still holds to that rule, though less devotedly in the face of Burger's challenge to it from within.

Overall, Burger's writing and his voting pattern do reflect a more or less predictable effort to stop, or slow down, the march of constitutional liberalism that was in full swing when he took his oath in 1969—thus reinforcing his image as "Nixon's man."

It is one of the most basic contradictions of his chief justiceship, however, that Burger's most important opinion for the court was the one that helped hasten Nixon's resignation from the presidency in 1974.

The full story is not yet known on how the court got together unanimously to force Nixon to turn over those decisively damaging White House tape recordings, but the result is a fact of history.

Curiously, even that was not enough to separate Burger, in the minds of his critics, from the man who had made him chief justice.

views of the wall

By John W. Baker

The First Amendment built "a wall of separation between Church and State." Thomas Jefferson in a letter to the Danbury Virginia Baptist Association.

". . . the line of separation, far from being a 'wall', is a blurred, indistinct, and variable barrier." Chief Justice Burger, *Lemon v. Kurtzman.*

In a recent U.S. Court of Appeals for the Seventh Circuit ruling, it was held that a metropolitan sanitary district had improperly refused to accommodate its employment examination schedule to the religious needs of a job applicant. In the case, an Orthodox Jew was unable to take the examination because it was given only on Saturday and his religion prohibited participation in such activities on the Sabbath. The court ruled that the sanitary district had the burden of showing that, without undue hardship, it could not have accommodated his inability to take the test on Saturday. The court noted that the state law does not require simultaneous examinations and that other state employers have been able to make alternate arrangements for people who, for religious reasons, cannot take an examination at its regularly scheduled time. *Minkus* v. *Metropolitan Sanitary District*, 19 Fair Employment Cases 1499.

Baker

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The terms and conditions for graduating from a private college, university or seminary are those spelled out in the catalog at the time a student enters the institution. These terms and conditions have some of the characteristics of a contract and may be legally binding. *See, University of Miami* v. *Militana Florida*, 184 So. 2d 701 at 704 (1966).

The catalog of the Lexington Theological Seminary, Inc. used phrases such as "Christian ministry," "gospel transmitted through the Bible," "servants of the gospel," "fundamental character," and "display traits of character and personality which indicate probable effectiveness in the Christian ministry."

A student at the Seminary informed the dean nine months before he was scheduled to receive the M.Div. degree that he was homosexual. After he had completed the academic requirements and despite the recommendation of the faculty, the executive committee and the full board of trustees refused to grant the student a degree. He went to court and the county level court held that the catalog language was not sufficiently clear to a potential candidate and that the Seminary had no contractual right to deny the degree.

The Kentucky Court of Appeals reversed that decision and held that the student, who had been warned by the dean that there was a chance that he would not be given a degree because of his homosexuality, had no contractual right to the degree and that the board had not acted arbitrarily in making its decision. *Lexington Theological Seminary, Inc.* v. *Vance*, 5/18/79.

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The California Supreme Court has determined that a school district's dismissal of a teacher after it failed to reasonably accommodate to the teacher's five to ten absences a year for observance of his religion's holy days was contrary to Article 1, Section 8 of the California constitution.

The reason given for the teacher's dismissal was not his religion but his absence from school without permission. The court held that Section 8 forbids not only overt religious discrimination but also qualifications for employment that are discriminatory in effect.

The teacher had given notice of the dates well in advance and had prepared detailed lesson plans the quality of which was not disputed.

Three justices filed a strong dissent. *Rankins* v. *Commission on Professional Competence*, ___ P.2d ___ (1979).

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The District Court for the District of Columbia has held that the Army's Conscientious Objector Review Board had no factual basis for its denial of a conscientious objector discharge to a soldier who had volunteered for service.

The Board had concluded that the soldier was not sincere in his assertion that he was opposed to war in any form or that he had held that view when he enlisted. The soldier stated that his experiences in the service in Germany made his views crystallize and become fixed though they had been there even when he enlisted. He was given the discharge. *Reinhard* v. *Gorman*, ___ F. Supp. ___ (1979).

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A Louisiana court has held that the "Act of God" defense did not apply in a personal injury suit brought by one worshiper against another after the defendant ran into the plaintiff while plaintiff was in the church aisle praying. Defendant contended that she was "trotting under the Spirit of the Lord" when the accident occurred and, thus, any injury was an "Act of God." The court rejected this argument. *Bass* v. *Aetna Insurance Company*, 370 So.2d 511 (1979).

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The Deerfield Hutterite Colony in South Dakota petitioned the Ipswich Board of Education to establish a public school within the Colony. The Board refused to establish the school but did offer to do whatever was necessary to provide a successful bilingual-bicultural program in the existing schools which serve the Colony. The Colony took the Board to court on charges that it had discriminated against them because of their religious beliefs and their national origin. The U.S. District Court for South Dakota held for the Board and said that their refusal to establish the school was not an unconstitutional act and that, by offering the bilingual-bicultural program, the Board had "gone the extra mile." *Deerfield Hutterite Association* v. *Ipswich Board of Education*, ___ F.Supp. ___ (1979).

Vins: Pressure from West Resulted in His Release

By Carol B. Franklin and Stan L. Hastey

WASHINGTON—Georgi Vins told the Helsinki Commission that pressure by government officials and Christians in the Western world was essential to his release from Soviet prison in April.

In response to a question from Senator Robert Dole, R-Ks., about the effectiveness of the Commission, the media, and others in the west who protest the treatment of Soviet dissidents, Vins said, "I am absolutely sure that without the help of God and the support of Christians around the world, many more USSR Christians would be in prison."

Vins further stated that Soviet Christians and citizens in general support President Carter's human rights emphasis and "welcome the concern of the American people."

The Helsinki panel, whose official designation is Commission on Security and Cooperation in Europe, consists of six U.S. senators, six members of the House of Representatives, and three members of the Carter administration, and is charged with monitoring human rights conditions in all of the 35 nations which signed a comprehensive human rights document at Helsinki in 1975.

On the same day it heard Vins' testimony, the Commission released the names of 10,000 other Soviet "evangelical Christians" who have made public their wish to emigrate from the Soviet Union.

Vins is secretary of the Council of Churches of Evangelical Christians and Baptists (Reform Baptists) which broke away from the officially sanctioned All-Union Council of Evangelical Christians and Baptists in 1965. Vins harshly criticized the official group, which has registered with the Soviet government.

"The All-Union Council, that is, the leadership, is a body linked in the closest possible way with the state authorities, including the KGB," Vins said. "Its prescribed role is to act as a screen for religious freedom in the USSR."

Vins went on to say that representatives of the registered Baptists "travel widely throughout the whole world proclaiming the imaginary religious freedom in the USSR. They perform the same role inside the country when they receive foreign religious organizations and maintain correspondence with them."

He said that his group, which in contrast to the officially-recognized All-Union Council has been forced largely underground, holds to such "fundamental principles" as the authority of Scripture "in all matters and all questions concerning faith and life;" the "absolute freedom of conscience;" the "spiritual regeneration" of church members; baptism by faith; the independence of the local congregation; the priesthood of all believers; and separation of church and state.

Vins called for continued support from the west for religious freedom in the Soviet Union. Detailing persecution of believers, he said there are about 40 Baptists now in prison for their beliefs.

Specifically, Vins called for the release of the chairman of the reform Baptists, Pastor G. K. Kryuchkov, who "has been persecuted for 18 years." Vins said that Kryuchkov "carries out his ministry under conditions of secrecy" and has lived at home with his wife and nine children only one of those 18 years.

Vins also repeatedly called for the release "of all prisoners of conscience in the USSR." including not only Baptists, but members of the Russian Orthodox Church, Pentecostalists, Adventists, Catholics, and Jews.

He also described the extensive harassment of "The Christian" printing press which issues Bibles and other religious literature. Vins said that about 10 million pieces of religious literature had been confiscated by the Soviet authorities in the years between 1929 and 1973. He urged the government to return all of that material to Christians.

Charging that registration of churches leads to direct intervention of the state in church affairs, including the appointment of pastors, Vins called for an end to "all kinds of interference by the KGB in the internal life of the Evangelical Christian and Baptist Church."

After describing many forms of repression of religious life, which include fines, breaking up of peaceful Christian meetings, attacks on Christian weddings, and harassment of Christian children, Vins urged that the Soviet government end all such activities. He noted that they are illegal under the Soviet constitution, which guarantees religious freedom to all citizens.

—Photo by David Clanton

Vins told the Commission that his release should not be viewed as a softening of Soviet policy toward dissidents. On the contrary, he said that repression is becoming "more sophisticated." "The situation is so desperate that people are willing to give up their Soviet citizenship and live anywhere in the world where they can practice their faith," Vins said.

Vins asserted that the KGB sets up church centers to spy on believers. He also said that the latest technology is being used to "bug" churches and believers' homes. In an ironic twist, he pointed out that this equipment is bought in the United States.

Vins described his two terms in prison for the commissioners. During his first term he was ordered to do "especially difficult manual labor. My health was ruined within a few months," Vins said. He said he developed a double hernia.

"The living conditions and diet were extremely poor," he continued. "We had

(See VINS, p. 11)

Supreme Court Update

Court Rules Against Weber in Affirmative Action Test

By Stan L. Hastey

WASHINGTON—Declaring that private employers' affirmative action programs do not violate the Civil Rights Act, the Supreme Court ruled against a white worker who claimed that such a plan constituted unlawful reverse discrimination.

The 5-2 decision was objected to in a strongly worded dissent by Justice William H. Rehnquist and Chief Justice Warren E. Burger. Justices Lewis F. Powell, Jr. and John Paul Stevens did not participate in the decision, Powell because he was ill at the time the case was argued last fall and Stevens for unexplained reasons.

Brian F. Weber, the white worker at Kaiser Aluminum Co.'s Gramercy, La. plant, had challenged the company's effort to increase the number of skilled black craftsmen through a training program which set aside 50 percent of all openings in the program to black workers regardless of seniority.

When the plan was first implemented in 1974, seven of the 13 openings in the new training program were handed to blacks, even though a number of white workers possessed higher seniority than the blacks chosen.

Weber took Kaiser Aluminum to court, arguing that a section of the Civil Rights Act as amended in 1972 specifically forbids discrimination against any person on the basis of race.

In both the U.S. District Court for the Eastern District of Louisiana and the Fifth Circuit Court of Appeals, Weber had won.

In its decision, however, the nation's high court reversed the lower courts, holding that because Congress' intention in passing the Civil Rights Act was to remedy past discrimination against blacks and other minorities, the voluntary Kaiser plan was acceptable.

Senior Supreme Court Justice William J. Brennan, Jr., who wrote the historic opinion for the court, declared that "it would be ironic indeed if a law triggered by a Nation's concern over centuries of racial injustice and intended to improve the lot of those who had 'been excluded from the American dream for so long,' constituted the first legislative prohibition of all voluntary, private, race-conscious efforts to abolish traditional patterns of racial segregation and hierarchy."

The argument over congressional intent in passage of the provisions of the Civil Rights Act in question dominated the high court's consideration of the Weber case, seen as a sequel to last year's landmark decision in Alan Bakke's similar challenge to the admissions scheme at a California medical school.

Brennan argued in a relatively brief opinion for the majority that the seemingly absolute prohibition against any discrimination whatever contained in the Civil Rights Act "must . . . be read against the background of the legislative history . . . and the historical context from which the Act arose."

Brennan

Rehnquist

He repeatedly quoted the late Senator Hubert H. Humphrey, one of the prime proponents of corrective civil rights legislation and a floor leader in the debate over the Civil Rights Act provisions in question. Congress' "primary concern" in passing the law, Humphrey had declared, was with "the plight of the Negro in our economy."

Brennan quoted Humphrey further that "the crux of the problem (was) to open employment opportunities for Negroes in occupations which have been traditionally closed to them."

Brennan also argued that the Kaiser affirmative action plan "does not unnecessarily trammel the interests of the white employees" by requiring white workers to be dismissed in order for blacks to be hired. "Nor does the plan create an absolute bar to the advancement of white employees," Brennan continued, since "half of those trained in the program will be white."

He also noted that the Kaiser plan was designed as a temporary remedy "to eliminate a manifest racial imbalance" rather than a permament plan "intended to maintain racial balance."

Rehnquist, writing for himself and Chief Justice Burger in an opinion that ran nearly three times the length of Brennan's ruling for the majority, accused the court of engaging in what he called "Orwellian" logic. He referred to George Orwell's book, *1984*, saying that the court's opinion "could more appropriately have been handed down five years from now."

Arguing that the legislative history of the provisions of the Civil Rights Act under question demonstrates that Congress intended the prohibition against racial discrimination to be read literally, Rehnquist went on to accuse the majority of engaging in a "*tour de force* reminiscent not of jurists such as Hale, Holmes, and Hughes, but of escape artists such as Houdini."

He also attacked the use of quotas in employment plans such as that at Kaiser Aluminum, saying that "there is perhaps no device more destructive to the notion of equality."

"Whether described as 'benign discrimination' or 'affirmative action,' the racial quota is nonetheless a creator of castes, a two-edged sword that must demean one in order to prefer another," Rehnquist declared.

Kaiser implemented its plan in 1974, seeking to upgrade the positions of blacks in its labor force in skilled jobs such as carpenters, electricians, general repairmen, insulators, machinists, and painters. At the time, less than two percent, or five out of 273, workers in such positions were blacks, even though the work force in the Gramercy area was 39 percent black.

The company's goal was to select craft trainees for its own training program on the basis of seniority, but with the proviso that at least half of the new trainees were to be black until such time as the percentage of black skilled craft workers in the plant approximated the percentage of blacks in the local labor force.

In its decision upholding the Kaiser plan, the court deliberately stopped short of endorsing all affirmative action programs, however, thereby leaving open the probability that future similar cases will be coming to the justices. *(United Steelworkers of America* v. *Weber)* (BPA)

Court Declines Debate on Parochial Busing

WASHINGTON—The Supreme Court sidestepped an opportunity to review its 32-year-old decree allowing states to provide transportation to nonpublic school students in an action announced here June 25.

The high court dismissed "for want of a substantial federal question" a challenge to a Pennsylvania law mandating transportation for all pupils, public and nonpublic alike, to and from schools located up to 10 miles beyond local school district boundaries.

Two Pennsylvania school districts, including Pittsburgh, had earlier challenged the law in state courts, where they lost. They sought to demonstrate that the law violates the no establishment of religion guarantee of the First Amendment and has the primary effect of advancing religion.

Attorneys for the Pittsburgh school district, in legal briefs submitted to the high court after losing in Pennsylvania's Supreme Court, cited statistics designed to prove the primary effect test put forth by the high court eight years ago had not been met by the law.

During the 1972-73 school year, before the law was implemented, some 700 nonpublic school pupils were bused to their schools at a cost to the state of $150,000. The following school year saw more than 3,800 nonpublic pupils being transported, costing Pittsburgh more than $477,000.

The Pennsylvania Department of Education had threatened to withhold state education funds to school districts which refused to enforce the transportation law.

Although no explanation was given by the six high court justices who voted to dismiss the appeal, the court was apparently unwilling to reopen what advocates and opponents of aid to nonpublic schools alike have accepted as a given since the court decided in 1947 that states may constitutionally provide transportation for nonpublic school pupils.

Since that historic ruling, decided by a bare 5-4 majority, the court has also held that states are not obligated to provide such aid to students attending parochial schools. *(School District of Pittsburgh* v. *Pennsylvania Department of Education; Pequea Valley School District* v. *Penn. Department of Education)* (BPA)

High Court Will Not Settle Church Dispute

WASHINGTON—The U.S. Supreme Court has refused once again to permit civil courts to settle a long-standing dispute in the Serbian Eastern Orthodox Church.

The case involved the defrocking of Bishop Dionisije Milivojevich 16 years ago by the parent church body in Belgrade, Yugoslavia and a subsequent dispute over who owns church property in this country.

Milivojevich, who headed the church's American-Canadian diocese, sought unsuccessfully three years ago to have the Supreme Court reinstate him. The court ruled then that civil courts have no right to decide such internal ecclesiastical disputes in hierarchical churches.

At the same time, the high court held that the church property dispute over who owned Serbian Orthodox properties in the United States and Canada must be decided by the church, not civil courts. The justices sent that aspect of the controversy back to the Illinois Supreme Court for actions consistent with that principle.

That court, in light of the 1976 Supreme Court decision, held last January that it had no power to declare that the properties belonged to Bishop Dionisije and his loyalists.

The high court's unanimous action declining to hear the new appeal presumably marks the end of civil legal appeals for the former bishop and his followers. *(The Serbian Eastern Orthodox Diocese for the U.S.A. and Canada* v. *The Serbian Eastern Orthodox Diocese for the U.S.A. and Canada)* (BPA)

O'Hair 'In God We Trust' Suit Fails in High Court

By Stan L. Hastey

WASHINGTON—The U.S. Supreme Court announced here it will not hear atheist Madalyn Murray O'Hair's challenge to the constitutionality of the motto "In God We Trust" on coins and currency.

The high court's action marks the final defeat of the Austin, Texas-based O'Hair's efforts to remove the slogan.

Mrs. O'Hair filed suit against Secretary of the Treasury Michael Blumenthal in January 1978, in a federal district court in Austin. That court ruled against her three months later, holding that she failed to show a "cause of action."

On appeal, the Fifth Circuit Court of Appeals in New Orleans declined to hear the case last January.

The challenged slogan has appeared on U.S. coins for more than a century and on all currency since 1955, when former President Dwight D. Eisenhower signed into law a bill requiring that it be used.

Over the past 17 years, Mrs. O'Hair has come to the Supreme Court challenging the constitutionality of various religious practices in public life.

Her suit challenging mandatory prayer and Bible reading in the public schools resulted in a 1963 decision by the high court outlawing such devotional exercises. The high court had ruled in 1962 that a New York board of regents prayer designed to be read each day in state public schools likewise violated the "no establishment" of religion clause of the First Amendment.

In 1968, Mrs. O'Hair challenged the National Space and Aeronautics Administration for permitting astronauts in space to read from the Bible. She argued then that the famous Christmas Eve 1968 reading of the Christmas story violated the rights of non-believers.

On two separate occasions, however, the nation's high court declined to disturb lower court rulings disallowing her objections.

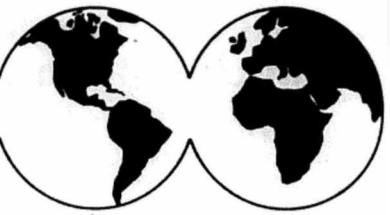
Since 1975 Mrs. O'Hair has been in the news frequently as the supposed author of a petition to the Federal Communications Commission (FCC) which would ban religious broadcasting from the nation's airwaves.

The actual petition, filed by two California men, asked the powerful regulatory agency to refrain from assigning new educational television channels or radio frequencies to organizations which broadcast religious programs exclusively.

The FCC ruled unanimously on August 1, 1975, that such a policy would violate the free exercise of religion guarantee of the First Amendment.

Rumors linking Mrs. O'Hair to the effort have flourished, nevertheless, causing millions of Americans to sign petitions which have deluged the FCC for the past four years. *(O'Hair* v. *Blumenthal)* (BPA)

INTERNATIONAL DATELINE



Compiled by Carol B. Franklin

Church, State Cooperate

KINSHASA, Zaire—Bishop Itofo Bokeleale, president of the Church of Christ in Zaire, told the general secretary of a government-sponsored patriotic youth organization that "the Church cannot refuse to collaborate with the state."

Bokeleale said that "the state has entrusted to us a mission; that of the moral reform of about a million children in Protestant schools. It is a heavy responsibility. We are trying by the grace of God to move towards that goal."

Citoyen Sakombi Inongo, leader of the government group, responded, "I have noted, I must admit, that in fact the Church has two passions, civic and spiritual, and I am very happy about that. There is identity of views between the Zairian Churches and the Zairian state. Collaboration is promised and assured. Young Zairians must be trained according to the political directives of the country for the birth of a new Zairian society. Our fundamental problem resides in moralization and spirituality." (RNS)

Religious Freedom Claimed

JERUSALEM—The head of a visiting Russian Orthodox delegation from the Soviet Union said here that all religious believers in the USSR "enjoy full freedom of worship and religion."

Bishop Job of Zaraik, who is deputy to the Moscow patriarchate's foreign affairs chief, was responding to a question about the impact on church-state relations in Eastern Europe made by the recent visit to Poland of Pope John Paul II.

Job said the pope's visit to Poland "would not influence" church-state relations in the USSR since believers already have freedom of religion. (RNS)

10,000 Want to Emigrate

WASHINGTON—A list by name and address of more than 10,000 Soviet evangelical Christians who have publicly declared their desire to emigrate from the Soviet Union, but have been prevented from doing so, has been published by the U.S. Commission on Security and Cooperation in Europe here.

Commission chairman, Rep. Dante Fascell, D-Fla., asserted that the report documents "the plight of Soviet evangelical Protestants and examines the reasons why these people have decided that only emigration can save them."

Rep. John Buchanan, R--Ala., a member of the Commission, wrote in the introduction to the report that these 10,000 Christians want to emigrate because the "methods of repression" by Soviet authorities against them "convince" them "their only salvation lies in emigration." (RNS)

Bulgarians Persecuted

KESTON, England—Bulgarian Christians are experiencing a fresh wave of persecution according to information received by Keston College. Pentecostals are apparently the main target but other Christian groups have felt the pressure.

Rapid growth in Pentecostal churches, especially among youth, seems to be the reason for their troubles with authorities. Keston College reported the arrest of two Pentecostal ministers, Bukov and Todorov, as well as the questioning of others. Various materials were confiscated from their homes.

Baptist pastor Angelov from Lom was interrogated and his home was searched for Christian literature. Various items were confiscated. The son of the assistant Baptist pastor in Sofia was questioned about the location of Bibles, Christian literature, and messages and music on cassette from the West.

Methodists, Congregationalists, and the Open Brethren have also been harassed. (KNS)

Soviet Catholics Struggle

NEW YORK—Roman Catholics in the Soviet Republic of Lithuania are still involved in a "life-or-death" struggle for the faith, according to an underground report recently smuggled out of Lithuania.

Referring to Lithuania as "the outpost of Catholicism in the Soviet Union," the report says, "In our current life-or-death struggle, we need quick and effective help in order not to be completely destroyed morally and physically."

The report says that during the last decade persecution of the Lithuanian Church had "mellowed somewhat," but that when "the atheistic government became convinced that the faith was reviving in Lithuania," it issued new regulations "in contradiction to the Universal Declaration of Human Rights and the principles of the Final Act of the Helsinki Conference (on human rights)."

The report is critical of what it considers too great a submissiveness on the part of some of the Lithuanian Catholic hierarchy to the atheistic regime. It also notes that the government "interferes in the least details of clergy assignment. The bishop is often powerless when it comes to transferring a negligent priest, or one who has broken Church law."

Father Casimir Pugevicius, executive director of Lithuanian Catholic Religious Aid and Lithuanian American Catholic Services here, said the report was "painstakingly typed on tissue paper because printing facilities are denied the Church in the USSR." (RNS)

Religious Office Raided

WINDHOECK, Namibia—Security police have raided the offices of the Namibian Council of Churches and seized about 150 books, video cassettes, and press clippings.

Kelwyn Sole, a staff member of the ecumenical organization, reported that the 10 officers who took part in the raid said they were looking for banned literature. But, he added, "we think this was just an act of intimidation since there was no method in the manner in which they conducted the search."

Sole said he believed the raid was a reaction to an open letter sent to Namibian Administrator General Justice Steyn, calling on him to name all the people detained in recent weeks. The country's police and military were recently given new powers to search without a warrant, arrest and interrogate suspects. (RNS)

Carter Launches SALT II Debate

By Stan L. Hastey

WASHINGTON—Declaring that the United States and the Soviet Union "must live in peace or we may not live at all," President Carter launched his formal campaign to have the U.S. Senate ratify the SALT II treaty in an address before a joint session of Congress.

Just hours after his return from Vienna, where he and Soviet president Leonid Brezhnev signed the treaty, Carter told members of Congress and a nationwide television audience that the ancient pattern of war and peace "must now be broken forever."

The President's speech, which received a mixed reaction from senators who will be voting it up or down, marked the beginning of formal debate on the controversial pact, although in fact debate has been raging for months.

At the annual meeting of the Southern Baptist Convention in Houston, for example, messengers argued the merits of the treaty before endorsing it overwhelmingly. The American Baptist Churches, U.S.A. likewise adopted a pro-SALT II statement at its biennial meeting in Carbondale, Ill. The Progressive National Baptist Convention adopted a similar statement during its January meeting in Orlando, Fla.

If recent White House political strategy is followed, as in the debate last year over ratification of the Panama Canal treaties, leading Baptists and other religious leaders who support SALT II will likely be asked to lobby senators from their state who are wavering.

In his speech to Congress, Carter emphasized one of the Administration's most telling arguments for ratification by pointing out that since the dropping of the first atomic bomb on Hiroshima, seven U.S. presidents of both parties have sought to reduce the "most dangerous" elements of U.S. relations with its post-World War II co-superpower, the Soviet Union.

Stating that "this is a vital and a continuing process," he called the names of Presidents Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, Richard M. Nixon, and Gerald R. Ford.

He also called attention to the fact that the just-signed treaty "is the product of seven years of tough, painstaking negotiation under three presidents."

But most of Carter's speech seemed designed to assure skeptical senators and the American public that the treaty actually serves the national defense interests of the United States.

"To keep the peace," he said, "we must have strong military forces, strong alliances and a strong national resolve—so strong that no potential adversary could be tempted to attack us. We have that strength—and the strength of the United States is growing, not diminishing."

He went on to say that "With or without SALT II we must modernize and strengthen our strategic forces—and we are doing so."

Carter also struck a theme he and other Administration officials have been striking for months—that the treaty "is not based on trust." On the contrary, he said, compliance with its provisions "will be assured by our nation's means of verification, including extremely sophisticated satellites, powerful electronic systems and a vast intelligence network."

He declared that should the Soviet Union choose to ignore the strategic balance agreements contained in the treaty, "there is no doubt that we would discover it in time to respond fully and effectively." The prospect of verification will undoubtedly be one of the key elements in the Senate debate over ratification.

The President also sought to cast the long-awaited agreement in historical perspective by declaring that while SALT II is important in itself, it is also "part of a long historical process of gradually reducing the danger of nuclear war—a process that we must not undermine."

Against that backdrop, he warned, "it would be the height of irresponsibility to ignore the possible consequences" of failure to ratify the agreement. Among those consequences he identified vast new expenditures for strategic weapons, uncertainty about the strategic balance, the danger of more and more nations acquiring nuclear weapons, and increased political tension between East and West.

"In short," he concluded, "SALT II is not a favor we are doing for the Soviet Union. It is a deliberate, calculated move we are making as a matter of self-interest—a move that happens to serve the goals both of security and of survival, that strengthens both the military position of the United States and the cause of world peace . . . ."(BPA)

Vins

(Continued from p. 7)

no baths for months at a time so everyone was dirty and had insects."

His second imprisonment was in northern Yakutia, nearly to the Arctic Circle, Vins said. "The frosts reached −62 degrees Celsius," he said. He said that he was constantly watched by authorities and surrounded by informers. "The authorities were worried I would convert the other prisoners. When I talked to a prisoner and then he prayed, he would be transferred to another prison."

Vins' visits from his family were infrequent during his imprisonment because he was 6000 kilometers from them. "When they did come we had one day together. The KGB recorded the meetings, including all the most intimate words we uttered," he said.

Vins said that his living conditions "improved radically" when the U.S. Congress began to give publicity to his case in 1976. He was given hospital care and his diet was improved.

The U.S. Senate and House of Representatives passed a concurrent resolution that year calling for Vins' release. Introduced by Southern Baptist John H. Buchanan, R-Ala., that resolution began to focus world-wide attention on the Russian Baptist pastor.

Vins told the Commission that he was convicted because he maintained contacts with the Christian printing press, organized Sunday schools for children, and made public the torture and death of a Soviet soldier in 1972.

"My actions were not criminal but purely religious in nature," Vins said. "Because we are successful and have many new believers, the authorities conduct these activities against us."

Vins expressed his dream for the future when he said, "I would like in the final analysis to return to my homeland and preach the gospel freely. That is my prayer." (BPA)

Mondale, Young to Highlight 17th Religious Liberty Conference

WASHINGTON—Vice President Walter F. Mondale and United Nations ambassador Andrew Young are slated to headline the 17th Religious Liberty Conference sponsored by the Baptist Joint Committee on Public Affairs.

The biennial conference is scheduled for Oct. 1–3 in Washington. Sites for the meeting are the Executive House Hotel and the First Baptist Church of Washington.

The meeting's theme, "The Role of Church and State on Behalf of Human Rights in National and International Affairs," coincides with the observance of the 40th anniversary of the establishment of the Baptist Joint Committee. A number of international religious liberty and human rights problems figured prominently in the agency's founding.

Other scheduled speakers include Patricia M. Derian, assistant secretary of state for human rights and humanitarian affairs; John J. Gilligan, professor of law at the University of Notre Dame and formerly administrator of the Agency for International Development; William A. Jones, president of the Progressive National Baptist Convention and pastor of Bethany Baptist Church, Brooklyn, N.Y.; and Theo Van Boven, director of the division of human rights at the United Nations' Geneva office.

Another scheduled program feature is a luncheon sponsored jointly by the Baptist Joint Committee and the American Jewish Committee, at which the Jewish group has announced it will present its "Isaiah Award" to the Baptist agency. (BPA)

House Supports 'Voluntary Prayer'

WASHINGTON—The U.S. House of Representatives agreed to language which would permit so-called voluntary prayer and meditation in the nation's public schools.

The 255–122 vote came on an amendment by U.S. Rep. Robert S. Walker, R–Pa., declaring that one of the purposes of the proposed Department of Education would be "to permit in all public schools providing elementary or secondary education a daily opportunity for prayer and meditation, participation in which would be on a voluntary basis."

Although the House has yet to vote on the entire bill itself, the amendment is considered by many observers to be yet another obstacle to a measure whose chances for passage were already questionable.

Conservative members of Congress have argued that the proposed new department would result in further control by Washington bureaucrats over local educational matters.

The House also passed an anti-busing amendment to the measure. It would bar the present Department of Health, Education and Welfare, out of which the new department would be carved, from threatening to cut off federal funds from school districts which do not comply with HEW desegregation guidelines.

On the other side of Capitol Hill, the U.S. Senate passed a bill calling for the new department on April 9, but only after a bitter debate over the voluntary prayer question.

The Senate had passed on April 5 language similar to that adopted by the House. Sponsored by Sen. Jesse Helms, R–N.C., the language was struck from the Senate version four days later and attached to a Supreme Court jurisdictional bill given little chance of passage.

Helms has threatened to introduce his language as often as necessary to force both houses to act on the sensitive prayer issue.

Many congressional observers feel that conservative members are accomplishing a dual objective by sponsoring such language in the debate over the Department of Education. They can go on record in support of prayer in the schools while at the same time opposing what they consider the threat of yet another federal bureaucracy.

Regardless of their reasoning, the prayer amendment to the bill is generally seen as detrimental to its chances of passage. (BPA)

Report from the Capital

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