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REPORT from the CAPITAL

Religious Liberty— from the first, the trophy of Baptists.

George W. Truett

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BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

REPORT from the CAPITAL

" . . . a civil state 'with full liberty in religious concernments' ".

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The Trophy of Baptists

Religious liberty as an *in* topic of discussion and deliberation has seldom, if ever, known more national attention. Some of this exposure can be attributed to the new religious right, whose biblical exegesis at long last assured them of the soundness of political involvement. It brought them into the affairs of national life, where their activity added to the complexity of church-state relations.

Today, most Baptists take involvement for granted. We have learned since our 18th century struggle for survival which culminated in the Bill of Rights, to appreciate the meaning of "a civil state with full liberty in religious concernments." Minority status teaches new lessons.

Religious Liberty Day observance, each year, calls to mind the events that instructed us in the ways of religious freedom. Support for freedom led to the steps that assure us of freedom as a permanent fixture in American life. It is good to report the growing acceptance of this special day of observance among congregations related to the denominations who cooperate in Washington through the Baptist Joint Committee.

We look back this year to the historic occasion in 1920 when an unusual session of the Southern Baptist Convention took place on the steps of the United States Capitol. There, George Washington Truett delivered a powerful sermon on Baptists and religious liberty. We have abridged his text for use as the theme and text for the 1986 Religious Liberty Day observance, focusing on the familiar quotation, "Freedom of conscience, unlimited freedom of mind, was from the first the trophy of the Baptists."

Truett during a 47-year pastorate at First Baptist Church, Dallas, led the congregation to an eleven-fold increase (715 to 7,804) in membership. A dedicated spokesman for religious freedom, he served his denomination in various leadership roles, and his country in World War I by preaching for six months to Allied Forces. There is no record he ever looked to government for assistance, believing "Christ's religion needs no prop of any kind from any worldly source. . . ."

Current experience suggests those words bear repeating. Religious leaders of all persuasions abdicate the spiritual nurturing of their flocks when they turn to government for legislative props such as tuition tax credits and state-required prayer in public schools. Advocates of the separation principle regard these to be among the props Truett warned against, and as unnecessary entanglement with the state. For Baptists, they jeopardize the vision of our forebears — "faith freely practiced" (a Religious Liberty Day theme from another year).

Guardians of the constitutional tents, you who are wary of the camel's nose of the state, join us in Washington on October 6 - 8 of this year, for the Baptist Joint Committee's National Religious Liberty Conference. We'll be exploring a most critical theme, "Intersecting Values: Christian Citizenship and Church-State Separation." That's the juncture at which discipleship and citizenship so often come into conflict. We add to the array of outstanding participants former governor, denominational leader and dedicated Baptist layman, Harold E. Stassen. See the registration form on page 7 for the full list of persons taking part. Other names will be announced as planning nears its completion. □

Victor Tupitza

The use of religious intolerance in political campaigns is the target of a new national project sponsored by People for the American Way.

Election Project will monitor and publicly report campaign practices ranging from appeals to religious bigotry to claims of God's endorsement of political candidates or positions.

Former U.S. Rep. Barbara Jordan, a Southern Baptist from Texas, said a "disturbing new form of religious bigotry" has entered American politics.

"There are those who claim God's endorsement to seek public office," said Jordan, one of five co-chairs for the project. "They question—or disparage—the religious faith and personal morality of their opponents."

Jordan contended while people should be able to bring their personal beliefs into public life, they should "never claim to speak for God." She added, "It's a fine American tradition to give your opponents hell. But it's something else entirely to say they belong in hell."

John Buchanan, also a Southern Baptist, former U.S. congressman and project co-chair, argued a person's legislative and political stances should not be turned into "tests of religious faith."

The organization also has developed a set of campaign guidelines that suggest candidates should: 1.) not claim to be best qualified because of their religious affiliation; 2.) not claim God endorses their views on political/legislative issues; 3.) not question their opponents' religious faith or personal morality based on their stands on political/legislative issues; 4.) not claim God endorses their aspirations for public office; and 5.) disavow support that violates these guidelines. •

Former Supreme Court Justice Arthur J. Goldberg told a gathering of church-state specialists the Southern Baptist Convention kept the nation's high court from being impeached after it struck down state-required prayer and Bible reading in 1962 and 1963.

"We were saved from impeachment" by a 1964 resolution adopted by the Southern Baptist Convention in Atlantic City, N.J., Goldberg told the National Coalition for Public Education and Religious Liberty.

The 1964 resolution indirectly endorsed the high court's rulings in a pair of decisions in which the nation's highest tribunal was accused of forcing God out of public school classrooms. It came also at a time when Congress was considering the first proposed amendment to the Constitution to undo what the court had decided in Engel v. Vitale (1962) and Abington School District v. Schempp (1963). •

An audience assembled to celebrate the 200th anniversary of Thomas Jefferson's Virginia Statute for Religious Freedom heard University of Virginia law professor A. E. Dick Howard observe that "a sizeable number" of Baptists "are following preachers who have abandoned" the views of the nation's founders regarding religious freedom and separation of church and state.

Howard, an expert on the United States Constitution, has been invited by the governments of Hong Kong and the Philippines to assist them in the process of drafting their new constitutions. He had also helped draft the constitution for his own state of Virginia, which had moved from religious toleration to free exercise of religion, and finally to separation of church and state. Those developments Howard said, formed the background for adoption of the religion guarantees for the whole nation in the First Amendment to the Constitution.

The anniversary service, held at the historic First Baptist Church of Richmond, was sponsored by the Virginia Baptist General Board, Virginia Baptist Historical Society, and the Baptist Joint Committee on Public Affairs. •

Religious Liberty— from the first, the trophy of Baptists.

It behooves us often to look backward as well as forward. We shall be stronger and braver if we thought oftener of the epic days and deeds of our beloved and immortal dead. The occasional backward look would give us poise and patience and courage and fearlessness and faith. The ancient Hebrew teachers and leaders had a genius for looking backward to the days and deeds of their mighty dead. They never wearied of chanting the praises of Abraham and Isaac and Jacob, of Moses and Joshua and Samuel; and thus did they bring to bear upon the living the inspiring memories of the noble actors and deeds of bygone days. Often such a cry as this rang in their ears: "Look unto the rock whence ye are hewn, and to the hole of the pit whence ye are digged. Look unto Abraham your father, and unto Sarah that bare you; for I called him alone, and blessed him, and increased him."

George W. Truett delivered this address, excerpted for these pages, on the East Steps of the U.S. Capitol on May 16, 1920, at the request of the Baptist churches of Washington, D.C. An estimated 10,000 to 15,000 participated in the ceremony held in conjunction with the annual meeting of the Southern Baptist Convention.

The Doctrine of Religious Liberty

We shall do well, both as citizens and as Christians, if we will hark back to the chief actors and lessons in the early and epoch-making struggles of this great Western democracy, for the full establishment of civil and religious liberty — back to the days of Washington and Jefferson and Madison, and back to the days of our Baptist fathers, who have paid such a great price, through the long generations, that liberty, both religious and civil, might have free course and be glorified everywhere.

Years ago, at a notable dinner in London, that world-famed statesman, John Bright, asked an American statesman, himself a Baptist, the noble Dr. J. L. M. Curry,

> "What distinct contribution has your America made to the science of government?"

To that question Dr. Curry replied,

> "The doctrine of religious liberty."

After a moment's reflection, Mr. Bright made the worthy reply:

> "It was a tremendous contribution."

Supreme Contribution of New World

Indeed, the supreme contribution of the new world to the old is the contribution of religious liberty. This is the chiefest contribution that America has thus far made to civilization. And historic justice compels me to say that it was preeminently a Baptist contribution. The impartial historian, whether in the past, present or future, will ever agree with our American historian Mr. Bancroft, when he says,

> "Freedom of conscience, unlimited freedom of mind, was from the first the trophy of the Baptists."

And such historians will concur with the noble John Locke who said:

> "The Baptists were the first propounders of absolute liberty, just and true liberty, equal and impartial liberty."

Ringing testimonies like these might be multiplied indefinitely.

Baptists have one consistent record concerning liberty throughout their long and eventful history. They have never been a party to oppression of conscience. They have forever been the unwavering champions of liberty, both religious and civil.

GEORGE W. TRUETT

Not Toleration, But Right

Baptists have one consistent record concerning liberty throughout all their long and eventful history. They have never been a party to oppression of conscience. They have forever been the unwavering champions of liberty, both religious and civil. Their contention now is, and has been, and, please God, must ever be, that it is the natural and fundamental and indefeasible right of every human being to worship God or not, according to the dictates of conscience, and, as long as this does not infringe upon the rights of others, they are to be held accountable alone to God for all religious beliefs and practices.

Our contention is not for mere toleration, but for absolute liberty. There is a wide difference between toleration and liberty. Toleration implies that somebody falsely claims the right to tolerate. Toleration is a concession, but liberty is a right. Toleration is a matter of expediency, while liberty is a matter of principle. Toleration is a gift from man, while liberty is a gift from God. It is the consistent and insistent contention of our Baptist people, always and everywhere, that religion must be forever voluntary and uncoerced, and that it is not the prerogative of any power, whether civil or ecclesiastical, to compel men to conform to any religious creed or form of worship, or to pay taxes for the support of a religious organization to which they do not belong and in whose creed they do not believe. God wants free worshippers and no other kind.

A Fundamental Principle

What is the explanation of this consistent and notably praiseworthy record of our plain Baptist people in the realm of religious liberty? The answer is at hand. It is not because Baptists are inherently better than their neighbors—we would make no such arrogant claim. Happy are our Baptist people to live side by side with their neighbors of other Christian communions, and to have glorious Christian fellowship with such neighbors, and to honor such servants of God for their inspiring lives and their noble deeds. From our deepest hearts we pray: "Grace be with all them that love our Lord Jesus Christ in sincerity." The spiritual union of all believers in Christ is now and ever will be a blessed reality, and such union is deeper and higher and more enduring than any and all forms and rituals and organizations. Whoever believes in Christ as personal Saviour is our brother or sister in the common salvation, whether they be a member of one communion or of another, or of no communion at all.

How is it, then, that Baptists, more than any other people in the world, have forever been the protagonists of religious liberty, and its compatriot, civil liberty? They did not stumble upon this principle. Their uniform, unyielding and sacrificial advocacy of such principle was not and is not an accident. It is, in a word, because of our essential and fundamental principles. Ideas rule the world. A denomination is moulded by its ruling principles, just as a nation is thus moulded and just as individual life is thus moulded. Our fundamental essential principles have made our Baptist people, of all ages and countries, to be the unyielding protagonists of religious liberty, not only for themselves, but for everybody else as well.

A Free Church In a Free State

That utterance of Jesus: "Render therefore unto Caesar the things which are Caesar's, and unto God the things that are God's," is one of the most revolutionary and history-making utterances that ever fell from those lips divine. That utterance, once for all, marked the divorcement of church and state. It marked a new era for the creeds and deeds of men. It was the sunrise gun of a new day, the echoes of which are to go on and on and on until in every land, whether great or small, the doctrine shall have absolute supremacy everywhere of a free church in a free state.

In behalf of our Baptist people I am compelled to say that forgetfulness of the principles that I have just enumerated, in our judgment, explains many of the religious ills that now afflict the world. All went well with the early churches in their earlier days. They were incomparably triumphant days for the Christian faith. Those early disciples of Jesus, without prestige and worldly power, yet aflame with the love of God and the passion of Christ, went out and shook the pagan Roman Empire from center to circumference, even in one brief generation. Christ's religion needs no prop of any kind from any worldly source, and to the degree that it is thus supported is a millstone hanged about its neck.

The Present Call

And now, my fellow Christians, and fellow citizens, what is the present call to us in connection with the priceless principle of religious liberty? That principle, with all the history and heritage accompanying it, imposes upon us obligations to the last degree meaningful and responsible. Let us today and forever be highly resolved that the principle of religious liberty shall, please God, be preserved inviolate through all our days and the days of those who come after us. □

The First Amendment built "a wall of separation between Church and State."—Thomas Jefferson

VIEWS OF THE WALL

Oliver S. Thomas

The Lord works in mysterious ways. So, too, does the U.S. Supreme Court. In the much heralded case of *Bender* v. *Williamsport Area School District*, the Court refrained from answering the constitutional question regarding "equal access." Yet, within the lines of the dissenting opinions lies the long awaited answer: equal access will pass constitutional muster.

For those who don't speak the language of church-state technicians, "equal access" refers to the concept that all student groups, including religious ones, should be given equal access to public school facilities if the school has an activities period during which student-initiated, noncurriculum related clubs may meet. In other words, if the Young Democrats and Young Republicans can meet, the Young Baptists can too.

The equal access concept was codified in 1984 by the U.S. Congress in "The Equal Access Act." The Act provides among other things:

> It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum [i.e. an opportunity for noncurriculum related student groups to meet on school premises during noninstructional time] to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.

Opponents of equal access argue that by allowing prayer meetings in public high schools we traverse the line of separation between church and state, thus violating the establishment clause of the First Amendment. High school students are young and impressionable, critics maintain, and are apt to conclude that even student-initiated meetings carry the imprimatur of school authorities.

Poppycock!

The notion that a high school student cannot distinguish between government and student sponsorship is at best naive and at worst nonsensical. Ask your 16-year-old if she thinks her public school is sponsoring the weekly meeting of the Young Republicans or the Bruce Springsteen Fan Club.

Student-initiated, student-sponsored, and student-controlled prayer meetings *must* be allowed if a school has created a forum that is otherwise open to student groups. To do otherwise singles out religious speech for discriminatory treatment and flies in the face of the First Amendment.

As a Baptist, I have sworn eternal hostility against state-sponsored, state-initiated, or state-controlled religion of every kind. The establishment clause also demands no less. However, the constitutional posture of the state towards religion is one of *neutrality* — not hostility.

I am dismayed when civil libertarians advocate content-based restrictions on free speech in the high schools of this nation. High school students may in some cases be less mature and less educated than their college counterparts, but they are no less entitled to the protections of the Constitution.

The Supreme Court has long recognized that high school students do not shed their First Amendment rights when they enter the schoolhouse door. Many of those who supported the Court's ruling when it applied this principle to armbands worn in protest against the Vietnam War need to realize that religious speech deserves the same protection.

* * * *

But what about *Bender*?

The Court held that the respondent, John C. Youngman, Jr., (a member of the local school board that was one of the original defendants in the case) lacked standing to appeal the trial court's decision in favor of the student prayer group. As a result, the Supreme Court vacated the Appellate decision which favored Youngman, thereby reinstating the judgment of the District Court in favor of the students.

So, what is standing?

Standing is simply a lawyer's way of saying that a party has a sufficient interest in a case to be in court. Generally speaking, the law doesn't allow a person to file suit unless he has suffered an injury. Put more simply, you may be angry or upset because your best friend was run over by a car, but you can't sue the guy who did it.

In *Bender*, the school board voted to accept the trial court's decision in favor of the student prayer group and not to pursue an appeal. Youngman disagreed with the board's decision and filed the appeal in his individual capacity. The Supreme Court held that Mr. Youngman did not have the legal authority to appeal on behalf of the school board, and the record was devoid of any evidence indicating an injury peculiar to Mr. Youngman that would allow him to appeal individually.

It's difficult to argue with the Court's logic. Otherwise, we open the door for disgruntled members of administrative bodies to appeal adverse court decisions even when the body itself has voted not to appeal.

* * * *

If the Court decided *Bender* on a procedural issue, how do we know equal access will pass constitutional muster?

Four of the nine justices filed dissenting opinions in *Bender* indicating that they thought equal access was constitutional. Only one additional vote would be needed to command a majority of the Court. Justice O'Connor will provide that vote.

O'Connor favors an establishment clause analysis constructed around the question, "Does this statute operate as an *endorsement* of religion?" If not, O'Connor would generally uphold the statute.[1]

Clearly, allowing religious organizations equal access to a public forum does not constitute an endorsement of religion.[2] O'Connor made this point in her concurring opinion in *Wallace* v. *Jaffree*. Although *Jaffree* involved a moment of silence statute, the same rationale would no doubt apply to equal access:

> By mandating a moment of silence, a State does not endorse any activity that might occur during the period. Even if a statute specifies that a student may choose to pray silently during a quiet moment, the State has not thereby encouraged prayer over other specified alternatives.[3]

To paraphrase: by creating an open forum, a school does not endorse any particular speech that might be expressed in that forum. Even if a school specifies that students may meet for political, philosophical, or religious discussions, it has not thereby encouraged religious speech over the other specified alternatives.

When one takes into account that the statute in *Jaffree*, like The Equal Access

Act, involved public high school students, there is little doubt how Justice O'Connor would vote on the merits of equal access. It's likely that at least some if not all of the other uncommitted members of the Court would also vote to uphold equal access.

The official results are not in. Several other equal access cases are inching through the federal courts, and we may yet get a decision on the merits. But, until then, you need not wring your hands.

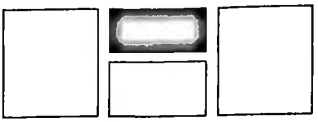
ENDNOTES

[1]This writer supports the Court's tripartite test set forth in *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971), and is not advocating the modification suggested by Justice O'Connor.

[2]*Widmar* v. *Vincent*, 454 U.S. 263, 271 n. 10 (1981) ("by creating a forum the [State] does not thereby endorse or promote any of the particular ideas aired there").

[3]*Wallace* v. *Jaffree*, ___ U.S. ___, 105 S.Ct. 2479, 2499 (O'Connor, J., concurring) (1985).

News in Brief



Court hears arguments in church school bias case

WASHINGTON

Conflicting claims of religious freedom and sex discrimination clashed at the Supreme Court in a case pitting a Southern Baptist teacher against a fundamentalist Christian school that fired her for consulting an attorney over her claim of sex bias.

In one of this year's two principal Supreme Court church-state disputes, an attorney for the state of Ohio representing Southern Baptist teacher Linda Hoskinson told the justices her client was unlawfully discriminated against when her former employer, Dayton Christian Schools, refused to renew her contract after she became pregnant. When Hoskinson consulted an attorney about legal recourses available to her, her school—citing what it called the "biblical chain of command"—dismissed her for taking her complaint outside the church setting.

A key factual dispute in the case swirls around the question of whether Hoskinson was given fair warning of the school's policy denying employment to women with young children. Such women's proper place, Dayton Christian Schools policy maintains, is in the home. Hoskinson has produced documents demonstrating her claim that the school had not informed her of the policy before she began teaching in 1974. She was fired five years later.

Hoskinson then took her complaint to the Ohio Civil Rights Commission which, after failing to resolve the dispute by conciliation, sought to enforce a broadly worded anti-discrimination law against Dayton Christian Schools. The school system countered by filing suit in federal district court, claiming the commission had no jurisdiction to enforce state law in a sectarian school.

But the district court agreed with Hoskinson, ruling Dayton Christian Schools came under the jurisdiction of the civil rights panel. On appeal, however, the Sixth Circuit Court of Appeals in Cincinnati reversed the lower court, holding the First Amendment religion clauses preclude such jurisdiction over the school. The civil rights commission then appealed to the Supreme Court.

Arguing Hoskinson's position, Ohio deputy chief counsel Kathleen McManus acknowledged that while the court was faced with a "delicate" dilemma in choosing between the two competing rights, her client should prevail under an Ohio law forbidding sex discrimination and retaliation by employers when workers claim their rights. The state, she contended, has a "compelling interest" in eradicating all forms of discrimination.

Arguing the other side, veteran church-state lawyer William Bentley Ball of Harrisburg, Pa., countered that the Ohio law was so tightly worded that it "does not allow any religious objection whatsoever," unlike similar anti-discrimination statutes in other states and the federal Civil Rights Act.

Concern over the potential ramifications of a decision favorable to Hoskinson brought a far larger than usual number of outside parties into the case as friends of the court on the side of Dayton Christian Schools. Among these were Americans United for Separation of Church and State, American Jewish Congress, American Jewish Committee, U.S. Catholic Conference, Lutheran Church—Missouri Synod, Rutherford Institute and Concerned Women for America.

Alone in filing a friend-of-the-court brief on Hoskinson's side was the American Civil Liberties Union, joined by the Women's Legal Defense Fund. □

Groups plan appeal over diplomatic ties to Vatican

WASHINGTON

Ten national church groups have announced plans to appeal a federal appellate court's decision to uphold U.S. diplomatic ties to the Vatican, following the court's rejection of arguments that President Reagan violated the Constitution by sending an ambassador to the Vatican two years ago.

In a unanimous decision, a three-judge panel of the Third Circuit Court of Appeals in Philadelphia threw out a challenge to Reagan's action, ruling that Americans United for Separation of Church and State—along with 20 religious bodies and 83 individuals—had no legal standing to bring the lawsuit. Even if the plaintiffs had been granted standing, the court ruled further, their arguments would have failed because the president alone has the power to appoint ambassadors.

Robert L. Maddox, Americans United executive director, said the coalition will either ask the full appellate court to review the three-judge panel's decision or take the case directly to the Supreme Court.

"It is clear that the appellate court panel did not understand the full implications of our constitutional objections to the diplomatic exchange," Maddox said. He added: "We have a popular president and a popular pope. But that must not obscure the fact that our nation is governed by the Constitution. The president has no authority under the Constitution to set up a formal relationship with a church."

But the appellate panel specifically rejected that argument, holding the issue was not U.S. diplomatic relations with a church, but with another sovereign state.

Besides Americans United, other plaintiffs included the American Baptist Churches in the U.S.A., Progressive National Baptist Convention, Baptist General Association of Virginia and numerous Baptist ministers.

The Baptist Joint Committee on Public Affairs, joined by the Southern Baptist Convention, is a friend-of-the-court party to the suit. □

Church loses 'privilege' tax appeal at high court

WASHINGTON

A nondenominational congregation in Knoxville, Tenn., that leases space from a motel for its worship and educational activities has lost its challenge to a state law imposing an occupancy—or "privilege"—tax on the rental of hotel and motel rooms in Knox County.

Covenant Community Church, described in papers filed with the U.S. Supreme Court as an "independent Bible church," lost its third and final effort to have the statute struck down for violating both the establishment and free exercise of religion clauses of the First Amendment.

At issue was a Tennessee statute known as a "state law of local application," meaning it applied only to Knox County, and designed to produce revenues for the promotion of tourism and the construction and maintenance of tourist facilities in and around Knoxville. After the management of a Howard Johnson's motel imposed the 5 percent

tax on the congregation for rooms leased for Sunday morning worship services and Sunday school classes, the church sued the state.

But the chancery court of Knox County issued a decree in October 1984 upholding the application of the tax to Covenant Church, a decision upheld a year later by the Supreme Court of Tennessee. By declining to hear the church's appeal from that ruling, the nation's high court left standing the lower decisions. □

Legal scholars tap roots of U.S. religious freedom

WILLIAMSBURG

An array of constitutional scholars from across the nation put the religion clauses of the First Amendment under the microscope of historical scrutiny during a two-day symposium. The event coincided with the bicentennial observance of Thomas Jefferson's Virginia Statute of Religious Freedom.

Philip B. Kurland, professor of law at the University of Chicago, credited Virginia Baptist minister John Leland and a handful of others with bringing the agitation resulting in the eventual declaration that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Kurland said Baptists and Quakers—two of colonial America's most despised religious minorities—created the necessary ferment for adoption of the First Amendment, a ferment occasioned by the demands for religious uniformity by the colonies' officially established churches.

He countered recent arguments by Supreme Court Justice William H. Rehnquist and U.S. Attorney General Edwin Meese III that James Madison—author of the Bill of Rights—was motivated solely for political reasons to insist on attaching the first 10 amendments to the Constitution. Instead, Kurland said, Madison "turned to his own efforts in Virginia" to guide him in insisting on incorporation of the Bill of Rights.

Among a quartet of other speakers who also addressed questions on the origins of the religion clauses, University Texas law professor Douglas Laycock beled as "the big lie" the view s by Rehnquist and Meese tha framers intended was to avoid ment of a national church ar tial treatment of one Christian sect over another.

He noted those questions were "squarely posed" in the first session of the U.S. Senate and rejected in three separate votes. What the constitutional convention adopted instead, Laycock said, was the "broadest version" brought before either the Senate or the House of Representatives.

Former U.S. Solicitor General Rex E. Lee, however, attacked the Supreme Court's three-part test to determine if laws or other public policies violate the establishment clause. Although he acknowledged the first two prongs of the test, dealing with purpose and effect, must be included in any future high court revision of its rationale, Lee insisted the excessive entanglement prong must be rejected. That portion of the test, he said, "has become the ultimate inquiry" in deciding too many church-state controversies.

Jesse H. Choper, dean of the school of law at the University of California, Berkeley, gave qualified support to Lee's views about the three-part test, stating the Supreme Court's interpretation of the free exercise clause "is at war" with its establishment clause doctrine.

Choper suggested what he termed a "reconciling principle" to remedy the court's inconsistency. That view, he said, would hold that government action violates the establishment clause if it has a clearly religious purpose and results in harming citizens' religious liberty. □

Dunn, others ask Reagan to sign torture treaty

WASHINGTON

James M. Dunn, Baptist Joint Committee on Public Affairs executive director, and 10 other American Christian leaders have asked President Reagan to sign a United Nations-sponsored tre on- demning the practice ur - out the world.

The 11 wrote, " el an awes re ut aga

Second Vatican Council of the Roman Catholic Church, the World Council of Churches and the Baptist World Alliance.

The U.N. General Assembly unanimously adopted the torture treaty—formally known as the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment—in December 1984. Noting that the United States supported the treaty in the U.N. but is not among nearly 50 nations that since have ratified the document, the 11 asked Reagan to direct the U.S. ambassador to the U.N. to sign the treaty and to submit it to the Senate for ratification.

Besides Dunn, other signers included Marshall Lorenzo Shepard, president of the Progressive National Baptist Convention; Arie Brouwer, general secretary of the National Council of the Churches of Christ; Edmond Lee Browning, presiding bishop of the Episcopal Church; Avery Post, president of the United Church of Christ. □

Firm may cancel church's insurance over sanctuary

SEATTLE

University Baptist Church, located in this Washington city, will continue to harbor Central American refugees despite threatened loss of its insurance coverage.

Church officials have been notified that Church Mutual Insurance Co. of Merrill, Wis., intends to cancel the church's insurance if it does not abandon its sanctuary program.

In a letter to the company's local agent, Church Mutual senior underwriter John Fehl said there "is clearly an increase in hazard to our insured property" because of the church's role in the sanctuary movement.

"This was evident in personal threats to the pastor and church, as well as the actual physical damage to the church premises," Fehl said.

He also contended another hazard is osed by the refugees' "different backrounds and cultures which may not acuaint them with the various electrical ppliances and other facilities available n the church."

The pastor's attorney, Charles Smith, a member of the Baptist Joint Committee on Public Affairs, has advised the church to contact other insurers. □

Carl H. Esbeck and Kline Capps

UNDERMINING INDEPENDENCE

Will state regulation follow the funding of church-related schools?

The past two decades in America have witnessed a resurgence of interest in religious-based schooling. Manifestations of this trend are evident in the increased number of primary and secondary students enrolled in religious schools and the rapidity with which new church-affiliated schools are being opened.

Concurrent with this increased parental interest in religious-based education has been a shift toward privatism in politics; growth in libertarian thinking; a widening perception that the public schools no longer operate within the context of a nondenominational "Christian consensus;" and a budding conviction that no overarching world view of civic faith presently exists in American society that the common schools can confidently draw upon for their values to be fostered in their students.

One of the many effects of these sociopolitical undercurrents has been an insistence by private school parents on the right to educate their children free of "discriminatory" funding arrangements, meaning the freedom to choose nongovernment schools without having to pay both taxes and tuition. This climate of thought coupled with enrollment shifts to private schools has resulted in an increasing number of spokespersons stepping forward to advocate the use of government funds for private education. Moreover, because the funding debate may no longer be cut short by characterizing it as simply a "Catholic issue," the movement has broader "political clout" at election time.

This article by Drs. Esbeck and Capps, of the U. of Missouri School of Law, appeared in expanded form in *The Journal of Law and Education* where it explored the regulation of religious schools in America, drawing on experiences of three other nations. ©

Federal Spending and the First Amendment

Although there were private schools in America long before there were public schools, in the 19th century primary and secondary education came to be understood as principally the responsibilities of local and state government. Occasionally litigation has broken out when educational bureaucrats have sought to assert some regulatory control over nongovernment schools pursuant to this power to act for the public's general welfare. As of late these disputes have involved Christian fundamentalist and Amish schools, as opposed to mainline Protestant and Roman Catholic schools which have no objection to (indeed, have often eagerly sought) laws requiring school accreditation, teacher certification, and the like.

Moreover, because of the First Amendment's interpretation banning many forms of aid to religious schools, these legal flareups with fundamentalist and Amish schools have not raised the issue concerning the scope of regulatory power that is tied to the government's authority financially to aid these religious schools. Indeed, the legal question could never arise so long as the U. S. Supreme Court continued to interpret the First Amendment as prohibiting most forms of parochial aid.

The Supreme Court's 1982-83 term witnessed the first real doctrinal break from the ban on government aid to primary and secondary religious schools. In sustaining Minnesota's tuition tax deduction plan in *Mueller* v. *Allen*, the Court sought to distinguish prior cases on principally two bases. First, the choice of "spending" the tax benefit on religious schooling, as opposed to choosing a free school or a tuition-charging nonreligious school, rests entirely in the hands of the taxpayer-parents. Not only did the aid avoid placing the state and religious schools in direct contact, but parents were not mere unthinking conduits for the channeling of public aid to religion by indirect means. "[U]nder Minnesota's arrangement public funds become available only as a result of numerous private choices of individual parents of school-age children," observed the Court. Thus, the statute in *Mueller* was likened to the familiar tax deduction for charitable contributions, including donations to religious organizations, that are not thought to violate the establishment clause.

Second, the tax benefit was available to all taxpayer-parents of school-age children, whether the pupils attended public or nongovernment schools, thus distinguishing the statute from New York tax legislation earlier struck down by the Court. This difference is more apparent than real, however, because in application the Minnesota statute benefited public school parents very little.

Religious Liberty Cases

Congress is empowered by the Constitution to raise revenues and to spend these funds for the general welfare. This taxing and spending power has been broadly construed. What it encompasses is discretionary with Congress, subject to judicial review only when it is determined that the legislation conflicts with a limitation found elsewhere in the Constitution, such as the First Amendment.

The consolidated cases of *Bob Jones University* v. *United States* and *Goldsboro Christian School, Inc.* v. *United States*, have already given the Supreme Court's assent to conditioning federal tax exempt status on the absence of racial discrimination in admissions and other policies toward private school students. Although the justices were divided on other issues, the Court was unanimous in turning back claims by the schools that their First Amendment religious liberty was denied by the nondiscrimination requirement of the Internal Revenue Service.

Since most religious-based schools voluntarily eschew racial discrimination, the practical effect of *Bob Jones* and *Goldsboro* is marginal. It is the legal prin-

ciple established by these cases concerning federal power that has some in the religious community worried.

Yet another step troubling to religious educators was taken by the Supreme Court in *Grove City College* v. *Bell*. Grove City College, a Presbyterian liberal arts school, sought to maintain its institutional freedom by refusing all state and federal financial assistance. However, Grove City College did enroll students that received educational grants and loans directly from the Department of Education (DOE). Because of this student aid, DOE claimed that Grove City was a "recipient" of "Federal financial assistance," as those terms appear in Title IX of the Education Amendments of 1972, a statute prohibiting discrimination on the basis of sex in post-secondary educational institutions. When DOE requested the college to execute an Assurance of Compliance, school officials refused and a lawsuit ensued.

The Supreme Court held that the student aid was federal financial assistance to the college, even though paid directly to the students, and that the college's student financial aid program was subject to Title IX. Of greater interest for present purposes was Grove City College's final argument: that conditioning federal financial assistance on compliance with Title IX violates the First Amendment rights of both its students and the college. The Court summarily brushed aside the defense.

On its face, the *Grove City* decision appears to hold that the federal spending power supercedes First Amendment rights that in other circumstances may provide a defense to excessive governmental interference. Conceivably, then, acquiescence by religious schools to federal assistance, even when that assistance is given indirectly through grants to students or their parents, could shackle religious schools to an unwelcome host of federal regulations.

The *Grove City* decision must be probed deeper, however. Although the college is a Presbyterian school, it did not argue any First Amendment religious liberty defenses. Section 901(a)(3) of Title IX exempts religious educational institutions having religious tenets contrary to the thrust of Title IX. Presumably, Grove City College did not rely on this statutory exemption because it had no religious tenet requiring sex discrimination.

It must not be assumed, however, that the exemption in §901 (a) (3) exhausts the full scope of the First Amendment's protection of religious liberty of church-related schools. Since the institutional integrity of Grove City College in fulfilling its *religious* mission, however perceived, was never placed in issue, it is not possible to say what the Court's disposition would have been if the case had presented a clear clash of federal spending power versus the First Amendment liberty of the college to be free of regulation so intrusive as to compromise its educational curricula where integrated with religious beliefs.

Freedom of Expression Cases

First Amendment expressional rights entail the freedoms of speech, press, assembly, and petition. When an individual has a clearly recognized expressional right to engage in certain activity, the Supreme Court has consistently held that the government does not act unconstitutionally if it declines to make easier the exercise of that right by refusing to pay for the desired activity. The difficult issue arises when government elects to subsidize an activity, but conditions the aid by imposing limits on the recipient's expressional activity. The two principal cases addressing this point evidence ambivalence by the Court toward a rule of "unconstitutional conditions" in taxing and spending power cases.

In *Regan* v. *Taxation With Representation*, a nonprofit corporation (TWR) had as its chief purpose the influencing of congressional tax legislation. Section 501(c)(3) of the IRS code grants tax-exempt status to nonprofit organizations, provided that lobbying does not comprise a substantial portion of their activity. A nonprofit organization that engages in considerable lobbying may register with the IRS under §501(c)(4). Because it is nonprofit, a §501(c)(4) organization does not pay federal taxes, but its donors may not deduct their contributions on their individual federal tax returns. However, the tax code allows a §501(c)(4) organization to affiliate with a §501(c)(3) corporation. The §501(c)(4) affiliate may lobby without impairing the tax-exempt status of the parent organization, so long as separate financial records are kept, including whether donations were received by the parent or by the non-exempt affiliate.

The Court previously held that lobbying is an expressional activity protected by the First Amendment. TWR brought this action seeking to obtain both tax-exempt status and the freedom to engage in lobbying without losing its §501(c)(3) exemption. The Court upheld the statutory restriction on lobbying activity. The tax deduction afforded donors to §501(c)(3) organizations was viewed as an "indirect subsidy" that Congress had the power to grant or withhold. By denying tax-exempt status to legislation-influencing groups, the Court characterized the congressional act as simply a refusal to subsidize lobbying with public funds, a legitimate exercise of its spending and taxing powers.

A concurring opinion by three justices appended what turned out to be an important refinement. If a §501(c)(3) organization was prohibited from creating its own §501(c)(4) affiliate for lobbying purposes, the concurring justices believed the tax provision would violate the First Amendment. Because they understood the restriction to prevent only tax deductible contributions from being spent on lobbying, the justices accepted the constitutionality of §501(c)(3).

More recently in *FCC* v. *League of Women Voters*, the Court sided with expressional rights over the spending power. The case called into question the constitutionality of §399 of the Public Broadcasting Act of 1967. The act created the Corporation for Public Broadcasting (CPB), with the purpose of dispersing funds to noncommercial broadcasting stations partially to defray their operational and programming expenses. Section 399 prohibits stations receiving CPB grants from airing opinions or editorials on public issues. Pacifica, whose station-licenses were receiving CPB subsidies, brought suit challenging the ban on editorializing.

Although the government raised several defenses, in its final argument (Citing *Taxation With Representation*) the Department of Justice maintained that §399 was simply an exercise by Congress in refraining from spending public money that would effectively subsidize Pacifica's editorials. The Supreme Court, however, distinguished §399 from the §501(c)(3) restriction on lobbying upheld in *Taxation With Representation*. Section 399 totally barred a station from editorializing if it received any CPB funds. Because a noncommercial station cannot segregate its funding by source, it is even barred from using funds from private donors to produce and broadcast editorials.

Thus, *FCC* v. *League of Women Voters* follows the caveat in the concurring opinion of *Taxation With Representation* as the distinguishing principle. *Taxation With Representation* reaffirms the rule that "the government may not deny a benefit to a person because he exercises a constitutional right." That is to say, Congress cannot have as its legislative purpose the suppression of First Amendment rights. These cases also reject the argument that because Congress has the power to grant or deny a subsidy (or tax benefit), it thereby has the *unfettered* power to attach conditions that impinge — even unintentionally — on First Amendment rights.

Conclusion

Whether access to government funding could be the means whereby a host

Continued on page 16

INTERNATIONAL DATELINE

Resignation flap reveals conflict in church council

JOHANNESBURG

An intense theological and ideological conflict in the South Africa Council of Churches has been brought into the open by the search for a new general secretary for the council and the surprise resignation of Dan Vaughan, the organization's number-two administrator.

Recently, there have been two further developments. Vaughan has been asked by the council's general staff in Johannesburg to withdraw his resignation and stay on as assistant general secretary.

Second, the Rev. Beyers Naude, the soon-to-retire general secretary, has at the last moment refrained from formalizing the appointment of Mono Badela, a seasoned journalist, as the council's new director of communications, because of the current controversy over senior appointments.

At the root of the turmoil are two basic demands by the vast majority of black Christians involved with the council and a small group of whites:

- That blacks should now have a decisive say in the administrative and financial structures of the council and of the multiracial churches that are members of it. These structures have heretofore been dominated by whites.
- That the church should become more directly involved at a practical, grass-roots level with the daily struggle of blacks against injustices and in the conflict with the government. Otherwise, the argument goes, black Christians in large numbers will lose confidence in Christianity.

The Vaughan resignaton, submitted in the wake of a reorganization that stripped him of many of his responsibilities, came after the influential, newly launched Black Ecumenical Church Leaders Consultation (BECLC) presented to the council and several churches a series of demands that did not refer specifically to personalities.

A prominent black church leader said that Vaughan was not personally a target of the black consultation, but that he was in an embarrassing position because of weak leadership in the council at the highest level. "The council presidium should have taken the initiative long ago of dividing Mr. Vaughan's responsibility," this spokesman told a reporter.

Mono Badela, who was to have been appointed communications director in early March, said he was told by Naude that it would be unwise to appoint him now in view of the ideological controversy over his predecessor's job.

The controversy over the lower-level executive posts gives some indication of the sensitivity and tension that may characterize the choice of a new general secretary for the council. □

Philippines NCC pleads for religious liberty

MANILA

While celebrating the recent overthrow of Ferdinand Marcos' regime, the leading ecumenical organization in the Philippines added that total liberation remains somewhat elusive.

"Ours is a continuing task and a collective opportunity to unmask and reject the evil remnants of the past," said the National Council of Churches of the Philippines in a March statement signed by Council Chairman Johnny V. Gumban and General Secretary La Verne Mercado. "Total liberation from the remaining clutches of the past regime is not yet complete," they added.

About 10 percent of the Philippines' 54 million residents are members of churches affiliated with the council. During the Marcos era the churches were closely identified with the opposition and especially with the human rights movement. The NCCP has its own human rights desk, which was critical of the old government's treatment of dissenters, activists and common citizens.

The NCCP urged Filipinos of various faiths and political beliefs to continue working for a "just and humane society where justice, freedom and democracy prevail." It said the four-day revolt and the popular power it inspired had been a unique and distinct part of the Filipino national experience. □

Groups in Canada want investigation of cults

MONTREAL

Quebec psychologists and other groups have asked for a provincial government inquiry into religious sects and other cults who, they charge, are recruiting through "misleading tactics."

Though declining to single out specific sects for their criticism, the petitioners also said the groups induce deep dependence among members through a variety of methods.

Nicole Crellin, a spokesperson for the Church of Scientology, one of the sects believed targeted for investigation, said she would welcome an inquiry into some of the groups responsible for calling an inquiry.

Scientologists in Montreal have been in a running battle with one of the groups calling for the government inquiry, a consumer protection group known as ACEF Center. The center passed out pamphlets which warn against the cults' techniques which include, the document charged, harassment of potential followers and brainwashing.

The petitioners emphasized that the idea was not to single out any particular group for criticism but merely to alert the public against tactics used to attract followers. □

Egypt pressured to adopt Islamic law as legal code

CAIRO

The Islamic religious revival that has swept Egypt is more than 10 years old, but it shows no sign of fading. Instead, there are more and more efforts to make Islamic law the sole legal code of Egypt.

The calls are coming not only from those known as Islamic fundamentalists. Leading politicians, jurists and progovernment editors say they also recognize the need as well as the desire for an Egyptian society faithful to Islam.

Most leading pro-government Egyptians agree that the Sharia (Islamic law) is applied in Egypt in nearly all cases. Since last year, the government of President Hosni Mubarak has had a commission of jurists combing through all the country's laws for any contradiction with Islam.

For example, earlier this year, a court in Alexandria sentenced dozens of followers of a man who claimed to be an Islamic prophet. Islam does not recognize prophets after Mohammed, and the defendants were charged with preaching heresy. The self-proclaimed prophet, Salmah Boreq, was sentenced to five years of hard labor.

Many Egyptians are convinced that, while Islamic law will eventually be fully implemented, it will not reflect the Iranian model. They say Egyptian minorities — especially the nearly 10 million Coptic Christians — will not be hurt.

But that, analysts say, depends on defining Islamic law. And so far, there are numerous opinions. "Everyone in

Egypt says they want Sharia," said a leading Western analyst and Islamic scholar. "Speak to all the political parties. They all want Sharia. Socialists will tell you how Sharia works with socialism. The same goes for the communists and capitalists." □

Pacifist pastor faces jail over military training

GAEVLE, SWEDEN

Hans Ivarsson, pastor of the Baptist Church here, reportedly is facing a jail term in the very prison he serves as chaplain.

Ivarsson claims he has become a pacifist since his national military training 20 years ago. He refused to discharge a month-long repetition course this year and was sentenced to a month in the prison, according to *Veckoposten*, the weekly organ of the Swedish Baptist Union.

He will accept the jail term rather than take the refresher course with non-weapon-bearing duties, an alternative sometimes allowed for conscientious objectors to military service in Sweden. □

Turn to left irreversible, Baum tells conference

VANCOUVER

One of Canada's foremost Roman Catholic theologians told a major conference of Canadian and U.S. theologians that the turn to the left that has taken place in church teachings is "irreversible."

Most of the themes of liberation theology have already been reflected in official church teachings, said Gregory Baum, noting that they have gone on to influence bishops and the Vatican.

Baum, a former priest, made his remarks in an address to the conference sponsored by Simon Fraser University in nearby Burnaby on the theme, "Liberation Theology—a Blend of Christianity and Marxism."

Baum said the bishops argued that any consideration of violence must begin by dealing with the violence wrought by unjust institutions. They did advise against revolutionary violence but on pragmatic grounds—revolutionary violence risks generating new injustices and provoking foreign intervention.

Baum said bishops alternate between a "soft concept of liberation" that vaguely calls for everyone to become more just, and a "hard concept" that is "concrete about the system that does the damage and singles out specific companies and countries." □

U.S. religious radio called monotonous and one-sided

NEW YORK

The content of religious broadcasts beamed into the Soviet Union by the Voice of America and Radio Liberty was sharply criticized as "archaic, monotonous and one-sided" at a conference on Religious Freedom, Human Rights and International Relations.

Speakers at the conference sponsored by the Research Center for Religion and Human Rights in Closed Societies discussed the roles that both private religious organizations and government groups play in fostering the current "religious renaissance" in the Soviet Union.

The most severe criticism came from Ludmilla Alexeeva, author of *"Soviet Dissent,"* a history of labor, political, religious and artistic dissent in the Soviet Union from 1962 to 1982. She charged that Radio Liberty and VOA religious programs are monopolized by extremely conservative synodal doctrines, and that the broadcasts discriminate against other religious groups by excluding news pertaining to them.

Russian Baptist immigrants complain that not enough information is broadcast regarding Protestant life in America. For example, Baptists in the Soviet Union were very eager to learn about former President Jimmy Carter because he was an active Baptist. □

Two flee Namibia to avoid draft into So. Africa army

LONDON

Two white Namibians have left the territory for London to avoid being drafted, but they say they will return "when true independence comes."

A report from the Namibia Communications Centre here identified the two as Stephan Scholz, 22, and Wilfried Brock, 24. Both are Lutherans and members of SWAPO, the South West African Peoples Organization.

While in London, they are hoping to take a teacher training course and get teaching assignments elsewhere in Africa until they are able to return home. □

NEWS-SCAN

Sixty-six cents could help save the lives of **millions of children** who otherwise will die each year from six preventable diseases. That's the word from Bread for the World, which in its 1986 "Offering of Letters" campaign is encouraging the concerned to write three letters to Congress. Director Arthur Simon points out that measles alone causes approximately 2 million deaths each year .... The **Sandinistas**, writes Jiri Valenta, science professor and director of Soviet, East European and strategic studies at the U. of Miami, did not come to power by the force of Soviet or Cuban arms but through a genuine, popular nationalist revolution against a repressive dictatorship. In a Kennan Institute report, Valenta concludes that while few would argue that Nicaragua is a "nonaligned" nation, there is still disagreement as to the nature of the regime. The FSLN views itself as a "strategic vanguard" and a revolutionary bridge in Central America, but has not become a full-fledged Leninist regime like Cuba and Vietnam .... To what extent is **food aid** used as a political weapon? When the African emergency food aid was before the Senate, both Republicans and Democrats gave enormous support and it was obvious the appropriation was going to sail through quickly. Then the Administration arranged for a rider to the bill, which included highly controversial aid to contras fighting the Nicaraguan government. The legislation was immediately delayed for months, every day resulting in more lives lost .... Believed to be the **oldest living ordained Baptist pastor** in the world, the Rev. Frans Manamela died in March in Soshanguve, So. Africa. He had maintained a faithful ministry near Pretoria even after retirement .... Professor Pieter de Villiers, who directs a Bible Center at the U. of So. Africa, claims that in turning to violence current **black liberation theology** is similar to the theology used by the Dutch-descended Afrikaans churches. "The biblical injunction against the use of force, the call to giving service, are in sharp contrast to the political programs in which force is given a legitimate place," he said. The church's duty is to bring about reconciliation and peace. □

CORRESPONDENCE

Reader response extends dialogue and thereby helps to focus and clarify the issues. Letters must carry both signature and address of the writer and should not exceed 200 words. We reserve the right to edit for length.

I want to commend you for several helpful articles: R. V. Pierard's "The Christian Right Threat to Evangelical Christianity," (Nov.-Dec., 85) and REFLECTIONS. I have shared these articles with others and posted them on our church bulletin board. I am becoming more aware of Church-State affairs with each issue of the REPORT.

Enclosed you will find copies of a newsletter from the Coast Guard base in Portsmouth. I was disturbed by the use of federal funds to reproduce and mail this item. The O'Hair petition, beyond being misleading and misinformed, goes beyond serving the spiritual needs of those on the Coast Guard base. I want to make you aware of this incident. Your "watchdog" role in Washington is invaluable. □

Darrell Reid James
Portsmouth, VA

[Ed. Note: The ubiquitous FCC petition to protest an alleged but non-existent attempt by Mrs. O'Hair to drive religion off public broadcasting, after 11 years refuses to go away. Some believe it gets periodic impetus as a fund-raising device either by Mrs. O'Hair or others to "keep your kind letters coming."]

Thanks so much for sharing the statement of the Baptist Joint Committee. I love the line, "let us err on the side of freedom." Great! □

John Seigenthaler
Nashville, TN

With more than passing interest I read Jimmy Swaggart's remarks in "Washington Observations," REPORT, March, 1986.

He is quoted there as saying " . . . they legislated God out of the country. . . ." His God must be very weak if He can be removed by a vote. Perhaps Swaggart should meet the Almighty God, the Father of our Lord Jesus Christ, of whom the Bible says, "The lot is cast into the lap; but the whole disposing thereof is of the Lord" (Prov. 16:33).

That goes for a vote as well, for, "The king's heart is in the hand of the Lord . . . He turneth it withersoever He will" (21:1). □

Robert M. Jaye
Umatilla, FL

April Quiz Answers

1. The Baptist Joint Committee adopted a statement against infiltration of churches by the government.
2. Senator Paul Simon.
3. Michigan.

Hymn Writers

Three prominent church musicians have agreed to serve as judges for the hymn writing contest being held in conjunction with the 20th National Religious Liberty Conference sponsored by the Baptist Joint Committee. They are:

- Dr. William J. Reynolds, Associate Professor of Church Music at Southwestern Baptist Theological Seminary;
- Dr. Milton Ryder, pastor of the First Baptist Church of Boston;
- Richard Donn, serving in the United States Navy.

The theme is "Intersecting Values: Christian Citizenship and Church-State Separation."

Compose a new hymn tune with new lyrics or write new lyrics to a familiar tune, but don't delay. Entries should be mailed no later than July 1, 1986, to Jeanette Holt at the Baptist Joint Committee. □

PROBE

- George Truett's sermon on religious liberty highlights the fundamental ideas that make Baptists "Baptist." In his opinion, what is the most fundamental Baptist distinctive? Is that idea alive and well in your area? Or, has it changed, or suffered some diminution? What is it about the heritage of Baptists that makes you and other members in your church most proud?

- Oliver Thomas (Views) writes that it is unconstitutional to single out religious speech in high schools for prejudicial treatment. Dividing into two groups, have one argue the free exercise of religion in high schools as Thomas outlines it. Have another argue that the First Amendment's "no establishment" clause means it is outside the domain of Congress to make *any* kind of law that affects religious exercises.

- James Dunn (Reflections) reminds us that for faith to be worth anything it has to be voluntary. (Compare this to George Truett's words, "God wants free worshippers and no other kind.") Why have Baptists opted for a naked "public square" rather than to have one group decide the appearance of the public square? Make a case that no group, civil or religious, can be trusted to be a benevolent dictator of public values.

Pop Quiz

1. Over what issue are psychologists in Quebec concerned?
2. Over what issue is a Swedish pastor going to jail?
3. Did a recent appellate court decision allow or disallow an ambassador from the United States to the Vatican?
4. What is the "big lie" referred to by strict church-state separationists regarding interpretation of the original intent of the framers?
5. Why is a Seattle church threatened with a loss of its insurance?

We have habits of mind, theological beliefs that hold it sinful to expect government to shape our consciences.

REFLECTIONS

James M. Dunn
Executive Director

He was a giant. He towered over me by at least a foot and would weigh in at twice my 150 pounds. He was appropriately the one-man-welcoming-committee when I arrived to speak to the Maundy Thursday service at the Scottish Rite Temple in Alexandria, Virginia.

The words he spoke to name the bond between Baptists and his fraternal order are as memorable as being met by a mountain. "You know," he said, "we don't need government telling us what to believe about God, even a little bit."

He's right. We know enough from our insides to reject the church-state patterns of Old World tyranny. We resist any hint of coercion when it comes to religion. An American contribution to theology is the institutionalization of the belief that faith is free or it's phony. Ordinary folks have bought the "baptistification of religion," in Martin Marty's words. Shared Reformation roots remind us that for religious devotion to be worth a hoot it has to be voluntary. One does not have to be particularly sophisticated theologically to cling bulldoggedly to that hunch.

The Free Churches have elevated this partiality for experiential religion to dogma. In nothing are we dissidents, we anti-establishmentarians, more dogmatically united than in our resistance to dogma externally imposed.

Beyond that, in the United States we have codified our penchant for pluralism. It is written into the Constitution in the first sentence of the First Amendment. The necessity of space between church and state has gripped the moral imagination. Most Americans, just folks, know it is good.

The American people are bodaciously religious. Europeans are dumbfounded at our religiosity. According to a story by Ken John (*Washington Post* Poll, April 5, 1986) 91% consider themselves religious, 95% believe in God, 93% believe Christ died on the cross and 92% attend religious services—at least "a few times a year." That high degree of involvement in religion can be clearly linked to the fact that the First Amendment rules out any state-sponsored churches.

In his 1984 book *The Naked Public Square* conservative gadfly Richard John Neuhaus rightly accuses plenty of politicians and most media masters of a woeful ignorance of religion and he appeals for a return to "religiously grounded values." Nothing is more profoundly and pervasively true in his assessment of the church-state situation in America than his prediction that the "Christian Nation" notion will continue to have tough sledding.

Neuhaus says, "For good reasons, Jews and others who are uneasy about the idea of 'Christian America' will continue to prefer the naked square until it is manifest that Christians have internalized—as a matter of doctrine, even dogma—reverence for democratic dissent." I say a sincere and reverent "Amen!"

It is my reading of religious America that she is not ready to dress the public square in the values of those who have the power to do the dressing just now. Most of us are not ready to pay for someone else's manger scenes with our tax dollars, to require religious exercises in public institutions, or to use the powers of government to foster religious values. We have habits of mind, theological beliefs that hold it sinful to expect government to shape our consciences. We had rather have a "naked public square" than one cosmetically covered with cutflower Christianity. We choose a bare town hall to which we bring our own most deeply held beliefs. We do prefer the naked public square to one in which government meddles in religion. In John Locke's words, "the care of souls is not committed to the civil magistrate." John Leland, colonial Baptist champion of freedom, answers those who are eager to decorate the public place with *their* values. "Experience has informed us," he said, "that the fondness of magistrates to foster Christianity has done it more harm than all the persecutions ever did." We forget so soon.

Religious liberty then is that value above all others in the hierarchy of values. Without that freedom the other "values" so-called aren't valuable at all because they cannot be appropriated, taken up voluntarily, exercised freely.

We are unimpressed as Baptist Christians by those who offer some vague bundle of a hyphenated ethic called Judeo-Christian values. Advocates most often do not define it but when they do enumerate those values they offer no dynamic for their attainment.

Evangelicals in the strictest sense of the word are not a part of the "evangelical party" or followers of a brand of faith advertised on television, or rationalistic argufiers on a head trip for biblical literalism. No! Evangelicals are by definition "good news" people who have an experience with Jesus Christ we are willing to share. So, we are leery of any codified religious values that would surely constitute a temptation for all would-be enforcers.

Mere toleration will not suffice, nor a consensus ethic, nor morality made up by the majority. Nothing less than liberty will do.

Yep, Richard John, you're right. A lot of us will "prefer the naked public square until it is manifest that Christians have internalized reverence for democratic dissent." Whether that time has come is the stuff of another "Reflections." □

REVIEWS

'A Man of Books and a Man of the People'

E. Y. Mullins and the Crisis of Moderate Southern Baptist Leadership. By William E. Ellis, Mercer U. Press: Macon, GA. 1985, 228 pp.

Perhaps not by coincidence, Mercer University Press has released a timely biography of E. Y. Mullins which is an exercise in deja vu. Baptist readers with even a modicum of awareness of denominational controversies may recognize their denomination in William Ellis's biography of an outstanding Southern Baptist leader.

Ellis, a history professor at Eastern Kentucky State University, characterizes Mullins as the classic moderate Baptist for his times. His life reflected, yea, personified, most of the major issues and questions with which religious Americans struggled at the turn of the century. While he assumed the moderating position in these issues, Mullins constantly nurtured (or juggled) his exemplary evangelical faith.

As Ellis' title suggests, Mullins lived in two worlds. Most comfortable in academia, he also took on duties in churches and in denominational life that entailed constant public exposure—and controversy. Fundamentalist Southern Baptists of his day excoriated him for his academic, rational ordering of the faith. Liberal Northern Baptists, especially at the University of Chicago, gradually lost interest in Mullins as an ally in their causes. He spent most of his adult life, then, on a doctrinal tightrope. His many public actions and books were interpreted as challenging counterpoint to both fundamentalist *and* liberal extremism.

From 1899 to 1928, Mullins served as Southern Baptist Seminary's president. During his tenure he led the seminary to be a major evangelical and academic force for Baptists. He enjoyed a large measure of success, and would have enjoyed more were it not for the climate of opinion of his day. Fundamentalism had waxed strong in the South and its penetrating influence reached into everyone's life.

Its *cause celebre* was evolution. Underestimating the strength of fundamentalist forces, Mullins tendered that God is not limited to work through human freedom but also in natural law. Mullins could see God directing evolution's progress. He spoke out against anti-evolution bills as violative of "our age-long Baptist principle of separation of church and state." No legislature, he believed, had the right to censor ideas, and as a Baptist he was convinced that a free marketplace of ideas established the surest path to truth.

Except for the details, Ellis composes a picture of a life that strikingly parallels many Southern Baptist leaders today. Many are their voices which call for moderation, for openness and religious freedom. If their lot is to be like Mullins', their mediating voices will weaken in the acerbic reactions of fundamentalism. Mullins underestimated the strength of fundamentalists. Could Ellis be saying they are being underestimated again?

History does not repeat itself, yet it often rhymes. In the moderate-fundamentalist battles of the 1920s and the 1980s, we find parallels too close to disregard as coincidence. "Smelling committees" periodically visited Southern Seminary to sniff out heresy. Mullins as a seminary president was lured into debate by fundamentalists. Journals published by both moderates and fundamentalists became the mouthpieces of each, keeping each other on the defensive by printing offensive articles and editorials about the other. Rival seminaries grew and competed for students' minds and bodies. Moderate actions were often distorted as liberal by fundamentalists in order to make political hay, and vice versa. And, denominational headlines spotlighted useless bickering and fruitless debates.

Mullins and other denominational leaders of his day were forced to mute their doctrinal leadership because they feared fundamentalist reprisals. It was only under tremendous pressure that he finally yielded to the desires of the fundamentalists. Yet he had been giving ground all along; the fundamentalists manipulated the issues and the terms of the debate to the point of eclipsing any opposition. His last capitulation had its roots in his first compromise with the fundamentalist milieu.

Ellis wants to remind his readers of this lesson, if there are ears to hear. ☐ **(MM)**

INDEPENDENCE, from page 5

of unwanted and obtrusive regulations come to bear on America's religious schools cannot be determined with certainty from this study. The status of the case law in the Supreme Court concerning congressional spending and taxing power versus First Amendment rights is inadequately developed at present. Accordingly, it is speculative to say whether the First Amendment provides sure protection for the philosophical integrity of religious schools receiving substantial government aid. It should not go unnoticed that those justices on the Supreme Court that are most inclined to uphold aid to religious schools are the same individuals who are unwavering in sustaining federal taxing and spending power in the face of claimed First Amendment violations. The operations principle at work by these justices appears to be a less "activist" approach to individual liberties and greater deference to the will of the majority as evidenced in legislation. Thus, any future conservative trend as a result of personnel changes on the Supreme Court actually heightens the danger that the diverse character of religious schooling cannot be assured by the First Amendment. Unless safeguards for shielding the educational independence of religious schools are written into the funding (or tax benefit) legislation, acceptance of federal benefits could compromise the very schools in which so much effort is presently being invested to insure their continued vitality. ☐

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