

---

# REPORT from the CAPITAL

---

*Congress shall make  
no law respecting an  
establishment of  
religion, or  
prohibiting the free  
exercise thereof. . . .*

SOUTHERN CAPITAL HISTORICAL  
LIBRARY AND ARCHIVES  
Historical Commission, SDC  
Nashville, Tennessee

## The Religion Clauses and Individual Rights

# REPORT from the CAPITAL

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

Vol. 43, No. 3

March 1988

## Articles

The Religion Clauses: Protecting Individual Rights By John T. Noonan Jr.	4
Rhode Island College By Andrew S. Chancey	7
Teen Sex Ed & Churches By James L. Watters	10
Senate confirms Kennedy as Supreme Court justice By Stan Hasteley	11

## Features

Washington Observations By Stan Hasteley and Kathy Palen	3
Views of the Wall By Oliver S. Thomas	6
News in Brief By Kathy Palen	8
International Dateline By Vic Case	12
Reflections By James M. Dunn	15
Reviews	16

**Cover:** The Religion Clauses from the First Amendment of the U.S. Constitution.

Executive Director: James M. Dunn  
Editor: Victor Tupitza (on sabbatical)  
Managing Editor: Vic Case

Contributing Editors: Rosemary Brevard, Andrew S. Chancey, Stan Hasteley, Jeanette Holt, Kathy Palen, Oliver S. Thomas (Washington, D.C.); Gary McNeil (Austin, Texas); Glenn Saul, (Mill Valley, California); Kenneth L. Smith (Rochester, New York).

*REPORT from the CAPITAL* is published ten times each year by the Baptist Joint Committee on Public Affairs, a denominational agency maintained in the nation's capital by its nine member bodies: American Baptist Churches in the U.S.A.; Baptist Federation of Canada; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention.

Subscriptions: Single rate, \$8.00 one year, \$15.00 two years; club rate (ten or more), \$7.00 each per year; student rate, \$3.50 one year, \$5.00 two years; foreign, add \$2.00 postage.

BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS  
200 Maryland Avenue, N.E., Washington, D.C. 20002

## Rights to Remember

Baptists sometimes do not give religious liberty the importance it deserves because either they know little about it and their history or they see it as having little relation to the more familiar activities of church life. Such perspectives lack the recognition that protecting and promoting religious liberty is an important, even irreplaceable, activity for Baptists.

In American society, individuals have rights over against the government; thus, individuals enjoy protection from a corporate coercion that would deny them basic freedoms Americans have come to take for granted. In this issue, John T. Noonan Jr. examines the evolving protection of individual rights (i.e., religious liberty) through the Religion Clauses of the First Amendment.

One area of such individual rights often taken for granted, religious liberty is an important means for pursuing the variety of activities in the life of the church. In part for the freedom to carry out such activities, Baptist forebears fought for the individual's right to differ from religious and governmental authorities; the preservation of freedom remains an important means to the ends of worshiping, educating, ministering, evangelizing, and organizing.

As a means, religious liberty is not just important; it is irreplaceable. To follow an ethic in which ends justify means is to risk betraying the ends sought. Because religious liberty cannot be separated neatly from the whole of the faith Baptists share, eliminating it is to corrupt the ends of faith itself. Coerced faith is an oxymoron; thus, Baptists have no alternative but to pursue freedom.

But Baptists do not want freedom just for themselves; they also want it for others. Here the line between means and ends shifts for Baptists, and religious liberty becomes an end in itself — a right and gift Baptists want to share with all peoples. Here religious liberty becomes an important part of that vision for God's children that Christians seek to realize regardless of the presence or absence of Christian faith.

But even when its importance is recognized, religious liberty is still difficult to defend. Most often, the threats to religious liberty are small, incremental ones that are unlikely to inspire heated reactions. In the absence of a catastrophic, sudden threat to this assumed freedom, the protection of religious liberty must depend on a disciplined commitment to principle, not the ineffective transience of passion. For Baptists, that commitment to principle is undergirded not only by the experiences of history, but also by the affirmations of faith.

The progress in the evolution of religious liberty in the American experience, especially in the more pluralistic and litigious times of recent history, is in part a result of continued watchfulness by Baptists and others. When Baptists forget their principled commitment to religious liberty, they help to endanger what it seeks to protect — unhindered Christian worship, work, and witness. And they forsake the freedom true Baptists dare to believe God wills not just for them, but for all of God's children. □

Vic Case



● **THE CALIFORNIA SUPREME** Court will be the next legal arena for the nation's first clergy malpractice suit.

The court unanimously agreed to hear a challenge brought by Grace Community Church of Sun Valley to a state appeals court ruling allowing the family of the late Kenneth Nally to proceed with a \$1 million suit against the church. The case is expected to be scheduled for argument and then decided by the court later this year.

Walter and Maria Nally sued the church after their son committed suicide in 1979 while a member of the congregation. He was receiving pastoral counseling from church ministers at the time.

Religious leaders have voiced concern over the case's potential intrusion on free speech and the constitutional separation of church and state.

● **A FEDERAL APPEALS** judge has rebuffed efforts of the faculty of United Methodist-related Boston University to organize a union.

Judge Juan R. Torruella of the U.S. First Circuit Court of Appeals said the 1,500 full-time faculty members cannot form a union because they are "managerial employees." His ruling upheld a similar finding made by the National Labor Relations Board in October 1986.

The Boston University faculty has been trying to organize a union since 1974. They have complained that administrators refuse to consult with them in person in making teaching assignments.

● **A NEW ORLEANS** judge has rejected motions to dismiss a case challenging the use of public funds in nonpublic school systems in Louisiana, clearing the way for the class-action suit to go to trial.

U.S. District Judge Frederick Heebe has denied motions for dismissal of the case from local, state, and federal officials. In one approved motion, the New Orleans Roman Catholic archdiocese was dropped as a defendant in the suit.

The suit was filed against the local, state, and federal governments in December 1985 by Americans United for Separation of Church and State on behalf of a group of local parents.

The action challenges the constitutionality of using more than \$30 million of public tax money to provide such items as transportation, school textbooks, materials, and supplies to nonpublic school students.

The suit also challenges provisions in the Louisiana constitution that encourage public funding of private, religious schools.

By rejecting the motions for dismissal, Heebe paved the way for Americans United to continue preparations for bringing the case to trial. Lee Boothby, the attorney handling the case for the nonprofit organization, said the case should be ready for trial in July or August. It is to be heard in New Orleans.

Americans United filed the suit on behalf of four local parents. Since that time, four other parents have intervened in support of parochial schools and are being represented by an attorney for the U.S. Catholic Conference in Washington.

An Americans United spokesman said while Louisiana ranks low in most public school categories, it ranks first in the amount of per capita aid given to nonpublic schools.

● **AN ILLINOIS APPEALS** court has awarded a \$5.7 million bank account of the late Black Muslim leader Elijah Muhammad to the American Muslim Mission, the religious organization he founded, rather than to his children.

Justice Mel Jiganti of the state appellate court wrote that "where funds are solicited to benefit a religious organization, we believe that basic principles of equity and fair dealing should preclude the use of those funds to benefit the personal estate of the religious leader."

After Muhammad died in 1975, the bank turned over the account to what was then known as the Nation of Islam, headed by Muhammad's eldest son, Warith Deen Muhammad. But another son, Emmanuel, who is the administrator of his father's estate, argued the money belonged to the late leader's twenty-two children.

Judge Henry Budzinski of Cook County Court ruled in 1982 that the money should be turned over to the children with interest accrued. After an appeal, in 1986 he again ruled in favor of the children. That ruling was overturned by the appellate court December 31, 1987.

# The Religion Clauses: Protecting Individual Rights

## *The power of ideals*

I propose to take a single case — that of the Religion Clauses — to show the relation of the Constitution to the protection of individual rights. We are not unaware today that the Constitution at the start did not afford protection of the rights of blacks or the rights of women. We are less aware of its failings in respect to an area that concerns blacks and whites, women and men — the area of individual conscience. But just as the development of the Constitution's basic principles was in the direction of securing rights for blacks and for women, so the path set by the Constitution was directed to securing the rights of conscience. Let me set out the course this path has taken. The case is exemplary.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." The extraordinary importance, the uniqueness, and the hope contained in these few words that committed the United States to its course in regard to religion have often been recognized. At one level of understanding they seem a superfluity: a governmental charter guaranteeing that government will not enter the sphere of human life that transcends government. At another level of understanding they are the indispensable foundation of our whole governmental enterprise, known to be such from over one thousand years of European experience of religious conflict and religious intolerance.

The Religion Clauses were neither a legal code nor a fully operative set of directions. They carried in themselves no sanction. The means of their enforcement was uncertain. They launched an experiment. They created channels in which conduct would take place. They conveyed a teaching. To understand what the Religion Clauses accomplished for the rights of individuals, it is necessary, however, to say first what they did not accomplish.

When the experiment began, religious establishments flourished in this country. I take my native state, Massachusetts, as an example. By the constitution of Massachusetts — proclaimed in 1780, the oldest surviving written constitution in the world — the Congregational church was established

as the state church of the commonwealth. With minor exceptions, the inhabitants of every town of the commonwealth were compelled to pay taxes for that church's support. The very Declaration of Rights of the Inhabitants of the Commonwealth, part I of this constitution, proclaimed the civic duty of every citizen to worship God. Statutes enforced the duty by compelling attendance at Sunday services under penalty of fine. By part II of the constitution, "The Frame of Government," Catholics were excluded from public office.

This kind of established church endured long after the Constitution of the United States was adopted. As late as 1833, when the Congregational church was disestablished, that church received a golden handshake in the form of all the churches the taxpayers had constructed in the previous two centuries. As late as 1837, blasphemy trials were common, and Chief Justice Lemuel Shaw could apply the blasphemy statute that protected the Christian faith to Abner Kneeland, a newspaper editor who had mocked the Virgin Birth. When the hapless editor evoked the First Amendment, Chief Justice Shaw proceeded to judgment against him and ordered Kneeland's imprisonment.

Religious establishments lasted as late as 1870, a date at which the New Hampshire constitution still forbade an agnostic, a Catholic, or a Jew from being a New Hampshire legislator. Persecution of particular religions lasted even longer. Congress in the 1850s began an attack on the Church of Jesus Christ of Latter-day Saints; in the 1860s under Abraham Lincoln Congress legislated specifically against that church; and in 1890 the Supreme Court of the United States upheld the congressional legislation revoking that church's charter.

Government coercion of conscience did not stop with the nineteenth century. Twentieth century America has been marked by active governmental persecution of groups with unusual or unconventional beliefs — most notably of the Jehovah's Witnesses, but also, for example, of such bodies as The Dolly Pond Church of God With Signs Following, a church that believed one should take the Gospel of Mark literally and carry snakes. Bizarreness of belief to the outsider — and what belief is not bizarre to an outsider? — has made governmental action acceptable to the majority. And no constitutional protection has been accorded conscience in an area in which conscience is most sensitive, in the taking of human life. In twentieth century America many have gone to prison because they have believed that they could not conscientiously go to war. The statutory exemption for con-

---

Judge Noonan sits on the U.S. Court of Appeals for the Ninth Circuit. The above is the text of a speech delivered to the Harvard Club of San Francisco. © 1987 by John T. Noonan Jr. Used with permission.

scientific objection cautiously extended by Congress has never reached large bodies of believers who object to fighting an unjust war. The Constitution has been no shield for those whom Congress has chosen to omit.

I review these substantial departures from the high ideals of the Religion Clauses for two purposes. First, with Thomas Hardy, I believe, "If way to the better there be, it exacts a full look at the worst." Second, these sad and shocking instances underline my starting proposition: the Constitution in its protection of individual rights was not self-executing. At the beginning and up until 1940, the Religion Clauses were not enforced against the states. In the nineteenth century the Religion Clauses did not bind Congress in confiscating the property of the Mormon church; in the twentieth century the Religion Clauses have not bound Congress in making laws invading the consciences of religious objectors to killing. At no time before the 1940s were the Religion Clauses enforced by the Supreme Court against any branch of the federal government. Enforcement of the Religion Clauses by judicial decree backed by the coercion of the contempt power is a phenomenon of the last two generations; the limits on that enforcement have been substantial, the gaps great.

And yet all the while the Constitution provided the framework in which religion has prospered, religions have coexisted, and the conscience of individuals in many ways has been respected. We have had no wars of religion on this continent. President Buchanan sending troops into the Utah Territory created an incident known as the Mormon War; but it was no war, and the federal military excursion was predominantly peaceful. We have never seen the state put a person to death for heresy. There have been governmental inquiries into religious belief — by statute in the suppression of the Mormons, by prosecutors of fraud as in the famous *Ballard* case. But we have never had the horrible European experience of seeing the state kill a man or woman for the convictions of conscience. In comparison with a thousand years of European history, these are great accomplishments: the deep cleavages that can be caused by religion have never led to open war, have never led to death at the hands of the government. I credit the Constitution with creating the environment in which peaceful debate and dissent and development have been possible.

It might be said that the Constitution does not deserve the credit. First, emigration made religious tolerance necessary. Second, belief in religion itself declined, so that fighting faiths became less frequent and less zealous. Third, in Europe by the end of the eighteenth century, religious warfare and the infliction of death for heresy were virtually unknown. The America governed by the Constitution was not different from modern Europe.

I answer that the Constitution by itself did not accomplish everything. Population change, change in opinion and habits had their effect. But no European nation had to cope with the diversity of religions that the Constitution accommodated. In the midst of changes in the composition of the population and changes in commitment to the churches, in the midst of great diversity of faiths, the bonds of peace held. And despite the scandalous failures to observe the ideals set out by the Religion Clauses, these ideals were there, inculcated by reverence for the Constitution, constant criteria by which the old state religious establishments could be judged and finally rejected, constant criteria by which new lapses could be condemned. The ideals were not self-executing nor for a long time were they judicially executed. Their message was not wholly disregarded; their message set the trajectory of government.

In the nineteenth century the United States did not know the theocratic rule that distinguished government in much

of Italy; it did not have the pogroms governmentally sponsored in Orthodox Russia; it did not know the legal exclusion from the universities by religious tests as in England. In the twentieth century, the United States had nothing like Spain's prohibition of the external manifestations of religious worship without governmental consent; nothing like the governmental discrimination on religious lines that embittered Northern Ireland, nothing like the governmental terror directed at the extinction of a race and a religion that occurred in Germany. It would be foolish to think that the Constitution alone was the shield by which such evils were avoided.

Any competent historian or sociologist could point to concrete conditions in these European societies causally related to such odious governmental structures or eruptions; a piece of paper alone did not make all the difference. But it would be equally foolish to ignore the function that the ideal set out in the Constitution had in keeping us from state-organized bigotry. We were not just blessed in our conditions. We had a charter — a charter effective not as a talisman, a magical piece of paper, but as a standard so apprehended and internalized by large numbers of our citizens that it had become a part of our organic national life.

---

*It would be . . . foolish to ignore the function that the ideal set out in the Constitution had in keeping us from state-organized bigotry.*

---

The development was slow. The protection of conscience was partial. The path was as slow as the protection of black persons had been and as imperfect as the protection of women. The protection of conscience is still not perfect. Halting though the progress has been, there can be no doubt of the channels the Constitution created for government, its teaching, its direction. When Justice Jackson, in 1943, wrote his immortal words "If there is any fixed star in our Constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein" — when Jackson spoke, he was speaking from the depth of a tradition that had been planted by the Religion Clauses.

When, a century earlier, the most acute of students of our American democracy, Alexis de Tocqueville, came to this country, he was moved more deeply by no phenomenon more than the spectacle of religious liberty that America, for all its faults, presented. In France, he observed, "I had almost always seen the spirit of religion and the spirit of freedom pursuing courses diametrically opposed to each other; but in America I found that they were intimately united."

Tocqueville returned to present the ideal of religious freedom to France and to Europe. In his special case and in the case of the world at large the Religion Clauses have been moral educators. From modern Japan to modern Spain they have been moral models. Even beyond continuing to protect individual American liberties, even beyond protecting these liberties more generously than they do now, the Religion Clauses, I venture to predict, will be a beacon for the future civil education of humanity. And so has been, and will be, the course of those other individual rights that the Constitution set forth, held high, and eventually will make secure in a more perfect union. □

## VIEWS OF THE WALL

Oliver S. Thomas  
General Counsel



**L**ittle in life stirs the blood more than politics and religion. Church-state issues, though often soporific with their language about tax regulations and constitutional law, have the potential to erupt into infernos that consume everything in their paths. Currently, one such issue threatens to reduce a greatly needed child care bill to ashes.

For years, low-income women have been unable to seek employment because they could not afford child care for their preschool children. Caught in a vicious cycle of poverty, these women have been locked out of the job market too long.

At last, a bill has been introduced in Congress (H.R. 3660) that would fund a comprehensive system of child care that would allow low-income women to do what most have always wanted — earn a living. Using public and private care providers, the Act for Better Child Care Services (ABC) would be a giant step forward in the ongoing struggle against the causes of poverty.

As always, there is a catch.

The only care providers in many communities are churches and synagogues. For that reason, religious organizations will be allowed to participate in the program. But because child care (unlike medical care, shelter care, and other government-funded services) includes education, there is an increased risk that these funds will be used to advance religion in violation of the First Amendment.

To guard against such misuse of federal tax dollars, the bill's sponsors have included a number of stringent church-state provisions. If the bill passes as introduced, any religious organization choosing to participate in the program would have to do the following:

(1) Waive its exemptions under federal civil rights laws. Many civil rights laws contain exemptions for religious organizations. For example, Section 702 of the Civil Rights Act of 1964 exempts religious employers from the law's general prohibitions against discrimination on the basis of religion. This exemption allows religious organizations to engage in preferential hiring by favoring their own members. Religious grantees under the ABC bill would give up this privilege.

(2) Waive all exemptions under state and local law pertaining to child care services. Any religious organizations

receiving ABC funds would be subject to the same comprehensive licensing and regulatory standards that are applicable to all other service providers. Moreover, the bill prevents participating states from relaxing their current standards for all child care providers, including those that do not receive ABC funds.

(3) Hire separate staff from those employed in any full-time parochial school operated by a recipient institution. In short, a religious organization that wishes to participate in the ABC program may not employ staff who are identified with the organization's religious mission of providing full-time parochial education.

(4) Refrain from engaging in any sectarian purposes or activities. "Sectarian purposes or activities" are defined as "any program or activity that has the purpose or effect of advancing or promoting a particular religion or religion generally...." In addition, the child care program may not be conducted in any classroom "unless all religious symbols and artifacts are covered or have been removed...."

Finally, no ABC funds may be spent to renovate or improve church buildings or other properties owned by pervasively sectarian institutions.

Taken together, these prohibitions are a substantial deterrent against the use of ABC funds for religious purposes. The waiver of the privilege to engage in preferential hiring in particular is significant because inculcating religion is impossible if an organization cannot control the religious beliefs of its staff. In short, if a religious organization wishes to participate in the ABC program, it must behave in all respects as a secular organization.

In stark contrast to the ABC bill are already established grant programs available to religious organizations. Even grant programs that involve education (such as Head Start, drug and alcohol rehabilitation, and other programs under Title XX) are devoid of the stringent prohibitions against the use of government funds for sectarian purposes. This is the first grant program in which churches have not been able to have their cake and eat it too. For decades, churches have been able to receive government funds and still retain their religious exemptions from generally applicable laws. In the ABC bill, churches will no longer have it both ways. Any organization so religious that it requires exemp-

tions protecting the free exercise of religion would be too religious to receive these funds.

Unfortunately, rumblings are already being heard on one end of the church-state spectrum. Groups antagonistic toward church-state separation are now complaining that the ABC bill discriminates against religion. These same organizations acknowledge that the ABC funds should not be used to advance religion. Yet, they are unwilling to give up their right to engage in preferential hiring.

Why would any religious organization that is not wanting to promote its religion insist upon hiring only its own members? According to the attorney for one such organization, the answer is private welfare. "The church wants to be able to hire in its child care program all the little old ladies in the church who might want a job," he said. "But what about the other little old ladies and the little old men who also need jobs but don't belong to your church?" I asked.

He might have had a response, but he didn't have an answer.

Should a Baptist church be able to hire only Baptists to teach in its day care center? Of course, if it's paid for by Baptists. Of course not, if it's paid for by the tax dollars of Baptists, Jews, Catholics, Moslems, and the several thousand other sects and denominations represented in our society.

The Baptist Joint Committee and other separatist groups are concerned about the ABC bill even with its strong church-state provisions simply because of the education component associated with child care. Many fear it could become the proverbial "camel's nose under the tent" on vouchers and aid to parochial schools. Certainly we would oppose the bill if these provisions were eliminated.

Let's hope it doesn't come to that. □

### Baptists and Church-State Issues

This December 1987 issue of *American Baptist Quarterly* offers a variety of articles of interest to Baptists concerned with church-state affairs. Coedited by C. C. Goen and Stan Hastey, the issue includes contributions by Edwin S. Gaustad, Dr. Goen, Charles G. Adams, Dr. Hastey, and Robert T. Handy. Copies are available for \$5 each post paid from the Baptist Joint Committee. Please enclose payment with order.

# Rhode Island College

## BAPTIST BEGINNINGS IN NORTH AMERICA

Until Rhode Island College was founded in 1764, Baptists had no college in the New World to call their own. Thus, they attended any of the dozen or so colleges and universities already established in the English colonies, where they were admitted without religious tests. Aspiring students could obtain quality education at schools sponsored by Congregationalists or Episcopalians or other denominations without fear of discrimination on the basis of religious beliefs.

Baptists, however, may have felt discomfort at being in the minority in these institutions. Potential Baptist ministers were being won over to other denominations by the influence in these schools. Those suspicious of higher education might have looked more favorably at an institution within the denomination. Baptists clearly needed a college of their own.

A Baptist academy had been founded eight years earlier in New Jersey. The Latin Grammar School had among its first pupils the future first president of Rhode Island College, James Manning, and the future first professor, David Howell. The school was sponsored by the Philadelphia Association, which in turn — according to the tradition recorded in Walter Bronson's *History of Brown University* — recommended in October 1762 the establishment of a Baptist-sponsored college or university in Rhode Island.

Because its legislature was largely seated by Baptists, Rhode Island was the place most likely to grant approval for the founding of the college. Rhode Island had already proven to be a haven of religious tolerance. Various sects operated openly, and "soul liberty" was held to be inviolable. The area had been settled for a century and a half and was prosperous materially and culturally.

The Reverend Morgan Edwards, moderator of the Philadelphia Association, wrote that "the first mover for [a Baptist college] in 1762 was laughed at as a projector of a thing impracticable." Most Baptists were prejudiced "against learning; and threatened opposition." Not one easily dissuaded, James Manning carried the idea to the Rhode Island government anyway.

In Newport, a cultural and economic center of the colony, seeds had already been planted for the establishment of a college. Ezra Stiles, pastor of the Second Congregational Church in Newport, librarian of the city's Redwood Library, and future president of Yale University, had promoted the idea as early as 1762. Upon learning of Baptist interest in founding a college, he proposed a plan calling for control to be divided equally between Baptists and Congregationalists. The charter ultimately adopted by the college, approved by the Rhode Island General Assembly, and signed by the governor on October 24, 1765, was written primarily by Stiles.

Even with Stiles's vast influence, the charter was different from his original intent mainly in that denominational representation to the governing body of the college was not divided equally: Baptists had a clear and established majority. In line with other charters of the day, this one did not allow admission to be based on religious tests. More progressive than others, however, the charter also rejected religious tests for faculty and called for wide and varied representation on the governing board.

Earlier, a corporation had been formed in September 1764 for the new Rhode Island College; among the incorporators was the Providence merchant, Nicholas Brown, father of the man after whom the college was later renamed. In September 1765, the corporation adopted a seal and appointed a president. The first student, William Rogers, had already been admitted and was among the seven who graduated on September 7, 1769, in the first class.



Photo courtesy Brown University News Bureau  
James Manning, first president of the college

Many changes were ahead for Rhode Island College, among them a new name in 1804. Brown University maintained its denominational ties until 1926. Yet, in its early history, the college benefited from the cooperation of the denomination, and Baptists benefited from having an institution that was distinctive among the many colleges and universities springing up in the English colonies. □

*Those attending "Faith & Freedom: Baptist Beginnings in North America" will stay on the campus of Brown University. Marking 350 years of Baptist life on this continent, the celebration and conference will be held June 5-7 in Providence and Newport, Rhode Island.*

*Leaders are to include Edwin S. Gaustad, Barrie White, Peter Gomes, Virgil A. Olson, Frederick J. Anderson, and Ken Medema. Sponsors include American Baptist Churches of Rhode Island, the Baptist Joint Committee, the North American Baptist Fellowship, and the Southern Baptist Historical Commission.*

*For more information and registration materials, write to Faith & Freedom, Brown University, Conference Services, Box 1864, Providence, R.I. 02912.*

Mr. Chancey is public affairs assistant at the Baptist Joint Committee.

# News in Brief

## Congress kills \$8 million for schools in France

WASHINGTON  
Congress has killed an \$8 million appropriation for construction of schools for North African Jews in France.

The action came at the request of the project's sponsor, Senator Daniel K. Inouye, D-Hawaii, who said he had made an "error in judgment" in backing the appropriation.

The \$8 million appropriation, part of last year's \$600 billion omnibus spending bill, would have gone to a New York-based organization, Ozar Hatora, to help build schools for North African Jews living in France. Although the original earmark classified the four hundred thousand North African Sephardic Jews living in France as refugees, the U.S. and French governments and the United Nations do not recognize the group as refugees.

Inouye, who came under sharp criticism for backing the project, asked Congress to rescind the appropriation.

"I have concluded that, if this avalanche of criticism is allowed to continue, this institution — this Senate, which I honor and respect — could suffer," he explained. "I continue to believe that what I have done is appropriate, but to fight the criticism and to prolong the controversy in order that I might win vindication would risk a further loss of public confidence in the Senate."

One aspect of the appropriation that attracted fire was its alleged violation of church-state separation. American Jewish leaders — as well as religious and church-state organizations, including the Baptist Joint Committee on Public Affairs — voiced opposition to the project on those grounds.

"Frankly, I did not consider questions of church and state," Inouye said. "Persecution is persecution, whether it be against Baptists in the Soviet Union, Protestants in North Korea, or Catholics in Poland. My country believes in the separation of the church and the state, that is true. But it also believes in religious freedom. Persecution of anyone anywhere because of his religious belief was abhorrent to those who raised me and it is abhorrent to me today."

Inouye said North African Jews who fled persecution in their home countries now face discrimination and prejudice in France because of race, religion, culture,

and national origin. He said he believed the building of schools would help ease the group's plight.

The day after Inouye made his request, the House of Representatives voted 384-1 to rescind the appropriation. The Senate approved the House measure by voice vote later the same day.

"We applaud Senator Inouye for his sensitivity and his willingness to acknowledge this mistake," said James M. Dunn, BJC executive director. "We worked closely with Senator Inouye's staff and they have been aware of our concerns about the church-state dimension." □

## Senate approves Civil Rights Restoration Act

WASHINGTON

Legislation that would restore broad application of four civil rights laws has won Senate approval following a four-year struggle.

Debates over abortion stalled previous legislative efforts that in effect would have overturned a 1984 Supreme Court decision, *Grove City College v. Bell*, that limited the enforcement of those civil rights statutes.

In that decision, the high court held an education anti-discrimination ban applied only to the "program or activity" receiving federal funds, not the entire institution. Although the ruling directly applied to Title IX of the 1972 Education Act Amendments, it also restricted the enforcement of three other civil rights statutes that contain the same "program or activity" language.

The Civil Rights Restoration Act, as approved by the Senate 75-14, would again broaden the civil rights laws to cover entire institutions. Thus, if a college's English department received federal aid, the entire institution, including its athletic program, would be forced to comply with Title IX's anti-discrimination ban.

Abortion again dominated Senate debate on the legislation, with senators disagreeing over the bill's potential impact on abortion rights. Similar debates are expected when the House of Representatives takes up the measure.

Although neither the legislation nor Title IX mentions abortion, 1975 regulations — promulgated by the then-Department of Health, Education, and Welfare — specify that schools receiving

federal aid "shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom in the same manner and under the same policies as any other temporary disability" in regard to leave, health services, or insurance for students or employees.

In response to charges the legislation would expand abortion rights, Senator John C. Danforth, R-Mo., introduced an amendment he called "abortion neutral."

It states: "Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion."

Sponsors of the legislation opposed the amendment, claiming it made substantive changes in existing law rather than just restoring previous coverage. But proponents of the Danforth amendment said the measure was necessary to ensure that colleges or hospitals religiously or morally opposed to abortion are not forced to fund or provide abortion services.

Following almost ten hours of debate, the amendment passed 56-39.

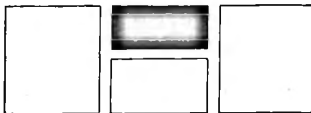
An amendment to expand the bill's "religious tenets" exception was rejected. Senator Orrin G. Hatch, R-Utah, unsuccessfully proposed expanding the legislation's provision to exempt "any operation of an entity which is controlled by a religious organization" to include an exception for any operation "which is closely identified with the tenets of" a religious organization.

Under current regulations, religious colleges and universities may apply for exemptions. To date, no school's application has been rejected and at least six Baptist institutions have been granted exemptions.

"To the extent that this bill makes it possible for the victims of discrimination to obtain justice in a court of law, it is a wonderful bill" said Oliver S. Thomas, general counsel for the Baptist Joint Committee on Public Affairs. "But it raises a number of problems that may need to be addressed in the future."

"For example, the bill makes no distinction between direct federal subsidy





and indirect financial assistance in the form of student aid. It seems patently unfair to treat a college that accepts a multi-million dollar federal grant in the same manner as a college that has steadfastly refused federal funding but simply has a student who is on the GI bill. There should be no religious exemption for those who receive direct federal aid. There should be a broader exemption for those that refuse it." □

## Religious broadcasters adopt accountability code

WASHINGTON

In the aftermath of alleged financial wrongdoings that rocked Jim Bakker's empire and congressional hearings that examined the tax-exempt status of television ministries, the National Religious Broadcasters adopted more stringent financial accountability regulations for its membership.

NRB members present for the organization's forty-fifth annual meeting in Washington voted to form a nine-member Ethics and Financial Integrity Commission and to condition NRB membership upon compliance with the commission's code.

The code requires that a member organization that receives tax-exempt donations from the public

— Submit an annual audited financial statement prepared by an independent public accounting firm;

— Have a board of directors of at least five people, with a majority of the directors not being family members, staff, or employees of the organization; and

— Report salaries and other benefits paid to staff members to the commission. (The code does not require public disclosure of such payments.)

According to the new regulations, the commission is to issue a list of organizations that comply with the code, but not to disclose the names of those not in compliance. The code will not apply to non-NRB member organizations, such as those of Oral Roberts and Robert Schuller. □

## School districts continue daily 'moment of silence'

NEW YORK

(RNS) — Despite a recent Supreme Court ruling that failed to reinstate a

New Jersey law allowing a daily moment of silence in schools, officials of three public schools districts in the state said they will continue the practice.

Officials in Sayreville, Woodbury, and Pennsville said they are innocent of the unconstitutional motives behind the disputed 1982 law that calls for a daily moment of "quiet and private contemplation or introspection."

"It's a practice that has become tradition here and it is not offensive to anybody," said Marie Parnell, a Sayreville school superintendent.

Claudio Arrington, school superintendent in Woodbury, said he was unsure why the policy was passed twenty-four years ago. "Whatever the intent was at that time," he said, "it has become a tradition to provide our students with the time to gather their thoughts before they begin their very busy academic schedule."

But Edward Martone, executive director of the American Civil Liberties Union, said New Jersey would be remiss if it did not force the municipalities to repeal their policies. He said teachers can require silence any time students need some peace to collect their thoughts, but "to mandate that . . . gives the clear message that something different is going on." □

## Ruling puts free exercise rights before libel laws

NEW YORK

(RNS) — A California appeals court has ruled the First Amendment's Free Exercise Clause takes precedence over libel and slander laws designed to protect the reputations of individuals.

The Second District Court of Appeals reversed a \$1.26 million defamation verdict against the Worldwide Church of God and ordered a new trial on complaints brought by Leona McNair, a former member of the church.

Her divorce from Raymond McNair, deputy chancellor of the church's Ambassador College, was cited at a 1979 convention of one thousand ministers and their wives in Tucson and in a pastoral newsletter that went to five hundred ministers. Roderick C. Meredith, an official of the church, said Leona McNair "had left the church and was virtually cursing [her husband] . . . spitting literally in people's faces and as hateful as a human being could be."

In 1984, a Pasadena Superior Court jury granted Leona McNair \$260,000 in compensatory damages and \$1 million in punitive damages. But the appeals court reversed that ruling on the ground that her attorneys had failed to "show, by clear and convincing evidence, that the defamation was made with constitutional malice, that is with knowledge that it was false or with reckless disregard of whether it was false or not."

The court said such a showing would have to be made in order for libel and slander laws to outweigh the First Amendment's right to the free exercise of religion. □

## Students win OK to hand out religious newspaper

WAYNESBORO, PENNSYLVANIA

(RNS) — A U.S. district court judge has ordered Pennsylvania school officials to allow three students to distribute a religious newspaper in their junior high school, an activity for which the youths were suspended two years ago.

The three students were suspended from Antietam Junior High School in Waynesboro for passing out copies of "Issues and Answers," a monthly published by Student Action for Christ.

Judge Sylvia Rambo said testimony by the school's principal indicated the paper's religious content influenced the decision to ban its distribution. Rambo rejected the school district's claim that permitting students to hand out the publication would imply school endorsement of religion in violation of the First Amendment's Establishment Clause. □

## Law overturns 'yarmulke' ruling for armed services

WASHINGTON

(RNS) — A bill that requires the armed forces to permit service personnel to wear "neat and conservative" religious headgear if it does not interfere with their duties has been signed into law by President Reagan.

The measure was introduced by Senator Frank J. Lautenberg, D-N.J., and Representative Stephen Solarz, D-N.Y., to overcome a 1986 ruling of the U.S. Supreme Court that upheld a regulation barring an Air Force psychologist who was also an Orthodox rabbi from wearing a yarmulke while on duty. □

# Teen Sex Ed & Churches

Few things are more difficult to correct than bad legislation. Once on the law books, a statute takes on a life of its own, often defying all attempts to eliminate even its most obvious flaws.

The recent decision of the U.S. Supreme Court to review the controversial Adolescent Family Life Act (AFLA) could mean the end of an exceptionally bad law. Or it could mean a new round of tinkering that could go on for years.

AFLA was enacted in 1981 to deal with the growing menace of teenage pregnancies and attendant problems that arise from the casual use of abortion as a means of handling such pregnancies. Also known as the teen "Chastity Act," AFLA was intended, in part, to discourage extramarital adolescent sexual involvement through sex education, counseling, and referral services.

Existing community agencies, including churches, have been selected by the Department of Health and Human Services to teach sexual morality to teenagers. And, of course, these agencies and churches have received taxpayers' money to fund the activities.

AFLA has been successfully challenged in court. Last spring the U.S. District Court for the District of Columbia ruled the law was unconstitutional on the grounds that it "has the primary effect of advancing religion and fosters an excessive entanglement between government and religion." U.S. District Judge Charles Richey further ruled that AFLA "explicitly permits religious organizations to be grantees, and envisions a direct role for those organizations in the education and counseling components of AFLA grants." He also said that "the risk that ... funds will be used to transmit religious doctrine can be overcome only by government monitoring so continuous that it rises to the level of excessive entanglement."

Justice Department lawyers argue, however, that the lower court ruling dis-

plays "a systematic hostility to religious organizations," which "offends the First Amendment as much as governmental establishment of religion."

Supreme Court Chief Justice William H. Rehnquist has expressed the opinion that a review by the high court is important because the lower court ruling invalidated a congressional law.

The problems that come from adopting AFLA's approach to moral education are many. To begin with, there is the obvious violation of the Constitution's First Amendment forbidding the advancement of any religion by government.

Then, there is the problem of the government deciding whose brand of religious morals should be taught. One of the plaintiffs in the upcoming high court review is a Methodist minister who opposes the law because he feels it discriminates against his church and its teachings.

Further, there is the problem of churches on government dole. Opponents of AFLA indicate that about \$6 million of AFLA money each year is dispersed to religious groups — mainly Roman Catholic.

Should the churches of America be engaged in moral and ethical teaching that promotes self-discipline and other obvious and prudent solutions to the current problems of adolescent extramarital sex?

The answer is yes, with qualifications: (1) churches should be led in their moral and ethical teachings by the authority of God, not government; (2) churches should seek to develop moral and ethical positions on current social problems from the biblical models that have been tested through many generations and in a variety of cultural settings; (3) churches should respect and promote the primary role of the family in all moral and ethical education, especially in those areas related to sex; (4) churches should seek to influence the morality and ethical behavior of people outside their own religious communities primarily by exemplary Christian behavior; and (5) churches should offer their moral and ethical guidance in the spirit of Christ-like service, not to earn government pay.

## Quoting

Robert S. Alley  
James Madison Symposium  
Madisonville, Kentucky

As a member of the first Congress under the new Constitution, James Madison received appointment to the select committee on constitutional amendments. After intense debate over procedure, the committee proposed a "bill of rights" for consideration by the House of Representatives. On August 15, 1789, in floor debate Madison remarked to his colleagues that he understood the meaning of the first clause of the proposal, "No religion shall be established by Law, nor shall the equal rights of conscience be infringed," to be "that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience." After debate the wording was altered, on motion by Fisher Ames of Massachusetts, to read, "Congress shall make no laws establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience." The Senate did not agree in full, so a conference, with Madison as a member, produced the form in which the amendment was adopted.

Madison would have preferred to extend the guarantees of free conscience, free speech, free press, and trial by jury to the states. He reasoned that "it was equally necessary that they [rights] be secured against the state governments." His failure to achieve extension of protection of these rights to the states had no effect upon Madison's full and vigorous support of the First Amendment as adopted. Until his death in 1836 he consistently interpreted the work of that first Congress, and the resulting ratification by the states, as in full accord with his commitment to total and complete separation of church and state. Had it been otherwise, he and Jefferson would most assuredly have taken up pen to respond. To be sure, Madison "stood at the forward edge of Congress, pushing it to require a greater degree of separation than many members desired." Not all the Founding Fathers were in agreement with him, but his influence on the subject was large in the first Congress and his central position in constructing the First Amendment cannot be ignored. All modern interpretations of the First Amendment must come to terms with Madison's eloquent presentation of his principles regarding a free conscience in a secular state, not only because of his primary role in the first Congress but, as well, because his insights have a remarkable currency for the continuing discussion of this constitutional question.

[Dr. Alley's new book, *The Supreme Court on Church and State*, will be published this year by Oxford University Press.]

Mr. Watters is editor of *Northwest Baptist Witness*, the newspaper of the Northwest Baptist Convention, in which the above editorial appeared. Used with permission.

# Senate Confirms Kennedy as Supreme Court Justice

Judge Anthony M. Kennedy, President Reagan's third choice to fill a vacant seat on the U.S. Supreme Court, has been confirmed unanimously, 97-0, by the U.S. Senate.

Kennedy, for the past twelve years a judge on the Ninth Circuit Court of Appeals in Sacramento, California, was praised by senators of all political persuasions in a brief debate prior to the vote as a conservative but "mainstream" jurist who will add luster to the nation's high court.

The overwhelming vote making Kennedy the 104th justice to sit on the court came after two earlier Reagan nominees faltered and more than seven months after Justice Lewis F. Powell Jr. announced his surprise retirement at the conclusion of the 1986-87 high court term. Reagan's first choice for the Powell seat, federal appellate Judge Robert H. Bork, was rejected by the Senate after a bitterly contested confirmation battle, and his second choice, appeals court Judge Douglas H. Ginsburg, withdrew as a nominee when it was disclosed he had smoked marijuana as a student and law professor.

With Kennedy's unanimous approval, all three of Reagan's choices to gain confirmation to the high court have done so through unanimous votes. Justice Sandra Day O'Connor, the president's first appointee, was confirmed in 1981 by a 99-0 vote, and Justice Antonin Scalia won his seat in 1986 on a 98-0 vote. On the Kennedy vote, three senators were absent, including Judiciary Committee Chairman Joseph R. Biden, D-Del., who was ill. Presidential candidates Paul Simon, D-Ill., and Albert Gore Jr., D-Tenn., were on the campaign trail.

During a one-hour debate immediately before the confirmation vote, liberal senators joined conservatives in praising Kennedy. Senator Edward M. Kennedy, D-Mass., the senior Democrat on the Judiciary Committee, spoke of Judge Kennedy's "distinguished tenure" on the Ninth Circuit Court, adding the Californian "has demonstrated integrity,

intelligence, courage, and craftsmanship — and a judicial philosophy that places him within the mainstream of constitutional interpretation."

Unlike the political uproar over Bork, Kennedy's nomination hardly caused a ripple. His calm demeanor and straightforward answers during Judiciary Committee hearings earned the fifty-one-year-old judge — who also is an adjunct professor at the University of the Pacific's McGeorge School of Law — high marks by senators of all political persuasions.

During those hearings, Kennedy told members of the Senate panel the First Amendment forbids government aid to religion and expressed the view that a judge's religious beliefs should not determine his vote on constitutional issues.

Questioned by Senator Howell Heflin, D-Ala., about his views on the Establishment Clause of the First Amendment, Kennedy summarized that the clause "tells us that the government should not aid or assist religion."

He also acknowledged he has not written a single opinion as a federal judge in an Establishment Clause dispute and added, "I have no really fixed views on the subject."

However, Kennedy concluded, "It is a fundamental value of the Constitution of the United States that the government does not impermissibly assist or aid all religions or any one religion over the other."

At the same time, he noted the tension in the First Amendment between the Establishment and Free Exercise Clauses, saying the former "in some senses works at cross purposes" with the latter. He cited as the "classic example" government-paid military chaplains.

Kennedy, who is a Catholic, also seized the opportunity to emphasize his view that a judge's own religion should not unduly influence his decisions on religious issues.

Asked by Biden if he had made a prior commitment to Senator Jesse Helms,



Photo courtesy McGeorge School of Law, University of the Pacific

R-N.C., to seek to reverse the Court's landmark 1973 decision in *Roe v. Wade* that legalized most abortions, Kennedy replied forcefully: "I think it is important to say that if I had an undisclosed intention or a fixed view on a particular case ... perhaps I might be obligated to disclose that to you. I do not have any such views with reference to privacy or abortion ... and would not attempt to try to signal by inference or by indirection my views on those subjects."

He said further: "Now it would be highly improper for a judge to allow his or her own personal or religious views to enter into a decision respecting a constitutional matter.... A man's or a woman's relation to his or her God and the fact that he or she may think they are held accountable to a higher power may be important evidence of a person's character and temperament. It is irrelevant to his or her judicial authority. When we decide cases we put such matters aside." □

# INTERNATIONAL DATELINE



## Church has significant role in German society

### ENGLAND

(RNS) — The adjective "Christian" is tagged to the names of two of Germany's main political parties — the Christian Democrats (CDU) and the Christian Social Union (CSU). But like much of public religion in Germany, the designation seems to have little to do with individual faith, while signaling a strong church role in providing social unity, at least on the surface.

Few paid-up members of either CDU or CSU, for instance, and fewer of those who vote for them, seem aware of any theological implication in the parties' names or ideology, according to church watchers here. Yet, in the election campaign in early 1987, both the victorious Chancellor Helmut Kohl, a staunch Catholic, and his Socialist challenger, Johannes Rau, a leader of the Evangelical church, frequently spoke on religious issues.

There are other indications that religion plays an important role in West German politics. President Weizsäcker attends church regularly. More than 300 members of the Bonn legislature, the Bundestag, are practicing Catholics or members in good standing of Protestant churches. Even the Greens and the Liberals are supported by some churchgoers and clergy. All the churches have bustling government liaison offices in Bonn.

And even German law can create the appearance that religion is of great importance.

Anne Town, daughter of an English Methodist minister who spent 1986 in Germany as houseguest of a Lutheran pastor and his family, found Christian influence on day-to-day living greater than in her native Britain. "Observance of the Sabbath, for instance," said Ms. Town. "Mowing a lawn or hanging out washing on a Sunday was against the law."

Still, the image persists that in the first half of the twentieth century, the collective behavior of Germans was anything but a model for devout Christians elsewhere. And German watchers seldom associate the post-war, consumer society living in the world's third largest industrial giant with being particularly religious.

German churches are certainly richer than those in neighboring countries. The

Lutheran pastor in Freudenstadt and his Roman Catholic counterpart are paid nine times more than the French priest across the Rhine in Strasbourg, France, and three times more than their Dutch colleagues. With a cool \$5 billion of (at least nominally) Christian taxpayers' money allocated to them, Catholic and Protestant churches in the Federal German Republic (West Germany) do very nicely for funds to support their work at home and abroad. Under the West German constitution, a percentage of federal tax goes to churches. Taxpayers can opt out, but less than 10 percent do so. Many believe that people pay the tax in order to be eligible for church marriage and burial. "Only 60 worshippers attended my church regularly, yet some 6,500 paid their dues," said Ms. Town.

In addition to supporting their churches' revenues, the funds collected as a result of the church tax — sometimes irreverently referred to as "Godbite" — are generally considered money well spent for social services at home and overseas. For example, Germany provides an adult and continuing education program that is the envy of adult educators worldwide, thanks to the church tax. Many of the courses are organized by the churches. Approximately half of Germany's extensive health care also is provided by the churches.

"Church-paid workers and volunteers are cheaper than state-paid nurses, adult teachers, and social workers. They do a better job," said Dieter Binder, the equivalent of a state librarian in a small town near the Swiss border. As he flicked through the annual budget of Miserior, the charity funded by the Catholic bishops, he pointed to millions of deutsche marks allocated to projects in such places as Amazonia, Vietnam, and Central Africa. "I'd much prefer my hard-earned taxes to be recycled through Miserior than through Bonn bureaucrats," said Mr. Binder.

Much of the church money also goes over to East Germany and is a major factor in keeping alive a kind of solidarity between the two parts of Berlin and the divided Germanies. The budding unity is fostered by exchanges of visits, letters, parcels, and the donation of funds to East German churches.

Apart from the money, one of the strongest symbols of unity is the nearly daily appearance of the Berlin archbishop's limousine, which is waved through the hated Berlin Wall without

halting. The prelate lives in the East, but most of his flock is in the West. His routine pastoral comings and goings are, say many Germans, much more the symbol of what the future has in store for them and for Europe than the shadow of the heavily armed border guard moving across the window of his observation tower.

The number of active believers varies from region to region, said Maria Inman, a Roman Catholic church worker. "Only one in ten West Berliners goes to church on Sunday. But in some Bavarian towns," she said, "nine out of ten Catholics attend Mass weekly. In most other areas, around half are believers. I think it's about the same in East Germany." □

Austin Carley

## Report notes improved treatment of Soviet Jews

### NEW YORK

(RNS) — The Soviet Union granted exit permits to 8,155 Jews in 1987 and released from detention the last Jewish prisoner of conscience, according to a report released by the National Conference on Soviet Jewry (NCSJ). The report said the 1987 total represented a substantial increase over the 914 Soviet Jews permitted to leave in 1986 but was still "far from the peak year of 1979, when 51,320 Jews were permitted to leave."

As examples of other positive developments in Soviet policy toward the Jewish population, the NCSJ noted that Jews denied exit visas on secrecy grounds held a symposium in Moscow that was unobstructed by the KGB; the first Kosher take-out restaurant in the Soviet Union opened in Moscow; the first officially sanctioned Hebrew courses were approved in Baku; and the first unofficial Jewish library was allowed to be set up in the Moscow apartment of Yuri Sokol.

In evaluating these and other developments of the past year, the NCSJ said they may represent "a real modification of Soviet policy or may merely be a shift in tactics designed to diminish the sense of isolation and deprivation felt by Soviet Jews." The organization said it is "clear" that the glasnost liberalization policy of the government "has not brought an end to restrictions on Jewish emigration and cultural movements, and that, at best,



Soviet measures taken in 1987 serve to highlight the fundamental problems which Soviet Jews continue to face." □

## Malay officials release jailed Baptist leader

**KUALA LUMPUR, MALAYSIA** (BP) — Malaysian Baptist leader James Lai was released from prison in December by the Malay government just days before he was to be remanded for a two-year jail term under that country's Internal Security Act.

Lai was in the last group of detainees released before expiration of the sixty-day detention deadline for people arrested in an October government sweep. The remaining thirty-three prisoners, including two Baptist workers, were remanded for an additional two years of incarceration under the law. They are being held without trial.

Lai's release left two Baptist pastors — identified only as Dr. Poh and Joshua — among the thirty-three who were remanded. That group includes six other Christian workers.

Joshua, a Malay, apparently was involved in Christian work under the direction of First Baptist Church at Petaling Jaya when he was arrested. The other worker, Dr. Poh, is the pastor of a Reformed Baptist church in Sri Serbang, a suburb of Kuala Lumpur.

Five Baptist workers were among 111 people arrested in Malaysia October 29 during a nationwide sweep by the government in an attempt to defuse racial and religious tensions between ethnic Chinese and ethnic Malays. □

Michael D. Chute

## Jehovah's Witness awarded damages for transfusion

**TORONTO** (RNS) — Justice James Donnelly of the Ontario Supreme Court has found that Georgette Malette might have died without the blood transfusion she received after a head-on car collision that killed her husband in 1979. Yet, he has awarded Mrs. Malette, a Jehovah's Witness, \$26,000 for emotional damages because the procedure was administered against her will.

Justice Donnelly ruled that Dr. D. L. Shulman acted "promptly, professionally and was well motivated throughout"

the treatment of Mrs. Malette. The doctor's actions, he added, "may well have been responsible for saving her life." But he noted that Mrs. Malette suffered mental and emotional damage when the blood transfusion was given against her wishes and religious views, as expressed in a document signed by her.

Jehovah's Witnesses believe it is sinful to receive blood, citing a passage in the Bible that states one should "abstain from blood."

Justice Donnelly dismissed actions against the hospital, its administrator, and four nurses in a sixty-nine page judgment.

He added that Dr. Shulman "squarely faced the fundamental issue of the conflict between the patient's rights over her own body and society's interest in preserving life." But he stressed that refusing medical treatment on religious grounds is an "inherent right." □

Walter Poronovich

## Singapore government closes ACC offices

**SINGAPORE** (RNS) — The government of Singapore has shut down the offices of the Christian Conference of Asia (CCA), charging that the ecumenical organization has broken a 1974 agreement not to indulge in political activities.

In a December announcement, the Ministry of Home Affairs said the CCA "has used Singapore as a base to support liberation movements in Asia and has funded procommunist movements." The government agency also charged that the CCA "has promoted radical political movements and liberation theology" and has "provided covert support for radical activists in Singapore." The Singapore government called upon all expatriate staff of the organization to leave the country.

The CCA is made up of fifteen national councils and ninety-five member churches in seventeen countries in the Asia Pacific region.

Last spring the government of Prime Minister Lee Kuan Yew arrested ten Roman Catholics, including four full-time church workers, and charged them with participation in an alleged Marxist plot to overthrow the government. In the wake of the arrests, Archbishop Gregory Yong suspended four priests who had worked with the ten Catholics.

Among the charges listed by the government was CCA support for the Jurong Industrial Mission, an agency that aided organized urban workers. The agency has been in existence since 1969.

The government also charged that member councils of churches protested recent arrests of what the government termed Marxist conspirators. Sources knowledgeable about the CCA said conference workers denied that such a protest was made.

Leon Howell, editor of *Christianity & Crisis*, who worked as a journalist in Singapore from 1970 to 1974 before being expelled by the government, said that the CCA is comparable to the National Council of Churches (NCC) in the United States in that it raises social issues throughout the region and has received support over the years from U.S. churches through the NCC. But the CCA, he said, has been criticized by some church observers as being too reticent in criticizing the Singapore government. □

## Chinese dedicate Bible printing plant

**NANJING** (RNS) — Chinese Christians dedicated a Bible printing plant in Nanjing in December. The press is the project of the Amity Foundation, a social service organization founded in 1985 by Chinese Christians in cooperation with the Jiangning County Industrial Corporation.

Since 1981, 2.9 million Bibles have been printed in China, but the Amity Press is the first and only plant to give priority to printing the Bible and other religious literature.

Christian organizations throughout the world donated \$6 million through the United Bible Societies to purchase equipment from Great Britain, West Germany, Italy, and Japan. Housed in a two-story building, the press employs 140 people and can print half a million Bibles a year.

During the Cultural Revolution (1966-76), possession of a Bible was a crime, and many Bibles were destroyed. Although atheism is still the official policy in China, the Communist Party leadership holds that suppressing religion only strengthens the resistance of believers. It has adopted a more tolerant attitude toward religious activity. □

numerous strengths and weaknesses. It does provide a helpful overview of a complex array of religious groups and subgroups in contemporary American life. It includes some excellent, perhaps even classic, articles from major analysts and representatives of the Evangelical tradition in America. These include Neuhaus himself, Martin E. Marty, George Marsden, Charles Colson, Jerry Falwell, Jim Wallis, Harvey Cox, and the re-

doubtable George Will. The latter's essay, republished from *Newsweek*, indicates that he knows more about politics than piety.

The book shows that the Evangelical-Fundamentalist traditions are quite pluralistic. Their theological and sociopolitical viewpoints extend from Thomas Road Baptist Church, Lynchburg, to the Sojourner community, Washington, D.C. In fact, some of the harshest criticisms come from conservative Evangelicals such as Ronald Nash and Lloyd Billingsley, who attack the politics of that more radical Evangelicalism represented by Ron Sider and Jim Wallis.

Those essays that provide analysis from "outsiders" are equally diverse. Most agree that the Evangelical-Fundamentalist resurgence reflects the moral and spiritual crisis in the society at large. They disagree as to the meaning of the movement and its long-term impact.

The book has numerous problems, however. First, the volume lacks continuity. The introduction, while well written, is far too brief. A broader introduction or an epilogue would provide greater clarity. Some recapitulation of the numerous issues and approaches presented in the essays would have enhanced the study considerably. In light of the varied opinions and analyses, what does all this mean? Neuhaus is well qualified to compose such a conclusion. Instead, his chapter is a reprint of an earlier work.

Second, some of the articles are rather dated. Falwell's description of the purposes of the Moral Majority was first published in 1981. This is a good history of the early days of that movement, but much has changed for Falwell and the Moral Majority since then. Jim Wallis's article dates from 1976. What are the current issues for Wallis and the Sojourner community?

Third, there are some rather serious omissions. For example, the editors fail to include an article by or about representatives of the so-called Christian Reconstructionism led by R. J. Rushdoony, Gary North, and others, who wish to construct a "biblical," theocratic government in America. Rushdoony's interpretation of American politics and religion is widely accepted among many Fundamentalists and Evangelicals. Indeed, he may be as important an influence on certain Evangelical-Fundamentalist groups as the late theologian Frances Schaeffer. Rushdoony is mentioned only in a footnote in Falwell's essay. Also, where are the Pentecostals in all this? What is the political impact of the Kenneth Copeland-James Robison-Jimmy Swaggert school of evangelism and political ideology?

Nonetheless, we learn a lot about

Evangelicals, Fundamentalists, and their diverse views of piety and politics in America. Essays by Neuhaus, James Hunter, George Marsden, and A. James Reichley set the historical context for contemporary movements. They help distinguish Evangelicals from Fundamentalists and define the historical antecedents of both traditions. These analyses illustrate the complexity of the groups.

The remaining two sections by "insiders" and "outsiders" contain essays guaranteed to appease or offend most readers. Evangelical patriarch Carl F. H. Henry writes that "a society that finds no basis for capital punishment (other than for acts of terror made possible by twentieth century technology) retains only a shadow of biblical sensitivity to the worth of human life and elevates the value of the survival of criminals above that of their victims." Radicalist Lloyd Billingsley charges that "radical" Evangelicals (Sojourners, et al.) take their cues more from Marx than from Jesus. *Washington Post* writer Sidney Blumenthal warns that the Republican Party is the new domain of the Religious-Political Right. He observes with prophetic insight that "the party that enacts sectarian doctrine into law in the attempt to regenerate a lost world will pay a steep political price."

Harvey Cox's essay on "Fundamentalism as an Ideology" is the most helpful analysis of the movement by an outsider. Cox rightly observes that Fundamentalists not only want to preserve Christian values, but they also want to change the world toward a greater Fundamentalist theology, morality, and politics. He also notes that Fundamentalism reflects a serious paradox. While fighting against modernity on one level, it also uses the tools of modernity to promote its message. He asks, "What happens when a profoundly antimodernist attempt to reassert the primacy of traditional values utilizes a cultural form that is itself thoroughly modern and anti-traditional?" Cox concludes that Fundamentalists have something to say to a world groping for values and "sick of modernity." "But," he writes, "there are very few people who want to live in a society in which the values of a particular subculture are unloaded onto all of us in the name of Jesus."

Like Cox, most observers agree that the Evangelical-Fundamentalist movements reflect the dysfunctions and frustrations of corporate life, values, and politics in America. What their agenda and impact may bring to the whole society is the real question that this helpful, if disjointed, study seeks to examine.

Bill J. Leonard

## Register Citizen Opinion 1988

The latest edition of this congressional directory and action guide lets you know how to communicate your views to the three branches of the U.S. government. Containing lists, addresses, and forms of address, this valuable resource also includes congressional committee assignments and a bibliography of periodicals for informing citizens about public policy issues.

Single copies, \$1.00 each; 10-99 copies, \$75 each; 100 or more copies, \$50 each. All prices include postage. Send orders to the Baptist Joint Committee, 200 Maryland Ave. N.E., Washington, D.C. 20002.



## Religious Liberty Day 1988

### Free Planning Packet

Send today for free materials to help your church celebrate Religious Liberty Day in June. Just mail this completed coupon to

Baptist Joint Committee  
200 Maryland Ave., N.E.  
Washington, D.C. 20002

Name \_\_\_\_\_  
Church \_\_\_\_\_  
Address \_\_\_\_\_  
Affiliation \_\_\_\_\_

When following high principle  
produces a tangible by-product

## REFLECTIONS

**B**aptists in the United States get a bargain with the Baptist Joint Committee. People in cooperating churches receive more for their money from this agency than from most enterprises to which their dollars go. For about \$500,000 a year the product of the BJC is a best buy among comparable expenditures.

This windfall was not the intent of the founders fifty-two years ago and is not the primary focus of this Baptist voice in Washington today. Yet, in the course of addressing issues of religious liberty and its corollary, the separation of church and state, the mission and purpose of the church is interpreted, the interests of the churches are protected, and the investments and stewardships of church people are safeguarded. It is wonderful when following high principle produces a tangible by-product: saving dollars dedicated to God's work.

In recent years one sees several clear examples of the BJC's cost-effectiveness. The Overseas Earned Income Act saves the Foreign Mission Board of the Southern Baptist Convention \$1.5 million each year. That's 300 percent of the annual BJC budget, and that doesn't count savings to the international ministries of other Baptist bodies. There is no doubt about the BJC role in securing this legislation guaranteeing fairness in taxing overseas ministers. Another multi-million dollar savings for the churches is seen in action that kept the Tax Reform Act of 1986 from levying a heavy, unfair tax on church pension plans. The state has no right to define the mission of the churches so as to tax ministries to retired or disabled ministers and their dependents. The BJC led the fight that stopped the move to tax church pension boards.

Television producers from NBC, PBS, and ITV (of Great Britain) called on the BJC for insight, research, and expertise in the production of documentaries seen by millions of persons in 1987-88. A significant Baptist witness in the secular media was advanced at minimal cost. The Internal Revenue Service was restrained from placing onerous and possibly unconstitutional regulations on the churches. The cause of religious prisoners in Russia was addressed in top-level meetings with the secretary of state and the president of the United States and through various media outlets. These actions were possible because of the initiatives, the relationships, and the reputation for reliability of the BJC.

Church-state litigation has exploded in the last decade. One Baptist state executive estimates that the BJC department of Research and Legal Services saves his office at least \$30,000 annually in legal fees. Numerous questions from individuals, churches, and institutions come each week concerning clergy malpractice, churches and the Internal Revenue Service, immigration, clergy confidentiality, pension law, religion in the public schools, regulation by government agencies, religion and politics, freedom and the pulpit, government intrusion in church affairs, and international religious freedom issues.

Beyond providing curbside counsel that saves precious mission monies and avoids expensive legal action, the general counsel and his associate also carefully monitor government agencies, which are becoming increasingly aggressive in regulating and controlling churches and

James M. Dunn  
Executive Director



church institutions. A reaction to the indiscretions and illegal behaviour of some television preachers has multiplied the fronts on which government seems determined to call religious organizations to account. Part of the daily work of the BJC is serving sister agencies and institutions in fending off either hostile or too friendly government advances.

Former U.S. Solicitor General Rex Lee praised the BJC amicus brief in the *Amos v. Bishop* case, which was decided in favor of the churches, granting them the right to give preference to their own members in employment practices. A decision is awaited in the *Benis v. Tennessee* case, in which the BJC argues for a free pulpit to address moral issues. The *A.R.M. v. Baker* case finds the BJC siding with Roman Catholics, who are protecting the right of religious bodies to engage in religiously motivated political activity without jeopardizing their tax exemption.

The formidable contribution of Research and Legal Services is possible only because of its two individuals of exceptional ability and dedication who combine twenty-five years of experience in the narrow, complex, and controversial area of church-state law. The general counsel, Oliver Thomas, is already a top authority in this difficult, highly specialized field.

A study by a Memphis State University doctoral candidate, Dick Jensen, finds the BJC to be a principle resource for editors of fourteen national news organizations (radio and television networks, wire services, magazines, and nationally circulated newspapers). Jensen's survey reveals that in total mentions the BJC ranked second as the source to which journalists turn for church-state information.

The two award-winning writers in Information Services themselves cover the news, providing comprehensive coverage of church-state cases before the Supreme Court and extensive coverage of the Congress. The director of Information Services, Stan Hastey, is the dean of religious Supreme Court watchers. He has covered the church-state beat at the high court for fifteen years, longer than any other such specialist, and he is the Supreme Court writer and analyst for Baptist Press and Religious News Service.

In 1987-88 the BJC has already earned its keep as an educational agency by distributing nearly one million brochures, pamphlets, booklets, Religious Liberty Day materials, and issues of *REPORT from the CAPITAL*. In addition, its first video cassette, "Religious Liberty in Review," is now in a second printing; the first five hundred tapes were distributed in eight months.

Beyond that, Denominational Services has for years maintained a presence, distributed materials, and sustained an emphasis on religious liberty in the national conventions that support the BJC. The director, Victor Tupi:za, has just completed a study leave in Germany and at Keston College in England in which he focused on religious freedom in Eastern Europe and the USSR. Baptists will act more vigorously for fellow believers behind the Iron Curtain with his leadership.

All this and more for a little over \$1,000 a day as a service to the 28 million Baptists in the United States. In this society — litigious, information-starved, complex, and competitive — and in this nation — pluralistic, in flux, bombarded with legislation — that's a good deal. □

# REVIEWS



## The Establishment Clause: Religion and the First Amendment.

Leonard W. Levy. New York: Macmillan, 1986. 236 pp. \$16.95.

Nineteen eighty-six was a banner year for church-state scholarship. Especially significant were three books analyzing the intended purpose of the First Amendment's Establishment Clause: *The First Freedoms* by Thomas Curry; *The First Liberty: Religion and the American Republic* by William Lee Miller; and *The Establishment Clause* by Leonard Levy. Although all three are essential reading for the church-state practitioner, none is more useful than Levy's volume.

The book is a much-needed response to those espousing the Meese-Rehnquist proposition that the Establishment Clause was intended merely to prevent the establishment of a single national church or the preference of one religious sect over another. These nonpreferentialists see nothing in the First Amendment or its attendant history that would prohibit government aid to religion so long as that aid is administered in a non-discriminatory fashion. Unfortunately the nonpreferentialist view, although untenable, has become respectable.

Levy decimates the nonpreferentialist position by making two simple points. First, the Bill of Rights is a limitation on the powers of government, not an expansion. Because the body of the Constitution gives Congress no power to pass laws advancing religion, and because ours is a system of delegated powers in which all powers not expressly given to the government are reserved to the people, it is ludicrous to read the Establishment Clause as, in effect, expanding the federal government's power by allowing it to confer nonpreferential aid on religion.

Second, the only establishments of religion in existence at the time the First

Amendment was drafted were general or multiple establishments that allowed nonpreferential aid to religion. Gone were the exclusive, single establishments of earlier years. Therefore, asserts Levy, Congress must have intended to bar nonpreferential aid when it declared, "Congress shall make no law respecting an establishment of religion..."

To support this second point, Levy examines the evidence — colony by colony — in meticulous detail. The result is a well-documented presentation of one of the most overlooked points to be made in the current debate over the intent of the Framers.

Another of the book's assets is its abundant supply of interesting and useful historical facts. For example, North Carolina, not Virginia, was the first southern colony to separate church and state by dismantling its Anglican establishment in 1776.

Of particular interest is Levy's account of the "Baptist establishment" in Swansea, Massachusetts, in 1693. Like many of the colonies, Massachusetts did not have an exclusive or single establishment of religion, but rather was a de facto Congregationalist colony solely because of the abundance of Congregationalists in New England. Massachusetts law simply required each town to support by a tax an "able, learned, and orthodox minister." Because Swansea had no Congregationalist church, two Baptist congregations became the recipients of this public bounty. Alas, even Baptists have at times enjoyed the benefits of state sponsorship.

The book's major shortcoming is that Levy occasionally loses sight of his role as an objective scholar and succumbs to the temptation of becoming an advocate. Abandoning his otherwise studied

approach to this complex legal and historical issue, Levy resorts to preaching against the dangers of the nonpreferentialist position. Although Levy sacrifices academic credibility by resorting to such rhetoric (leave the rhetoric to the lawyers), the book remains a splendid contribution to current church-state studies.

□

Oliver S. Thomas

## Piety & Politics: Evangelicals and Fundamentalists Confront the World.

Edited by Richard John Neuhaus and Michael Cromartie. Washington, D.C.: Ethics and Public Policy Center, 1987. 424 pp. \$12.95 paper.

This book is actually an anthology, a collection of essays aimed at placing the recent resurgence of American Evangelicals and Fundamentalists within "proper theological and historical context." Editors Richard John Neuhaus, of the Rockford Institute Center on Religion and Society, New York, and Michael Cromartie, director of Protestant studies at the Ethics and Public Policy Center, Washington, D.C., divide the articles into three sections. Section one deals with historical and theological issues among Evangelical-Fundamentalists. Section two contains essays from representative Fundamentalists and Evangelicals. Section three includes articles from various analysts outside the Fundamentalist-Evangelical movement.

The book contains no new materials. Chapters are composed of articles previously published in periodicals, journals, monographs, and other anthologies.

As an analysis of the "politics and piety" of American Fundamentalism and Evangelicalism, the book demonstrates

Continued on p. 14

### Reviewers

Mr. Thomas is general counsel for the Baptist Joint Committee. Dr. Leonard is professor of church history at The Southern Baptist Theological Seminary, Louisville.

Baptist Joint Committee on Public Affairs  
200 Maryland Ave., NE  
Washington, DC 20002

Forwarding & Return Postage Guaranteed.  
Address Correction Requested.

87750 DEWC7J K 119  
CHARLES W DE WEESE  
HISTORICAL COMM  
127 9TH AVE N  
NASHVILLE TN

37234

Nonprofit Org.  
U.S. Postage  
PAID  
Riverdale, MD  
Permit No. 5061