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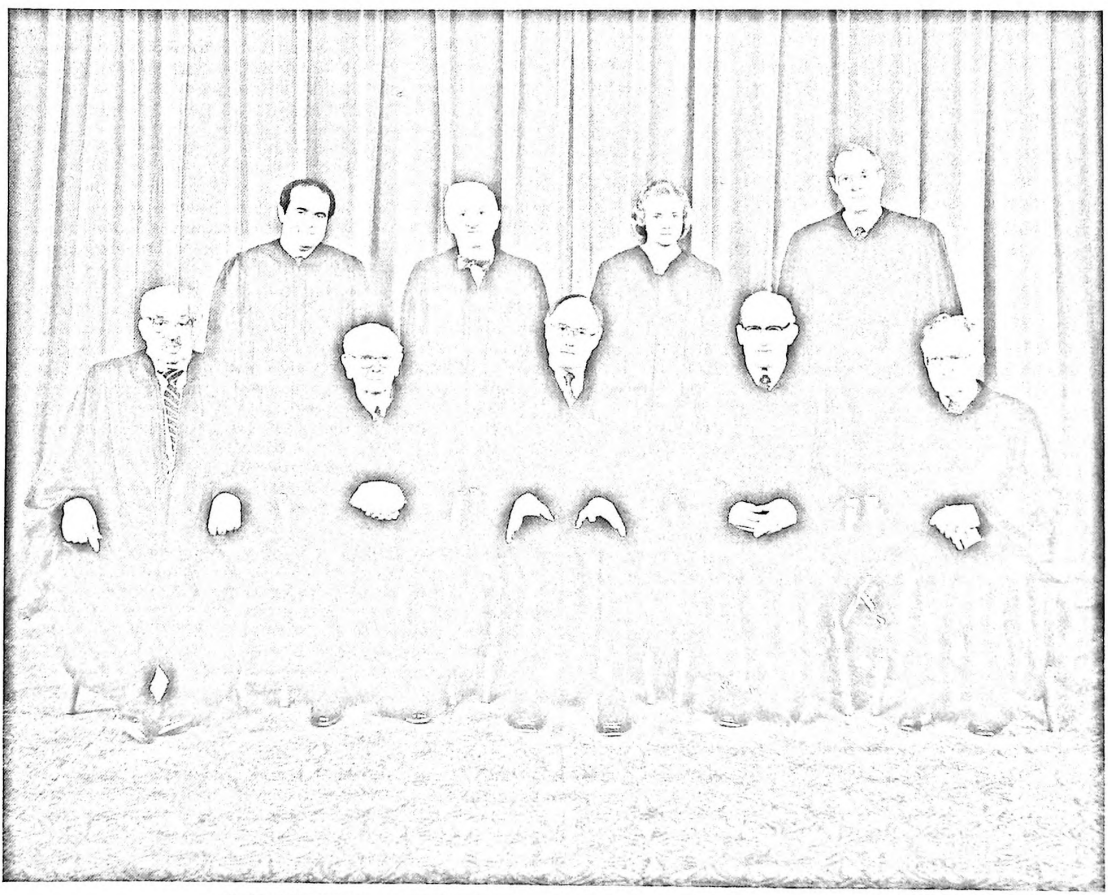
REPORT from the CAPITAL



UNITED STATES SUPREME COURT

REPORT from the CAPITAL

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

Vol. 44, No. 9 **October 1989**

Articles

Features

Cover: As the Supreme Court begins its 1989-90 term on the first Monday of October, cases related to religion issues are the focus of attention for many observers. These cases have steadily increased since the turn of the century, with more than 50 cases in this decade alone.

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BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS
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Democracy, a Moral Project

Few there are who today need be reminded that our nation is one "of the people, by the people, and for the people." William Lee Miller, writing on American public philosophy, affirms those sentiments of Lincoln under the rubric "The Moral Project of the American Founders." He stresses that "The United States was ... brought into being not by an oracle in Delphi but by a committee in Philadelphia."

That committee viewed its deliberations in terms of a moral project, Miller observes, discovering that "political/moral order not by consulting and interpreting authoritative texts but by their examination of experience...." Its profound belief in "public virtue" was evidenced in goals that included vindication of public life and the profession of public good. Its members gave us as the form of politics (and enough of an "original intent" to guide us) a not fully completed democracy, whose responsibility for refinement rests upon all citizens.

Thayer Warshaw of the National Council of Religion and Public Education picked up on the title of an earlier **REPORT** article, "Faith and State," to encourage use of similar, pluralistic locutions. Another phrase, "government and religion," also moves beyond Thomas Jefferson's "wall of separation between church and state." Writer Jeffrey Scott cites a James Madison letter that refers to "the line of separation between the rights of religion and the Civil authority." He suggests the new metaphor "line," along with the more inclusive "religion," might be an alternative to "church" but believes the adoption of new terminology will require deeper interest on the part of the public.

Not all petitions to the Supreme Court are accepted for hearing, but of those that are, many are sure to have broad implications for future church-state (there we go again) relations and legislation. Only five years ago, the Baptist Joint Committee took a leading role in behalf of the enactment of the Equal Access Act. Now, in a case (*Westside Community Schools* v. *Mergens*) contesting the constitutionality of that 1984 law, this office is preparing an *amicus* brief supporting that legislation. Of the three cases Counsel Oliver Thomas analyzes in **VIEWS**, he regards Mergens to be the most significant. The case asks whether equal access violates the establishment clause and questions the meaning of the term "noncurriculum related."

James Dunn attended two important summertime events, the historical European Baptist Federation Congress in Hungary and the World Congress on Religious Liberty in London. Conversing with Alexei Bichkov, Dunn learned that religious liberty best expresses the aspirations of many long-repressed citizens of Eastern European socialist bloc nations.

Finally, the letter (July-August) from Brown University historian William McGloughlin prompted our effort to seek an actual likeness of Roger Williams. The folks at the Bodleian Library, Oxford University (where Williams studied) and the Ashmolean Museum offered this response to our inquiry: "An old record card suggests that there might once have been a print but we cannot find it anywhere!" Will we ever know what Williams looked like? □

Victor Tupitza

WASHINGTON OBSERVATIONS

news/views/trends

• **A U.S. DISTRICT** judge has ruled that a husband and wife who filed for bankruptcy may give 10 percent of their income to their church rather than to creditors.

The judge ruled the couple may continue to donate $140 a month to their church and consider the sum part of their living expenses.

• **A FEDERAL APPEALS** court in Cincinnati has ruled that Jewish inmates at the State Prison of Southern Michigan should be allowed to travel between complexes at the prison site so they can attend weekly Sabbath services.

A three-judge panel of the Sixth Circuit Court of Appeals unanimously rejected claims by Michigan prison officials that permitting the intercomplex travel by six Jewish inmates would pose security problems. The inmates accused prison officials of violating their civil rights.

The appeals court's decision reverses a ruling by a district court judge, who upheld the prison officials' position and barred travel of the prisoners for the weekly services.

• **THE BAPTIST JOINT** Committee has joined a number of other religious and human rights organizations in re-endorsing a statement urging U.S. ratification of the U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. The statement was presented to the Senate Foreign Relations Committee.

It states: "We strongly endorse the U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture) and urge the Senate Committee on Foreign Relations to promptly recommend Senate advice and consent to ratification. Torture is a direct violation of the human rights our organizations strive to protect and promote. There are no circumstances in which torture can be justified, nor can there be any legitimate defense offered against it. The civilized world developed this Convention not only to express its revulsion at the practice, but also as a tool with which to uncover, prosecute, and punish torture.

"The Convention Against Torture was adopted unanimously by the United Nations General Assembly in 1984, and entered into force in 1987. The United States participated actively in drafting the Convention and signed it on April 18, 1988. The Convention was then transmitted by President Reagan for advice and consent to ratification. The United States is the only member of the U.N. Security Council which has not ratified the Convention.

"The Treaty contains a number of provisions which would make it more difficult for states to practice torture and for individuals to escape punishment for the crime of torture. The impact of these provisions would also prevent torturers from claiming that their acts did not constitute torture. The Convention further requires measures to prevent torture and punish violators when torture takes place. The force of these and other provisions should not be compromised or weakened by reservations, declarations, or understandings which are not constitutionally required.

"U.S. ratification of the Convention Against Torture would send an important signal to the world about U.S. concern for human rights and its determination to combat torture with every available tool. It also allows the United States to join with other countries in pursuing and prosecuting torturers. Moreover, we believe that the United States' ability to pursue a persuasive, constructive, and credible human rights policy will suffer until the United States takes formal steps to accept those standards of international conduct by which it evaluates other states. We therefore urge you, in the strongest possible terms, to support the United Nations Convention Against Torture, and work towards its immediate ratification."

• **A STATE APPEALS** court in California has reduced an award to a former member of the Hare Krishna movement and her family from $9.7 million to $2.9 million.

The three-judge panel of the Fourth District Court of Appeals in San Diego left intact a $2.9 million award to the woman's mother for infliction of emotional distress and libel and a $75,000 award to the woman for the wrongful death of her father, who died while searching for his daughter after she joined the sect.

William Lee Miller

Dr. Miller, professor of religion at the University of Virginia, delivered a lecture on "Public Philosophy and the American Experiment" at the signing of the Williamsburg Charter. "Unusual Beginnings" is an excerpt from that address. It is used by permission of the Williamsburg Charter Foundation and Brookings Institution.

UNUSUAL BEGINNINGS

The Moral Projects of the American Founders

We Americans do have those founding fathers. We look back across the long stretches of time and find there in the short middle distance, the late eighteenth century, those forefathers, and we acknowledge that they have some claim upon us.

Other countries do not characteristically locate their great nation-making stories, their norms, their beginnings, their heroes and guides and symbols, in so clear cut and unitary a way in so short and so definite and so recent a period. Usually, for the older nations of our European heritage, the "founders" and the heroes, the exemplary national events and mythic beginnings, the Romuluses and Remuses, the King Alfreds with their Round Tables, the Cyruses and Ottomans whom Thomas Jefferson's hero Francis Bacon mentions in this connection, the great founders of states and givers of law, the individual and collective beginners and guides and symbols for peoples, fade back into the distance past, come up out of the German forests or down from Olympus or Sinai; they step across the line into the mists of legend and myth. They bring some oracle from Delphi: the nation is founded by the inscrutable action of the Gods.

The slowly accumulating actions of the many founders, zigging and zagging, spread out across the centuries; there were some Romes before Julius Caesar, and some Romes afterward. There are several Frances before the France, or the multiple Frances, of their Revolution, and these others, their physical contributions more evident in Paris than those of the Revolution, make comebacks. There are Englands before their revolution, and another more glorious Revolution after their revolution, and there was an England before either of them and — in particular — even before the Normans came across the Channel; it seems not only that there will always be, but that there always was, an England.

But for us, this first modern nation, there is no such mist and distance. Our founding heroes line up there pretty squarely, real people, at a rather definite time, between 1763 and 1791, give or take a few years, in quite specific places we can still visit, at least in the off-season — Philadelphia, Boston, Williamsburg, New York, Concord Green, Valley Forge, and a few other places. We know their names and can read their copious letters and still try to run the society by the words they put down on sheets of paper. And the line runs straight and unbroken, the not so mystic chord of memory, from them to us.

What these founders did was not mysterious, equivocal, or opaque, but was filled with a rather straightforward moral and intellectual and (in the good old sense) *political* content. The American founders knew what they were doing, and they said so. Or, they were working out, thinking out what they were doing, and they were saying so. The United States was to a much greater extent than other nations the product of collaborative human contrivance, of reason and conscience, of deliberation. It might even be said to have been brought into being as a result of moral reasoning; its own beginning might itself be an example of that governance by mutual persuasion which is its own main point.

Of course we Americans, with that pride and self congratulation of which all peoples are guilty, exaggerate the newness and the wonderfulness and the element of sheer human concoction in what was done. But, still, it was in some ways new and it was also in some ways wonderful. We are not altogether wrong to believe that it was, to an unusual degree,

The United States was to a much greater extent than other nations the product of collaborative human contrivance, of reason and conscience, of deliberation.... brought into being not by an Oracle in Delphi but by a committee in Philadelphia.

done. It was done by human hands or rather by human minds, and not by mysterious superhuman powers from another world or inexorable subhuman forces in this one. It was done not by the long unconscious accumulation of dozens of generations but by quite specific human beings thinking it through at specific times and places in a relatively short period. The United States was brought into being not by an Oracle in Delphi but by a committee in Philadelphia.

There was no Solon or Romulus or Moses. There was no single figure who gathered up into his symbolic real or legendary self, by his foundational law-giving or glorious deeds, by his connection with Divine Powers or charismatic leadership, the whole originating and defining action of the people. No doubt the monarachial impulse in human beings, to deposit all collective feeling in one king or queen or leader applies double strength to the legends of a people's beginnings and moments of decisive self-definition. But the Americans, born in an age of post-Puritan enlightenment and the intellectual clarity of the printing press, did not do it that way. In this

regard, too, the American founding may be itself an example of the principle the founded nation was ideally to exemplify. One might say that the Americans resisted mono-founderism (not a word I expect ever to use again) as they did monarchy, on republican principle — the republican principle that was the moral content of the Revolution and of their founding of the states and the nation.

In particular, there was no Caesar. The one candidate for that role, the "father of his country" as he was to be called, overtly and repeatedly rejected it — formed his "character" (that is, his reputation) in great part out of his rejecting of that role in all its variations. He declined to be king, and he not only declined to be the leader of a military intervention in government, but in a moving moment at Newburgh he stood alone against his restless, angry, unpaid army in resisting it. On that consequential occasion George Washington made a serious long speech, something he rarely did, by which the disgruntled soldiers may not yet have been persuaded, and then, faltering in the effort to read from a letter, fumbled in his pocket to extract his new spectacles, and remarked: "Gentlemen, you must excuse me. I have grown gray in your service and now find myself growing Blind." The officers, much moved, reversed course, voted him thanks, and left quietly. One of Washington's biographers flatly calls this Newburgh meeting of March, 1783, "probably the most important single gathering ever held in the United States." Thomas Jefferson later interpreted what this episode meant: "The moderation and virtue of a single character probably prevented this Revolution from being closed, as most others have been, by a subversion of that liberty it was intended to establish."

Undergirding this performance by Washington on this and other occasions was a distinctive moral understanding, a notion of a sort of *republican* honor that combined the Roman and aristocratic virtue of a high sense of personal dignity and scrupulous care for how one is regarded, with a nonaristocratic purpose — a purpose not to assert superiority and distinction as in an aristocracy, but rather a "republican" purpose (to keep using that word, as the Americans did) to respect the institutions of the collaborative common life. The Americans — and George Washington especially — identified not with Julius Caesar but with Caesar's opponent Cato, not necessarily as he may have been in historical fact but as he was presented in the very popular play by Joseph Addison called *Cato*, which was loosely based on the resistance of the Roman republican senate to the "all-conquering Caesar."

"The moderation and virtue of a single character [Washington] probably prevented this Revolution from being closed, as most others have been, by a subversion of that liberty it was intended to establish."

This country was argued into existence in a particular kind of committee meeting or debating society that the Americans themselves devised, something new on the face of the globe, ... the *constitutional convention* chosen by, and reporting to, the whole people.

This nation did not spring from the brow (nor from the sword nor from the loins nor from the visit to the mountain) of some single giant all-purpose progenitor, but rather from a long series of committee meetings. Of careful political reflection before the committee meetings. Of serious reading before the political reflection. Of debating societies exploring the reflections. Of arguments in taverns and newspapers. Of course, of committees of correspondence. Of pamphlets answering pamphlets and sermons and answering sermons. Of letters — *how* these people did write letters, serious ones! (How are you; how are the kids; the price of corn is up; the price of pigs is down; now let me tell you what form of government most answers to the needs of human happiness. Twenty pages.)

The papers of the major founders march on now volume after volume across the shelves and through the years, loaded with serious letters. In particular, this country was argued into existence in a particular kind of committee meeting or debating society that the Americans themselves devised, something new on the face of the globe, the *constitutional convention* chosen by, and reporting to the whole people. (The French, a few years later, would copy from the Americans the idea, and the name, but would muck up the application.)

And then, after the nation was argued into Independence and the new governments ratified into existence, there was to be no Napoleon. It is also a point — not to mention invidiously any other nations by name — that the American revolutionaries did not proceed to cut off each other's heads on the glorious guillotine or kill each other in glorious purges. If they had lived in the age of the photograph it would not have been necessary for the Americans to keep taking the group picture down from the wall to remove somebody from it. It is characteristic of American founding that its leaders live on and live on and live on, the same ones, through the initial act of defiance, the ensuing war, the peace, the setting up of the states, the shaping of the constitution, and then to early years of the Republic, furnishing the first four or five (or six, if you count the precocious teenager John Quincy Adams who had traveled abroad with his father in the aftermath of the revolution) of the nation's presidents.

Two of the greatest collaborators from the earliest days of the American Revolution (Jefferson and John Adams) were able to turn up clear at the other end of things to die with incredible convenience half a century later exactly on the fiftieth anniversary of the Declaration of Independence. Though each had been for a time there in the middle of things much opposed to each other, on opposite sides of issues fundamental to the new nation's soul — the Alien and Sedition Acts, for one — they did not lead insurgent forces against each other or banish each other to the hills of Kentucky or kill each other off, but lived on through each other's depredations and settled down to old age to a renewed correspondence, reminiscent, but full of ideas too, pounding away still on thoughts about government.

Continued on page 14

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

VIEWS OF THE WALL

Oliver S. Thomas
General Counsel

Getting the Supreme Court to hear a lawsuit is like winning a sweepstakes — it doesn't happen to many people.

Each year several thousand lawyers and laypersons (who choose to represent themselves) petition the United States Supreme Court to hear their cases. Less than five percent of the petitions are granted. Of the 150 or so cases the court agrees to hear, only a handful involve church-state issues. Thus far, the Supreme Court has agreed to hear three such cases during the 1989 term.

(1) *Board of Education* v. *Mergens*, Doc. No. 88–1597 — By far the most important of the three cases, *Mergens* will test the constitutionality of the 1984 Equal Access Act, the passage of which was influenced significantly by the Baptist Joint Committee. The act forbids any secondary school receiving federal funds from denying student religious groups "equal access" to conduct their club meetings during noninstructional time (defined by the act as "time set aside by the school before actual clasroom instruction begins or after actual classroom instruction ends"). The act is triggered by the existence of a "limited open forum," which the act defines as existing if the school has granted permission to one or more "noncurriculum related" student groups to meet before or after the school day.

In *Mergens*, the Board of Education for Westside Community Schools in Omaha, Nebraska, claims that it has *not* created a limited open forum and that the Equal Access Act, therefore, should not apply. In short, the board claims that all student groups are curriculum related and thus it need not grant permission to a group of students who wish to gather before or after school for fellowship and Bible study. The board maintains this position despite the presence of a chess club (with no corresponding class in logic), two service clubs, a "Welcome to Westside" club, and a scuba club that not only is attended but also is taught by nonstudents.

Two primary issues are before the court: (1) does the Equal Access Act violate the establishment clause and (2) what is meant by the term noncurriculum related?

As to the first issue, the answer seems clear. Equal access does not have the primary purpose or effect of advancing religion nor does it create excessive entanglement between church and state. Justices Rehnquist, White, Scalia, and Kennedy are almost certain to vote to uphold the act, and Sandra Day O'Connor's concurring opinion in *Wallace* v. *Jaffree* indicates that she does not view the creation of a forum as an endorsement by the state of any particular speech or activity that might occur within that forum. To the contrary, singling out religious speech for discriminatory treatment would seem to stand the First Amendment on its head. Even such strict separationists as Justices Brennan, Marshall, and Blackmun are likely to vote for equal access as indicated by their dissenting from a recent Supreme Court refusal to review a California appeals court decision denying a student religious club the right to distribute fliers on an equal basis with other student groups.

The second issue is more difficult. While great discretion must be given to local school officials to determine issues pertaining to the curriculum, they may not claim such unfettered discretion as to eviscerate an act of Congress. By fashioning such a broad definition of curriculum related as to include chess clubs, service clubs, and even clubs led and attended by nonstudents, the board in effect can allow any group it chooses to meet while at the same time maintaining the appearance of a closed forum.

Clearly, this would defeat the intent of Congress in passing the Equal Access Act. The bill's primary sponsor, Sen. Mark Hatfield, R-Ore., specifically mentioned chess clubs as the kind of student group that is not directly linked to one of the school's academic courses and, therefore, would trigger the act. It is hoped that the court will hold that Boards of Education are *not* free to craft their own definitions of curriculum related but rather must apply the more narrow concept that was intended by Congress. Only then will Congress's goal of prohibiting discrimination against student religious groups be achieved.

SINGLING OUT RELIGIOUS SPEECH FOR DISCRIMINATORY TREATMENT WOULD SEEM TO STAND THE FIRST AMENDMENT ON ITS HEAD.

Achieving this goal would produce a healthy result. Schools would be called upon neither to advance nor inhibit religion but the free exercise rights of students would be recognized and respected. The Baptist Joint Committee will be joining with the Christian Legal Society, the National Council of Churches, the National Association of Evangelicals, and other religious organizations in a "friend of the court" brief in *Mergens*. The brief will urge the Supreme Court to uphold equal access.

(2) *Employment Division* v. *Smith*, Doc. No. 88–1213 — The issue in *Smith* is straightforward: does the free exercise clause prohibit a state from imposing sanctions against those who use illegal drugs as part of a religious ceremony? The answer, I suspect, is no, though the facts in this case make the issue somewhat difficult. Smith admitted using the hallucinogenic drug peyote as part of his Native American religious observances — a practice that has long been exempt from federal prosecution and some state criminal codes. Moreover, at least one federal appeals court has held that the use of peyote in Native American religious rituals is constitutionally protected.

The U.S. Court of Appeals for the District of Columbia, on the other hand, held recently that those who use marijuana in connection with religious ceremonies are not exempt from criminal prosecution. In all likelihood, the Supreme Court will rule similarly, holding that illegal drug use — even by traditional Native American religions — is not protected by the free exercise clause. Such a ruling would leave the individual states to decide whether or not they wish to accommodate this unusual religious practice.

(3) *Jimmy Swaggart Ministries* v. *Board of Education*, Docket No. 88–1374 — This case tests the validity of applying sales and use taxes to the distribution of sermon manuscripts, tapes, and other religious materials. *Swaggart* is the flip side of last term's *Texas Monthly* decision. In *Texas Monthly* the Supreme Court struck down a sales tax exemption for "[p]eriodicals ... published or distributed by a religious faith ... con-

sist[ing] wholly of writings promulgating the teachings of the faith and books consist[ing] wholly of writings sacred to a religious faith." This exemption *exclusively* for religious periodicals was adjudged violative of the establishment clause prohibition against government aid to religion. In *Swaggart*, the state of California had provided no exemptions from its sales and use tax, but evangelist Jimmy Swaggart maintains that he is entitled to one by virtue of the free exercise clause of the U.S. Constitution. Taxing the sale of religious materials, argues Swaggart, is tantamount to requiring a license to preach and is, therefore, forbidden by the Supreme Court's 1943 decision of *Murdock* v. *Pennsylvania*.

Many experts were surprised that the court agreed to hear *Swaggart* just weeks after striking down the Texas sales tax exemption for religious periodicals. If such exemptions are not allowed by the establishment clause, said the experts, how can they be required by the free exercise clause?

Most likely the court took the case for reasons other than to revisit *Texas Monthly*. For example, the court may wish to examine the jurisdictional question of whether conducting a religious crusade in a particular state gives that state the power to tax materials sold during or after the crusade. The court previously has held that mail order sales alone will not give the state in which the buyers reside the power to tax an out-of-state seller. On the other hand, the court may reaffirm its decision in *Texas Monthly* that no special privileges can be given to messages that promote religious belief, yet hold that neither can a state tax the distribution of such messages. In other words, an exemption from taxation for religious messages may be constitutionally required, but it must be interpreted broadly so as to include those messages that advocate irreligion or disbelief as well. Such a ruling would give states extraordinarily little latitude in crafting sales tax legislation, but it appears to be the thrust of Justices Blackmun and O'Connor's concurring opinion in *Texas Monthly*.

Putting to rest the lingering doubts about the viability of equal access alone would have made this an important year for church state relations. While *Smith* and *Swaggart* will not be considered "landmark decisions," they, too, will answer some lingering questions. Overall, the '89 term should prove to be another exciting one. □

Brent Walker joins BJC staff as Associate General Counsel

J. Brent Walker, an attorney and recent graduate of Southern Baptist Theological Seminary, has joined the Baptist Joint Committee staff.

Walker last month assumed the newly created position of associate general counsel and associate director of research services.

In that role, he assists the staff's general counsel in conducting legal research; maintaining contact with personnel in the legislative and administrative branches of government; providing legal advice and assistance on church-state issues to individuals, agencies, churches, institutions, and denominations; writing position papers, articles, congressional testimony, and court briefs; and maintaining relationships with academic, legal, and religious leaders.

Walker completed a master of divinity degree at Southern Seminary in May. While a student there, he served as pastor of Richland Baptist Church in Falmouth, Kentucky, and as a professor's assistant. He was ordained to the ministry in August 1988.

Before attending seminary, Walker worked for the law firm of Carlton, Fields, Ward, Emmanuel, Smith, and Cutler in Tampa, Florida, for 10 years. In 1982, he became a partner in the firm.

He is a graduate of the University of Florida, where he earned both a bachelor's and a master's degree in political science, and Stetson University College of Law.

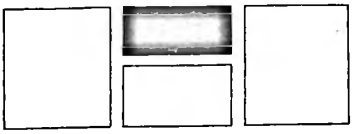
Walker and his wife, Nancy, have a son, Ryan, 10, and a daughter, Layton, 7.

"We are excited about Brent's joining our staff," said James M. Dunn, BJC executive director. "Having an additional attorney will enable us to take a more active role in litigation, to assist in drafting more legislation, and to provide more assistance to our Baptist friends at the state and local level.

"Brent is both a practicing attorney and an ordained Baptist minister. He has good pastoral experience that will help him in relating to our constituents and has been a partner in a prestigious Florida law firm whose senior partner was president of the American Bar Association. He has received superb recommendations from his colleagues in both the legal and pastoral fields and is well suited for a position with the BJC."

"I'm delighted to have this unique opportunity to work at the Baptist Joint Committee. Its assignment in church-state relations, I believe, will utilize a near-perfect blending of my legal experience and my commitment to Christian ministry. I hope to make a positive impact on public policy and to contribute meaningfully to the BJC's program of educating Baptists and other Americans about our rich history and tradition of religious liberty and church-state separation. The BJC's strategic location on Capitol Hill adds a dash of excitement that I look forward to."

News in Brief



Court dismisses challenge to Catholic tax exemption

WASHINGTON

A federal appeals panel has dismissed a lawsuit challenging the tax-exempt status of the U.S. Catholic Church.

A three-member panel of the Second Circuit Court of Appeals ruled a group of abortion-rights advocates did not have legal standing to sue the Internal Revenue Service and Treasury Department for failing to revoke the Catholic Church's tax exemption.

The nine-year legal battle began when Abortion Rights Mobilization, along with 20 other individuals and groups, challenged the tax-exempt status of the U.S. Catholic Conference and National Conference of Catholic Bishops. It claimed the church agencies violated a tax-code provision by campaigning against pro-choice candidates in the 1980 federal elections.

The church's refusal to comply with a district court's order that it produce internal church documents resulted in a contempt citation, including fines of $100,000 a day.

The church agencies appealed to the Second Circuit, which stayed the fines pending appeal. But the appeals court held the church did not have standing to press the case.

That decision was reversed by the U.S. Supreme Court, which sent the case back to the Second Circuit for further proceedings.

In a 2-1 ruling, the appeals panel said the plaintiffs did not suffer a "particularized injury" by the alleged actions of the church agencies and thus could not bring a complaint.

Attorneys for ARM have said they will appeal to the full appeals court and, if necessary, to the Supreme Court.

Legal experts consider the case to be one of the most significant church-state disputes of recent times, citing the case's underlying question of whether a group such as ARM has legal standing to challenge the tax-exempt status of a religious body because the group disagrees with the church's stance on a public issue.

"It is hard to overstate the implications of this case," said Oliver S. Thomas, Baptist Joint Committee general counsel. "If ARM's standing had been upheld, the tax-exempt status of any church could have been attacked whenever groups disagreed with its position on controversial issues. Obviously, this could have become a key element in a group's overall strategy on a hotly contested issue."

A coalition of religious organizations, including the BJC, filed a friend-of-the-court brief supporting the Catholic Church's appeal of its contempt citation to the Supreme Court.

"We are pleased that the courts have once again provided a safeguard for churches to be involved in the political process in a constitutionally appropriate way," said James M. Dunn, BJC executive director. □

Amish exempted from law requiring warning signs

ST. PAUL, Minnesota

In a unanimous decision, the Minnesota Supreme Court has ruled that freedom of religious expression exempts Minnesota's Amish from the state law requiring a special sign on slow-moving vehicles.

It overturned a Fillmore County District Court ruling and dismissed petty misdemeanor charges against 14 Amish men and women who have been ticketed for failing to display the signs. Two men have been jailed in connection with the issue.

The Amish are "unwilling to compromise their belief that the 'loud' colors required and the 'worldly symbols' the triangular shape represents to them conflicts with admonitions found in Apostle Paul's Epistles," wrote Associate Justice Glenn Kelly..

"To them to do so would be putting their faith in 'worldly symbols' rather than in God."

The court noted the Amish, for purposes of warning at night, are willing to outline the boxes of their buggies with silver reflective tape or to display lighted red lanterns to supplement the tape.

It held the state's public safety interest would not be significantly diminished if it permitted the Amish to use such warnings. RNS

Churches in Florida city taxed on some property

SANFORD, Florida

Churches in Sanford, Florida, are being asked to pay utility taxes on property not used "exclusively for church purposes."

In an opinion distributed to city commissioners, City Attorney Bill Colbert wrote that "courts have recognized that preaching, teaching, Bible and Sunday schools, prayer services, and meditation are 'church purposes.' Property used as a primary residence for clergy or members of a church or religious organization would probably not meet the requirement of being used 'exclusively for church purposes.'"

The city has singled out 10 properties — owned by groups ranging from Grace United Methodist Church to New Tribes Mission — for notification that they must begin paying the utility tax. The city utility director said there may be even more that have nonexempt residences, but the 10 were the only ones identified during a period review of utility customers. RNS

Senate passes antibias protections for disabled

WASHINGTON

The Senate has approved legislation that would extend broad antidiscrimination protections to the estimated 43 million Americans who have physical and mental disabilities.

The Americans with Disabilities Act, passed by a vote of 76 to 8, would ban discrimination based on disability in employment, public accommodations and service, transportation, and telecommunications.

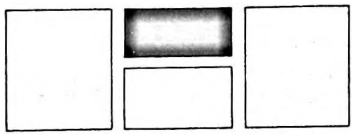
The bill has garnered bipartisan support on Capitol Hill, as well as the endorsement of President Bush.

"This has been very much a good-faith effort on all sides because I believe that all of us — Republican, Democrat, conservative, liberal, whatever stripes we may have or people tend to give us to wear — we all believe very deeply," said Sen. Tom Harkin, D-Iowa, the bill's chief sponsor. "The time has come to extend broad civil rights coverage to people with disabilities in our society."

Harkin said individuals with disabilities have been excluded from the economic and social mainstream of American life.

Sen. Orrin G. Hatch, R-Utah, one of the bill's major cosponsors, praised the legislation for recognizing the federal government's role in enforcing the rights of people with disabilities and in helping those individuals become independent and productive citizens.

"Persons with disabilities I have talked to stress that their entire desire is only to



be given the same opportunity to work and fend for themselves like anyone else," Hatch said. "They are looking for what this bill provides — equal opportunity, not equal results."

The ADA bill will end the "American apartheid" that has allowed disabled Americans to be treated as second-class citizens, said Sen. Edward M. Kennedy, D-Mass. The legislation could become "one of the great civil rights laws of our generation," he predicted.

The legislation would protect people who have AIDS or the related HIV virus, but it would not include coverage for a wide variety of sexual practices, including homosexuality and transvestism. It also would not cover current users of illegal drugs or alcohol.

Although the ADA bill would apply to both public and private sectors, it would include exemptions for religious organizations.

In the area of employment, the legislation would allow religious organizations to exercise religious preference in hiring. It would allow a religious organization to require all applicants and employees to conform to the organization's religious tenets.

The bill also would exclude religious institutions or entities controlled by religious institutions from a list of categories of establishments — such as restaurants and office buildings — considered to be public accommodations.

The legislation now goes to the House of Representatives, which is expected to follow the Senate's lead in approving the measure. □

Judge upholds policy on religious newspaper

WAYNESBORO, Pennsylvania

A federal judge has upheld a Pennsylvania school district's policy restricting distribution of a religious newspaper on campus.

U.S. District Judge Sylvia Rambo ruled the Waynesboro Area School District did not illegally discriminate in its policy by allowing some students to pass around pins for a faculty morale- boosting day without restriction while restricting distribution of the religious periodical. She noted the special day was a school-related activity.

The lawsuit was filed on behalf of two students who were suspended from Antietam Junior High School in Waynesboro in 1986 for passing out copies of a newspaper published by Student Action for Christ. In 1987, Judge Rambo ruled the school district had violated the First Amendment rights of the students by its policy.

Following that ruling, the school district developed a policy under which materials not related to the school curriculum must be approved by the principal and then put on a counter in the principal's office where students may pick up one copy each. The students, who are now in high school, then brought a new legal action against the district, saying they wanted to be free to distribute the paper personally. RNS

House committee amends child care legislation

WASHINGTON

The House Ways and Means Committee has approved a measure that would utilize existing tax credit and block grant programs rather than create a new federal program for the provision of child care services.

The panel voted to amend the Early Childhood Education and Development Act, which was approved by the House Education and Labor Committee in June. The amendment focused primarily on one section of the bill.

As approved by Education and Labor, that section — known as Title III — would provide federal funds for day care programs for infants, toddlers, and children under age 13. Under the legislation, funding would be distributed through the states, which in turn would give funds to eligible child care providers.

Title III would require the establishment of a National Advisory Committee that would develop national model child care standards. It also would require states receiving funds to have in effect state child care standards.

The Ways and Means amendment would replace Title III with an earmarked increase in the Title XX Social Services Block Grant and an expansion of the earned income tax credit.

The amendment would permanently increase funds for Title XX by $350 million for fiscal year 1991 and $400 million in the following fiscal years. The additional funds would be earmarked for child care and could not be used to take the place of federal and state funds already being used for that purpose.

States would be required to use at least 80 percent of the funds for child care services, with the remaining money being used for administration, training, and standards enforcement.

The amendment also would require the establishment of state child care standards that would be applied to all child care providers receiving federal funds. Those providers also would be required to comply with state and local licensing or regulatory requirements and to meet training requirements.

States would not be mandated to require the training or licensing of individuals who provide child care for family members.

In addition, the amendment would expand the earned income tax credit and adjust the credit for family size. The credit is designed for low-income families with children and is available whether or not families purchase child care services.

Under the amendment, the maximum credit in 1991 for a family with one child would be $1,217. The credit would phase out completely when a family's income exceeds $21,000.

The amendment also would provide a supplemental credit for eligible families with children under age 6.

The House Democratic leadership now is faced with deciding how and when to bring the child care bill before the full House of Representatives. □

Court says home-school teachers must be licensed

LANSING, Michigan

The Michigan Court of Appeals has ruled that home-school teachers must be licensed despite the objections of a couple that the state licensing law violates their freedom of religion.

The case stemmed from the convictions of two couples who were charged with violating Michigan's compulsory school attendance laws by teaching their children at home.

One couple, who are not certified teachers, had said they believe God gave parents the sole responsibility for the education of their children and that submitting to such state mandates would be a sin. But the court said the state's teacher certification requirement would have only a minimal effect on the couple's freedom of religion because people can obtain teaching certificates by attending religious schools. RNS

Jeffrey Warren Scott

The Rev. Scott is pastor of Wisconsin Avenue Baptist Church, Washington, D.C., and a Ph.D candidate in American church history at Baylor University.

'Church-State,' a Time-honored Metaphor, Now Outdated?

Today, the monolithic concept inherent in the metaphor is even less descriptive than in Jefferson's day. Religious pluralism is apparent even to the person of average perception.

Since Thomas Jefferson's landmark letter to the Baptist Association in Danbury, Connecticut, at the beginning of the 19th century, the almost universally used metaphor to describe religious liberty, the relation of law to religion, and the relation of civil authority to faith has been that of "the wall of separation between church and state." In a shorthand sort of way, this historic phrase has been condensed to "church and state" to describe the complex and entangled set of relations between religion and civil authority. But is this metaphor accurate or descriptive of the present and historic realities?

Problems With the Jeffersonian Metaphor

To illustrate the problems with the Jeffersonian metaphor, one needs only to consider its key words: wall, church, and state. The mental picture evoked by the word "wall" is one of a solid, impregnable barrier with a firm and unshifting foundation. Such a wall of separation conjures up an image of two well-defined and hostile parties. On one side the task is at least to breach or perhaps even to destroy the wall, and on the other to defend it. Clearly, the Jeffersonian metaphor is descriptive of neither the current nor the historical American experience. The wall separating church and state has not been impregnable, nor has it been an undiverted barrier. Every generation, indeed every Supreme Court and Congress, has influenced the direction and condition of the wall.

Jefferson's use of the word "church" is also problematic. This suggests that there is a single, monolithic religious structure in society that acts in opposition to a similar monolithic secular authority. As John F. Wilson and Donald L. Drakeman have pointed out in the introduction to their latest work, this model is based on an ancient differentiation between two kinds of institutions that have organized the life of Western civilization.[1] This European model of a single monolithic church was inadequate to describe the American religious experience in Jefferson's time and is even more out of place today. At the close of the 18th century only about five and a half percent of the population was identified in any way with religion. In fact, it was not until 1940 that half of the population was associated in some way with a church. There was not a single monolithic religious structure in America in the time of Jefferson.

Today, the monolithic concept inherent in the metaphor is even less descriptive than in Jefferson's day. Religious pluralism is apparent even to the person of average perception. The influx of Eastern religious groups and the proliferation of various sects and alternative religions has dated even Herzberg's neat summary of American religion in the 1950s and 1960s — Protestant, Catholic, Jew.

Second, in a day when inclusive language is the rage, the word "church" in the Jeffersonian metaphor is offensive to many non-Christians. Such exclusive language seems to be an anacronism in a religiously pluralistic society. Today's thinkers may find in this language a subtle affirmation of the Christian nation concept that many historical revisionists have suggested as of late.

The Jeffersonian metaphor suffers with the use of the word "state." Governmental power has never been focused in a single ruler. Jefferson's concept, borrowed from a European scheme of things, is simply inadequate to describe the American situation. Here the government is the people. Here, civil authority comes in multiple layers: federal, state, and local governments. Each of these layers of government has been active in matters relating to religion. The federal government has established diplomatic ties to the Vatican, pressed for tuition tax credits for religious schools, and established requirements for employment practices of seminaries, just to name a few areas of involvement. State author-

ities also impact upon religious faith and practice. Consider, for example, the regulation of the states on questions such as spiritual approaches to healing, mandatory reporting of child abuse and neglect, textbook loans and busing privileges for students at parochial schools, and licensing of ministers for the performance of weddings. Even local governments are getting involved in the relationship with religious groups on matters such as taxation of church property and zoning ordinances and the location of churches and Bible study groups. Clearly, Jefferson's metaphor is inadequate to describe the complexities of the modern relationships between religion and civil authority.

Toward a New Metaphor

In an important essay some 20 years ago, Sidney Mead argued that a more accurate phrase than Jefferson's "wall of separation of church and state" can be found in the writing of James Madison.[2] Writing in 1832, some three decades after Jefferson's letter to the Rev. Jasper Adams:

> ... it may not be easy, in every possible case, to trace the line of separation between the rights of religion and the Civil authority with such distinctness as to avoid collisions and doubts on unessential points. The tendency to a usurpation on one side or the other, or to a corrupting coalition or alliance between them, will be best guarded against by an entire abstinance of the Government interference in any way whatever, beyond the necessity of preserving public order, and protecting each sect against trespasses on its legal rights by others.[2]

Madison, the author of the First Amendment and the Bill of Rights, offers a more accurate metaphor: "the line of separation between the rights of religion and the Civil authority." The superiority of the Madison metaphor to that of Jefferson is demonstrated by looking at its key words: "line of separation," "rights of religion," and "civil authority."

Madison's "line" seems much more descriptive than the Jeffersonian "wall." As Sidney Mead has skillfully observed, a line is a continuingly moving point, zig-zagging and not always easy to trace.[4] Thus the relationship between religion and civil authority is a dynamic one, ever changing with time. Twentieth century Americans can well attest to the increasing complexities of the relationship between religious rights and the numerous civil authorities.

Second, Madison captures the varied religious structure of the land when he notes the "rights of religion" and uses the word "sect" to describe the number of smaller religious bodies in the land. While not perfect, this language is much more inclusive than the concept of a monolithic church structure that did not exist in the time of Jefferson and does not exist today. In fact, it might be argued that the "rights of religion" involve both the right to believe and the right to refrain from belief. Thus, Madison's terminology may be somewhat more palatable to agnostics and atheists.

Finally, Jefferson's concept of a state is replaced by the broader term "civil authority." This may well imply a broad number of authorities that interact and relate to the plethora of religious groups. Thus the line of separation is constantly being molded to meet the needs of society while continuing to maintain the rights of religion and the integrity of civil authority.

Conclusion

The traditional metaphor of church and state offered, unsuspectedly perhaps, by Thomas Jefferson, may well have outlived its usefulness. It is less than accurate and descriptive of the pluralism of the modern American scene. To be sure, Madison's concept of a line of separation between religious rights and civil authority is more accurate, yet seems more difficult to condense into a catchy phrase. Will the phrase "separation of church and state" be replaced by the phrase "separation of religious rights and civil authority?" While such precision would be more intellectually desirable, lacking the background and understanding to appreciate such a fine distinction may well place the question beyond the interest of many Americans. Realistically and unfortunately, it appears that the Jeffersonian metaphor may be here to stay. □

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[1]John F. Wilson and Donald L. Drakeman, eds. *Church and State in American History: The Burden of Religious Pluralism* (Beacon Press: Boston, 1987).

[2]"Neither Church nor State: Reflections on James Madison's 'Line of Separation.' " This important essay has been reprinted in the just released *Readings on Church and State*, James Wood, ed. (J.M. Dawson Institute of Church-State Studies: Waco, Texas, 1989), 41-51.

[3]In John F. Wilson, *Church and State in American History* (Boston: D.C. Heath and Co., 1965, 77-78.

[4]Sidney Mead, "Neither Church nor State: Reflections on James Madison's 'Line of Separation,' " in *Readings on Church and State*, 42.

Quoting

John Armistead
Calvary Caller
Tupelo, Mississippi

A fissure in a wall — especially if it is a very important wall — cannot be ignored. I see a fissure in a vitally important wall and it makes me very uncomfortable. That fissure seems to be growing ever wider — perhaps only a few millimeters at a time but always gaping open more and more — every time a writer or a preacher comments disparagingly concerning the phrase "separation of Church and State," implying that this historic, Baptist-beloved, time-honored concept is something American Christians can do without.

You can tell they are trying to undermine this cardinal principle when they talk about "the original intent of the Founding Fathers" or emphasize that the phrase "separation of Church and State" is not found in the Constitution.

Such speakers should know better, particularly if they come from Baptist, Quaker or Presbyterian backgrounds. The blood of the martyrs in these three traditions is the mortar which built that wall. To speak against the wall by misreading and misrepresenting English and American history is a desecration of the memory of those saints who were burned at the stake, whipped, branded, hanged, drawn, and quartered.

I hesitate to think such speakers deliberately misrepresent the facts. Perhaps it is mere ignorance. Be that as it may, whether by ignorance or fraud, these highly visible and influential Christian leaders are endangering us all by widening the fissure in the wall. □

Burt McCollum Union of French Baptist Churches

One Sunday morning about a month ago, with all the Sunday School children present, a "dramatic event" took place during the morning service at La Prairie. A woman walked up to the microphone and demanded that all the deacons stand up. She said their names would be noted and added to the government list of people to be watched. Then she commandeered their services to collect all the Bibles and songbooks from the entire congregation, having them piled on the floor in the center aisle. One young woman who tried to hide her Bible was caught and her name added to the suspect list.

Then it was explained that this was a dramatization of what is taking place "for real" in countries where an anti-Christian regime is in power and that someday it could happen right here. As the pastor continued the service, he suggested that those who had memorized Scripture would be better off than others, inviting people to quote from memory any that they had learned. Several did, including a young Sunday School lad, and the point was made. Lucien announced a hymn, which had to be played and sung from memory, the musicians having surrendered their music. Then he preached his sermon with neither Bible nor notes. I wonder how many of us would be ready if it really happened in our church? □

INTERNATIONAL DATELINE

Hungary's president lauds Baptists; EBF Congress ends with 25,000 decisions

BUDAPEST

The eighth Congress of the European Baptist Federation, held July 26–30 in the Budapest Sports Hall, is history. More than 5,200 delegates from 47 countries registered, making this the largest EBF Congress ever. Gabor Viczian, who directed the complex computerized registration system, reported the good news at the close of the Congress.

Baptists from Eastern European countries — Czechoslovakia, German Democratic Republic, Poland, Rumania, the U.S.S.R., and Yugoslavia — and from every country of Western Europe met for the first time in Eastern Europe. More than 40 Bulgarian delegates attended their first EBF Congress. Baptists in Israel also were represented for the first time, Israeli Baptists having joined the EBF last year. Participants came from as far away as Ghana, the Philippines, Cuba, and the United States. Hungarian Baptists were the largest national group, with nearly 2,000 delegates.

The opening session included an address by Hungary's National Assembly president, Matyas Szuros. Going far beyond the language of normal diplomacy, he praised Baptist churches for their democratic system of government, suggesting they might become models for the creation of necessary structures of a new society." He added, "In this vicious century .... let there be shouting that Baptists are the spokesmen of Christian love and forgiveness ... and for peace among people ... as well as for tolerance and justice ... and as defenders of human rights."

The president's speech was praised by Janos Viczian, himself a member of the Hungarian Parliament by virtue of his position as president of the 11,000 members of the Hungarian Baptist Union. "Our political situation," he stated, "has changed. We have a real reform situation in Hungary."

The theme-motto of the congress — "Come and see what God has done," from the Bible verse in Psalm 66:5 — was the subject of the opening message by Vasile Talpos. Talpos, who was terminating his two-year term as EBF president, is the president of the Baptist Theological Seminary of Bucharest, Rumania. Among the main speakers were: Solomon Gwei, minister of agriculture, animal husbandry, and forests in the central African country of Cameroon; Baptist World Alliance President Denton Lotz; and Women's Department President Edna Lee de Gutierrez of Mexico.

The Congress ended with a special evangelistic rally in the Budapest People's Stadium. Evangelist Billy Graham preached to 95,000 people, many of whom arrived by buses and trains from all over Hungary. Stadium officials reported that attendance was the greatest for any stadium event.

When the 70-year-old American evangelist gave the invitation at the close of his Christ-centered message of repentance and faith, 25,000 people walked to the platform declaring their desire to make some decision of faith. Many were accepting Christ as Savior for the first time. All of these persons, many of whom were young people, were supposed to fill out cards explaining their decision. However, apparently the Billy Graham staff, which had prepared for six months prior to the event, ran out of cards at 16,000. "No one could have imagined such a response," reported Janos Viczian. **EBPS**

Mission leader claims U.S. funded Nicaraguan pastors

MANAGUA

The U.S. Embassy in San Jose, Costa Rica, provided at least $150,000 to hundreds of conservative evangelical pastors in Nicaragua during the early years of Sandinista rule, according to recent claims by a Central American religious leader.

Jean Kessler, the former administrative director of the International Institute of Evangelism in Depth, known throughout the region as IINDEF, told RNS in a telephone interview from his office in Costa Rica that beginning in 1980 and continuing for at least two and one-half years, he received $5,000 every month from a diplomat at the U.S. embassy in San Jose.

An official at the State Department in Washington would not confirm or deny the story and said he had no knowledge of Kessler. "The bottom line is, I have to say 'no comment,'" he said.

While holding that the money came from the embassy, Kessler declined to specify which U.S. agency provided the funds. He said only that the diplomat "had influence and knew where to get funds" and denied that the source was the CIA.

Kessler said the funds were received "without conditions" and that the money he passed on to conservative Nicaraguan pastors had "no political objectives."

Kessler said he approached Ignacio Hernandez, a Nazarene pastor, who agreed to pass on the funds. The program eventually came to occupy too much time, Hernandez told RNS in early August, so he suggested to Kessler that Modesto Alvarez distribute the money.

According to Alvarez and Kessler, the aid has gone to some 500 pastors. There are more than 2,000 evangelical pastors in Nicaragua.

Alvarez and Kessler told RNS the pastoral aid goes to people "in need" and claimed there is no political litmus test for participation. They said the funds are distributed primarily to denominational leaders, who then select which pastors will receive the money.

Yet denominational officials of the Baptist and Nazarene churches — perhaps the least conservative of the evangelical groups in Nicaragua — said they have never been approached by Alvarez about passing on funds. They admitted that some of their pastors may have received a portion of the funding but said they do so from local committees of the National Council of Evangelical Pastors of Nicaragua (CNPEN) a conservative group formed in 1980. Both Hernandez and Alvarez are key leaders of CNPEN.

Gilberto Provedor, a Baptist pastor who served as CNPEN's treasurer in the northern provinces of Esteli, Madriz, and Nueva Segovia, claimed the funds came with subtle strings attached.

"He who pays gives the orders," Provedor told RNS in a recent interview, and that pastors who receive the funds are more likely to obey the wishes of CNPEN leaders than risk jeopardizing part of their income.

Boanerges Mendoza, a Central American mission pastor in the same congregation as Alvarez, said in the January 1984 edition of the North American Congress on Latin America's "Report on the Americas" that the fund is only "for those pastors who are loyal to the Word, loyal to God," unlike "those who have gotten involved in Nicaraguan politics."

Kessler, who is now IINDEF's publications secretary, said the U.S. embassy support stopped in 1983 after questions

began to be asked about the source of the funds. He said private contributions have maintained the program since then and more than $1,000 a month is now passed on.

Kessler told RNS that Nicaragua is the only country where he has introduced funds of this nature. He also dispenses scholarships for pastors to study at conservative theological centers outside the country. **RNS**

Church risks tax loss over ordination of women

BERLIN

In an action that could have implications for the Roman Catholic Church in West Germany, a member of parliament there has moved to deny a traditional tax benefit to a small Lutheran denomination that bans ordination of women.

The challenge involves the Lutheran Church of Schaumberg- Lippe in Lower Saxony, the smallest of the 17 regional Protestant churches in West Germany. The issues are the same for the Catholic Church, to which 27 million West Germans belong, more than all the Protestant churches combined.

Edith Niehuis, a Social Democratic member of the Parliament (Bundestag), argues that denial of ordination to women by the Schaumberg-Lippe church violates a provision of the West German constitution.

The West German constitution requires religious institutions to regulate their affairs independently "within the limits of the laws which apply to all persons."

But because the West German constitution guarantees that no one should be discriminated against based on sex, Niehuis has protested to the finance minister that denial of ordination to women by the Lutheran church violates this provision.

The church tax system was instituted after the disestablishment of German churches at the end of the World War I. The church tax provides for a piggy-back tax equal to nine percent of the state income tax, paid only by church members but mandatory for them.

The tax is collected at the source by employers before church members see their money and forwarded through the state finance office to the church headquarters. The churches then decide on distribution for common tasks and to local churches.

The only way a church member can avoid paying the church tax is by formally leaving the church. This is done by filling out a statement in a courthouse that then notifies the church that it has lost a member.

The 17 regional churches — Lutheran, Reformed, and Union — and the Catholic Church participate in the church tax system. Methodists, Baptists, free Lutherans, and certain U.S.-based religious bodies, such as Mormons and Jehovah's Witnesses, do not. □

BWA acts on key issues, nominates new president

ZAGREB

Baptist leaders from many countries, addressing major world issues during the meeting here of the Baptist World Alliance General Council, adopted resolutions that dealt with the environment, human rights, children, sexual morality, and the family.

Knud Wumpelmann of Copenhagen, Denmark, currently European regional secretary of the Baptist World Alliance (BWA) and general secretary of the European Baptist Federation (EBF), was nominated by the General Council to be president for the quinquennium 1990-1995.

Wumpelmann's name will be placed for election before the 16th Congress of the BWA, which will meet in Seoul, Korea, August 14-19, 1990. If elected, Wumpelmann, who plans retirement in 1989, will succeed current President G. Noel Vose of Western Australia.

Zdenko Svete, president of the Commission of the Religious Affairs of the government of SR Croatia, welcomed the body and observed, "Built in the cornerstone of Yugoslav society is that religious belief is one of the basic elements of human rights and liberties."

Svete told the council that in Yugoslavia, "the church is separated from the state" and "the only limitation is that religion cannot be misused for political purposes." He included religious and national hate, ideological intolerance, and aggressiveness.

A worldwide Baptist organization, the BWA numbers 141 Baptist unions and conventions in 145 countries with a membership of more than 35.5 million baptised believers. □

NEWS-SCAN

Eleanore Schnurr, former Baptist (ABC/USA and SBC) representative to the United Nations, has been honored posthumously with the "Eleanore Schnurr Award" — established by the United Nations Association of the USA. It will be presented periodically to the nongovernmental representative to the United Nations "who exemplifies the courage and commitment of Eleanore Schnurr" .... For the first time in nearly 20 years, **Gennady Kryuchkov**, a leader among unregistered Baptists in the U.S.S.R., has appeared in public. Soviet authorities made no attempt to detain Kryuchkov, who turned up to address the annual conference of those Baptists who refuse to comply with state registration of their congregations .... Former Baptist pastor **Ivor Jenkins** in Pretoria, South Africa, narrowly escaped death when the right-wing Afrikaner organization "White Wolf" fired 12 shots through the front window of his residence. Jenkins is now coordinator of Koinonia, South Africa, an ecumenical ministry of racial reconciliation. Another Baptist pastor, Gideon Makhanya, was one of three blacks arrested by the police as he attempted to board a "whites only" bus in Pretoria .... Taiwan is one of the few places in the world that requests its citizens to have entry permits in order to return to their homeland. The Presbyterian church in Taipei recently held a Thanksgiving service for the return of dissident **Chen Wan- chen**. There, she shared her personal experiences and feelings of being a blacklisted oversea Taiwanese, not even permitted to come into the country for her father's funeral .... The government of the Soviet Republic of Estonia decided last month to abolish the special income **tax rate applied to clergy** and other employees of religious organizations. The punitive rate, set at 69 percent in 1981, compares with the maximum rate of 13 percent levied on state employees. The move followed a request from the Estonian Council of Churches .... Not all non-Christian faiths are benefiting by **reform in the U.S.S.R.** A Buddhist community composed of about 500 members was for the first time officially registered in Leningrad and a temple which had been constructed in 1915 turned over for its use. In contrast, the Hare-Krishna movement in Moscow has been demonstrating to protest the restriction on its religious freedoms, including government failure to register its communities and to provide places of worship. □

BEGINNINGS, from page 5

The founders, to be sure, were actors as well as thinkers and writers and debaters. They initiated and consummated the break with England that made us a nation. They fought the war and arranged the peace. They negotiated the new nation's connections to the European powers. They molded the constitutions of the several states. They wrote the Supreme Law of the Land. They thought and talked and wrote into existence the governmental institutions under which we still live, in a vastly different country in a vastly different world more than two hundred years after their time: The Constitution they wrote and got ratified; the Bill of Rights they added to it; the presidency they designed with George Washington sitting in silence and great dignity in the room while they did it; the Congress with the two houses they fought about and shaped by compromise in Philadelphia; the federal system with both the national government and the state governments acting on the individual citizen (all the authorities said that couldn't be done but they did it anyway); the dual layers of courts and the Supreme Court, and the unique capacity called judicial review to declare laws in violation of the Constitution, which gives us every day its lawsuits, its protections, and its outraged phone calls to talk shows.

We are a nation standing on its own legs among the peoples of the world, as a result of their actions, and we live under and through institutions they created, which have lasted and preserved original values for more than two centuries of enormous expansion, turbulence, and change. One could wish that later generations had displayed even a fraction of the institutional creativity this first generation displayed.

Because we do not have that mist and distance and those multiplying centuries and also because we do not have the unity of blood and race and folk — no common "father" in a more nearly literal sense than the metaphorical application to Washington — we Americans had to scramble to produce, in a hurry, a symbolic past. A little thin in the department of ancient glories, ivied ruins, and hallowed memories, the American had to press into instance service as perhaps slightly unlikely demi-gods (Jefferson's word for the delegates to Philadelphia in 1787) the lawyers and politicians and scholars whose thinking and writing and arguing got the nation underway.

The founders sought to shape a nation in all its particularity, but at the same time in accord with, and as a bearer of, universal "self-evident" truths. The new nation they brought forth upon this continent was supposed to embody certain universally worthy qualities. It was conceived in liberty and dedicated to the proposition that all men are created equal.

To a quite unusual degree, the founding of the United States was a moral project, a venture in bringing into being in an actual state what a political order ought to be. There was something still of the Puritans in that, building a commonwealth accord with a universal moral order. But there was also something of the new secular outlook, of the Enlightenment, in that the founders discovered that political/moral order not by consulting and interpreting authoritative texts but by their examination of experience — their own, but also the experience of other peoples and of past ages. By all that reading. And by thinking.

The founders themselves had a commitment to public life as honorable, as central to the social order, as by no means secondary to some "private sector" even if they had used such a phrase. Public spirit was not for them accidental and occasional and secondary to private and materialistic interests, but primary. They had a belief in that "public virtue" that many contemporary writers now in the 20th century want to emphasize and even try to revive.

If one looks for contemporary applications of the outlook of the founders, this certainly is one of them. To vindicate public life; to profess the public good; to defend republican government; to honor the work of politics and statecraft; to affirm the principle of government; to affirm a particular kind of government through which the people govern themselves — that already is a great deal. It is a form of politics whose adventures, now under the name of "democracy," are by no means completed, and which falls to us now as their successors to carry on. Perhaps that's enough of a deposit, of an original intent, to furnish us some guidance 200 years later. □

William Lee Miller

Court rules students may hand out religious paper

DENVER

Students have a constitutional right to distribute a publication promoting Christian values at their high school, a U.S. District Judge ruled here in September.

Judge Richard Matsch decided in favor of students at La Junta High School who sued school officials in 1987 for barring the distribution of a publication that presents issues from a Christian perspective.

The judge ruled it is unconstitutional for school officials to have a policy prohibiting distribution of "material that proselytizes a particular religious or political belief."

School officials had maintained their policy was necessary to prevent disruption, to preclude the appearance of political favoritism, and to avoid violating the constitutional ban on a government establishment of religion.

Students aregued that the rule violated their right of free speech. "A student policy completely preventing students from engaging other students in open discourse on issues they deem important cripples them as contributing citizens," Judge Matsch declared.

The paper, *Issues and Answers*, is published by the Caleb Campaign, which one leader described as an evangelical organization whose mission is to "reach and disciple young people with the gospel of Jesus Christ."

Judge Matsch said the First Amendment ban on religious establishment "is a limitation on the power of goverenments.... It is not a restriction on the rights of individuals."

He ruled that distribution of the publication would "neither advance nor inhibit religion," □

Experiences on the world scene convince me afresh of the depth and persistence of the human hunger for freedom ... of the universal longing to express humankind's deepest hopes and dreams without restraint.

REFLECTIONS

James M. Dunn
Executive Director

From our hotel room on the sixth floor we could see them coming, starting about 1:30 in the afternoon, for the rally that was to begin at 6:30 that evening. First a few at a time, then small groups, larger groups, then a steady stream of people, until the sports stadium was completely filled. It was like Saturday of the big game on a university campus.

When we joined the crowd in the July 29 closing service of the European Baptist Federation Congress, we saw their weathered faces, simple work clothes, gnarled hands. The gathering audience, many with babushkas, some wearing heavy work boots, was marked by a great expectancy. They weren't silent, but there was not the raucous roar of a sports event.

All ages were assembling. Working people, old beyond their years, came with the shuffle and stoop that bears silent testimony to back-breaking labor. The elderly moved slowly up the long steps with heavy tread. Children ran ahead as children do. Achingly beautiful young people came in clusters and in couples. Hundreds of persons in wheelchairs lined the infield.

The service began on a calm so untypical of the usual American mass gathering. We sang. We prayed. We listened patiently and appreciatively through the long translation of testimony and endorsement. It was when their Roman Catholic archbishop was speaking, commending Billy Graham, celebrating our oneness in Jesus Christ and rejoicing in the freedom that allowed 90,000 to worship together in Budapest, Hungary — it was then that I first noticed the tears. I finally became aware of how special this event must be. Those tears coursing down the cheeks of these believers around us were mute evidence of fears, hopes, joy too deep to be spoken or sung.

Then as the service came to a close we sang again in several tongues ... "Spirit of the Living God, Fall Fresh On Me." What a choir! "Spirit of the living God, fall fresh on me." I didn't anticipate that they knew that song. "Break me, mold me, fill me. Spirit of the living God, fall fresh on me."

I saw the tears. I heard the song. I felt the Spirit.

Peristroika no longer is just a word for a changed policy in Eastern Europe and the U.S.S.R. It now has a human face. It is the face that has finally found long-sought freedom. It is the face of diminishing fear. It is the face of the particular Hungarian brothers and sisters in the Josef Street Baptist Church who from their lean larders fed lavishly dozens of visitors after Sunday worship the next day.

At that one evangelistic service, the largest ever in Eastern Europe, over 25,000 persons indicated a desire to follow Christ. More importantly, that gathering is simply a demonstration of the new openness in Socialist Europe. Posters on Budapest lamp posts advertised the meeting. Billy Graham was interviewed on national television and the entire service was broadcast over the whole country.

There is no doubt that Hungarian leaders honestly desire freedom of religion. At the opening session of the European Baptist Congress, Matyas Szuros, president of Hungary's National Assembly, praised the "values of the democratically controlled model in the Baptist churches." He went on to demonstrate that he was aware of the Baptist emphasis on religious freedom.

Szuros, a key Socialist leader, called on Baptists to claim their rightful role as "spokesmen for Christian love and forgiveness for the benefit of nations and for peace of people and nations and for tolerance between people and countries, for righteousness and the defense of human rights."

The week before the European Baptist Congress (EBC), I had participated in a remarkable conference in London, the World Congress on Religious Liberty. There I'd heard Barna Sarkadi- Nagy enunciate clearly for the record Hungary's dogged determination to guarantee genuine religious liberty for all. Sarkadi-Nagy, under a new arrangement that allows much less government management of religion, is the Hungarian government's liaison with all the churches. The idea of a State Office of Religious Affairs is foreign to Americans, but it is clear that real progress is being made in Hungary — from mere toleration toward greater religious liberty.

Janos Viczian, president of the Baptist Union of Hungary, testifies to the fact that the government is not "all talk and no action." Rather, he describes a long list of advances toward religious freedom.

H. E. Konstantin Kharchev was also in the London Congress as the resident celebrity. The most dramatic changes for religion since the Russian Revolution have come in the last four and one- half years during Kharchev's tenure in the ministry of religious affairs. Christians now are allowed to hold public meetings, to engage in educational activities and in social ministry, to sell literature, to distribute Bibles, and to produce television programs from outside the Soviet state.

Baptists in Russia are anticipating more extensive training for ministers and Seventh-day Adventists have been granted permission to establish a seminary. Incidentally, all friends of religious freedom owe a great debt to Seventh-day Adventists for bearing the financial burden of the World Congress on Religious Liberty. This meeting, held every five years, has provided one of the few forums for such a genuinely inclusive gathering of high-level government leaders and religious functionaries whose common concern is freedom of religion and human rights. Dozens of different religions were represented in the Congress this year, as were top political leaders from every continent and all sorts of governments: Communist, Islamic, Hindu, Christian.

Experiences of the last few weeks in my own life and on the world scene convince me afresh of the depth and persistence of the human hunger for freedom. One can see, first hand and on the front page, evidences of the universal longing to express humankind's deepest hopes and dreams without restraint or restriction.

I'll never escape the tears of joy I saw and shed in Budapest. Spirit of the living God, fall fresh on me.

Could it be that the Divine is at work in ways and persons and in places we are totally unwilling to admit? Could it be that with the title of J. B. Phillip's wonderful little book, our God is too small? "God moves in mysterious ways, his wonders to perform." And our faith must be sensitive to and receptive of the depth of God's activity in all our world. □

Bichkov tells Dunn, 'We dreamed about open doors.'

"People in the Soviet Union are thirsting for the good news of Jesus Christ," said Alexie Bichkov, adding that Baptists are equally determined to take advantage of every opportunity to proclaim the gospel, fully and broadly.

Speaking with the Baptist Joint Committee's James Dunn in Zagreb, Hungary, where European Baptists gathered in Congress, Bichkov, the general secretary of the All-Union Council of Evangelical Christians-Baptists in the U.S.S.R., said that Baptists have begun to minister more expansively because of the new spirit ushered in by the twin reform movements, *glasnost* and *perestroika*.

"We dreamed about freedom and open doors for witnessing in our society," he said enthusiastically, "and now *glasnost* and *perestroika* are giving us those new opportunities."

While religious communities and religious expression still function under the harsh 1929 law on religion, Bichkov alluded to the adoption of new legislation now being drafted and anxiously awaited by churches and national bodies.

Of this proposed legislation, he told Dunn, "It will soon become a matter of national discussion. There will be amendments and other changes, and we invite Americans to offer their counsel."

Following the October 1917 revolution, the constitution adopted by the U.S.S.R. called for the "separation of the church from the state and the schools from the church." The government, however, over the years has unconstitutionally intruded into church life. Through enforcement of strict regulations, participation of the church in national life totally ceased.

Bichkov pointed out that perestroika already has done much to eliminate suspicions about the loyalty of Christians as citizens and the intent of churches through their ministries.

Thus, following the easing of restrictions on activity outside church walls, Baptists became the first religious group permitted to conduct charitable work in prisons.

On "one occasion that I have in mind," Bichkov said, prisoners who thought they were forgotten — but later at a time of mutual rejoicing — came to "share their meager lunches with those who had come to share the gospel.

"People ask, 'What will happen if Mikhail Gorbachev is removed from office' and of the future? Everything rests in the hands of Jesus Christ," Bichkov told Dunn.

"But for the strength of Christ as head of the church," he said, "the church would have been completely obliterated. We consider this to be the 'Day of Salvation.'"

Baptists in the Soviet Union visualize the future with great optimism. Bibles — more than 1.2 million — already have been received and more have been promised. Churches are holding rallies and conferences in stadiums and other state buildings rented for specific purposes, their church choirs perform in concert before the general public.

Having recently finalized arrangments for a Baptist seminary in Moscow, Bichkov and Baptists look forward to even more seminaries — in Riga, Kiev, Alma Ata, and Novosibirsk. Current theological education takes place primarily through Bible correspondence courses.

While the progress has been great and the opportunites have grown, needs of Christians in the Soviet Union also have increased. Bichkov told Dunn of a "wish list" of supplies: office equipment, a broadcasting studio, library furnishings, and facilities for teaching English were foremost.

In the midst of the recitation of these necessities, Bichkov stressed appreciation for the prayers of Americans and for their understanding of the hardships and the circumstances under which the church has labored in the U.S.S.R. International relationships remain as valuable as ever to them.

"Even during the cold world period," he explained, "we kept our relations in the Baptist World Alliance. It was so important for us and for the world family." Today, ties among Christians within the Soviet Union and abroad are carried on openly, and even families rejoice in their freedom, so unlike the childhood experience Bichkov remembers.

As a boy in the 1930s, he recalled the practice of his family at mealtime. "First, we closed the window curtains; then my parents would offer grace. Hymns of praise were sung slowly and quietly because of fear of the authorities. But fear did not halt their worship."

Seventy years of persecution, if not at an end, certainly show signs of diminishing. But Baptists, as ever, remain loyal to Jesus Christ and deeply committed to their churches and to the well-being of their nation. □

James Dunn (r) chats with Konstantin Kharchev who, until recently, served as chairman of the Council for Religious Affairs of the Soviet Union. The occasion for their conversation was the World Congress on Religious Liberty held in London by Seventh-day Adventists. Some observers believe that Kharchev's adamant pursuit of perestroika and its implications for more autonomy for religious bodies in the U.S.S.R. led to his dismissal from that post.

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