

# REPORT from the CAPITAL

## One Decade ...

January, 1980  
VOL. 1, NO. 1

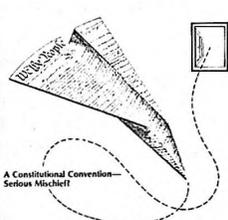
**REPORT from the CAPITAL**



WE HOLD THESE TRUTHS TO BE SELF-EVIDENT THAT ALL MEN ARE CREATED EQUAL THAT THEY ARE ENDOWED BY THEIR CREATOR WITH CERTAIN UNALIENABLE RIGHTS AMONG THESE ARE LIFE LIBERTY AND THE PURSUIT OF HAPPINESS—THAT TO SECURE THESE RIGHTS GOVERNMENTS ARE INSTITUTED AMONG MEN

January 1981  
VOL. 2, NO. 1

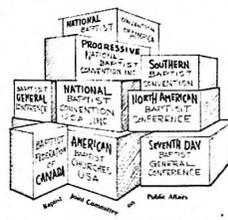
**REPORT from the CAPITAL**



A Constitutional Convention—  
Serious Mischief

February 1982  
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June 1983  
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March 1984  
VOL. 3, NO. 3

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SENATE HEARS BAPTIST TESTIMONY



Observe Religious Liberty Day  
June 1985

May 1985  
VOL. 4, NO. 1

**REPORT from the CAPITAL**



**Soul Freedom**  
Baptists Living Their Religious Faith

As declared by the U.S. Supreme Court, the principle of the First Amendment is that of religious freedom and the right of each citizen to the enjoyment of freedom and peace.

MAY 1986  
VOL. 4, NO. 2

**REPORT from the CAPITAL**

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



HEARST PUBLICATIONS, INC. NEW YORK, N.Y.

September 1987  
VOL. 5, NO. 1

**REPORT from the CAPITAL**



If we cut and paste  
who knows what we'll  
come up with?

February 1988  
VOL. 5, NO. 2

**REPORT from the CAPITAL**



God, Caesar,  
and  
the Christian Citizen

June 1988  
VOL. 5, NO. 3

**REPORT from the CAPITAL**



**SOUTHERN BAPTIST HISTORICAL LIBRARY AND ARCHIVES**  
Historical Commission, SBC

Robert Washington Weaver 1899-1974

January 1989  
VOL. 6, NO. 1

**REPORT from the CAPITAL**



For the benefit of our people,  
who make both groups who vote,  
and look to down the barrier  
of the dividing wall.

**SOUTHERN BAPTIST HISTORICAL LIBRARY AND ARCHIVES**  
Historical Commission, SBC

**Leads into Another**

# REPORT from the CAPITAL

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

Vol. 45, No. 2

February 1990

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**Cover:** Much already has been said about this final decade of the 20th century, and there's little point in adding to the discussion. What we've done instead is to review past covers of REPORT as background and lead into the 90's. They have been exciting years.

Executive Director: James M. Dunn  
Editor: Victor Tupitza

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## Freedom and Authority

Authority — is it losing its sting? We see authoritarian governments foundering, no longer feared and life-threatening but responsive to the will of the people. We see esoteric ideologies exposed by the light of their implicit weakness and illogic. Yet, in this free nation we also see the old order dying and, in the struggle to revive it (i.e., traditional values), neighbors and nation divided. For proponents, tried customs represent the comfort of the known, but for others they are a poor trade for the uncertain but rich possibilities in liberty, a theme Dostoyevski dealt with at great length. Freedom and authority — how does one choose?

Two important events in the life of the Baptist Joint Committee this year will deal with this quandary: the 22nd National Religious Liberty Conference and the Religious Liberty Day Observance. The former explores the theme "Freedom's Spiritual Roots," the latter "Living in Christ, Walking by Faith."

James Dunn introduces the October 1-3 conference in his REFLECTIONS, writing, "Spiritual roots require a constitution that will guarantee civil liberties and freedom of conscience." Through the conference's subtheme, "Baptists and the Bill of Rights," attention will be directed to that unique summary of human rights that is the product of the political and religious sensibilities of Jefferson and Madison, Backus, Leland, and Stillman.

On the first day of worship in June, religious liberty observance takes as its point of departure scripture found in Colossians where Jesus, as God's anointed, is declared faith's sole authority: an authority God-given and not self-assumed and a faith granted by divine grace, never by human imposition. The themes underscore the sanctity of conscience led by God's spirit ("soul authority") and the rule of law as the guarantee of just governance.

George Weigel, president of the Ethics and Public Policy Center in Washington, told an anniversary gathering at the Department of State that American support for human rights and democratic revolutions is sustained by the conviction that each person is created in the image of God. Thus, moral norms grounded in biblical religion begin with recognition of the inherent dignity of beings, Weigel writes, and "human rights and democratic revolutions now sweeping large parts of the globe are the political expression of a great moral and spiritual renaissance."

Oliver Thomas writes at length on the The Civil Rights Act of 1964, which continued the American revolution of justice with dignity. The act places religion and civil rights in tension as it raises for religious institutions — granted an exemption for nonministerial staff — the issue of discrimination in their employment practices. Congress provided partial answers and the courts are the final arbiters of the Constitution, but the morality of employment practices ultimately rests in the hands of religion.

"Other Voices, Other Times" brings historical personalities into your presence through a program written by Rosemary Brevard. John Leland, Thomas Jefferson, Patrick Henry, and James Madison all speak informatively of the early American experience in state and church, giving listeners a front-row seat on history in the making. She includes suggestions for using the article as a learning resource. □

Victor Tupitza



● **THE IMPOSITION OF** a state sales tax on a religious organization does not violate the First Amendment, the Supreme Court has ruled.

In a unanimous opinion, the high court held California's collection of a generally applicable sales tax does not place an unconstitutional burden on Jimmy Swaggart Ministries' distribution of religious materials. The court also held the tax does not threaten excessive entanglement between church and state.

At question was whether California could apply a state sales tax to religious and nonreligious merchandise sold by the television evangelist's Louisiana-based organization at 23 religious crusades it held in California from 1974 through 1981. Also at issue was the taxation of \$2 million worth of mail-order sales to Californians by the organization during those years.

California's Board of Equalization assessed that Swaggart Ministries owed \$183,000 in state sales tax, which the organization paid under protest. When its request for a refund was rejected, the organization filed suit against the state.

The state trial court ruled in favor of the Board of Equalization, and the California Court of Appeal affirmed the decision. The California Supreme Court declined to review the case.

Justice Sandra Day O'Connor, writing for the court, said the California sales tax differs from a flat license tax, such as the Supreme Court struck down in two previous cases. The court ruled in those cases -- *Murdock v. Pennsylvania* and *Follett v. McCormick* -- that the flat license taxes "operated as a prior restraint on the exercise of religious liberty," she wrote.

"California's generally applicable sales and use tax is not a flat tax, represents only a small fraction of any retail sale, and applies neutrally to all retail sales of tangible personal property made in California," O'Connor said. "California imposes its sales and use tax even if the seller or the purchaser is charitable, religious, non-profit, or state or local governmental in nature.

"Thus, the sales and use tax is not a tax on the right to disseminate religious information, ideas, or beliefs per se; rather it is a tax on the privilege of making retail sales of tangible personal property and on the storage, use, or other consumption of tangible personal property in

California."

The California tax also does not require registration or act as a precondition to the dissemination of the organization's religious message, O'Connor wrote. In addition, there is no evidence that collection and payment of the tax violate the sincere religious beliefs of Swaggart Ministries, she said.

"We therefore conclude that the collection and payment of the generally applicable tax in this case imposes no constitutionally significant burden on appellant's religious practices or beliefs," she wrote. "The free exercise clause accordingly does not require the state to grant appellant an exemption from its generally applicable sales and use tax."

Although acknowledging that collection and payment of the tax will require some contact between Swaggart Ministries and the state, O'Connor said such administrative and record-keeping regulations do not violate the First Amendment's establishment clause.

More significantly, California's imposition of a sales tax that makes no exemption for religious materials "does not require the state to inquire into the religious content of the items sold or the religious motivation for selling or purchasing the items because the materials are subject to the tax regardless of content or motive," she wrote. "From the state's point of view, the critical question is not whether the materials are religious, but whether there is a sale or a use, a question which involves only a secular determination."

● **AN ESSAY CONTEST**, sponsored by the Baptist Joint Committee for students in grades nine through twelve, is now under way.

The essays, which should be between 800 and 1,200 words, are to focus on the theme "Freedom's Spiritual Roots: Baptists and the Bill of Rights." All essays must be received by the BJC by July 20.

The contest winner will receive an all-expense paid trip to Washington for the BJC's 22nd National Religious Liberty Conference October 1-3.

Students, teachers, and other interested individuals are encouraged to write the BJC for official contest guidelines.

## George Weigel

Dr. Weigel is president of the Ethics and Public Policy Center in Washington, D.C. The following paper was delivered at the U.S. Department of State on the occasion of the 41st anniversary of the signing of the Universal Declaration of Human Rights (adopted by the U.N. General Assembly).

# Spiritual Renaissance

## Human Rights in an Era of Democratic Revolution

I'm told by a reliable source that, when this program was being planned, the proposal that there be space on the agenda for a presentation on religion and human rights caused no little consternation in some parts of this building.

That's understandable, if a little shortsighted.

It's understandable because, when the foreign service officer or policy professional (or, indeed, the typical modern political scientist) hears "religion and politics," the images conjured up are of Belfast, or Beirut, or Amritsar. Those images are real, and it would be foolish to deny their reality.

But it would be equally foolish to reduce the interaction of religion and politics — even international politics — to these scenes of sectarian strife. Why? Because if we miss the fact that the human rights and democratic revolutions now sweeping large parts of the globe are the political expression of a great moral and spiritual renaissance, we are going to misunderstand the deepest source of these remarkable events.

And, lest you think that this is a bit of historical expropriation by an unscrupulous theologian, let me quote briefly from a recent issue of *The New Republic*, in which the Polish poet Stanislaw Baranczak had the following to say:

"Today's Central Europe is a place where a spiritual transformation of truly colossal proportions has been taking place for a long time, and is now taking final shape. Trained for many years in the school of adversity, the inhabitants of these parts have learned at least this fundamental lesson: that (in [Timothy] Garton Ash's words) 'there are things worth suffering for. There are moral absolutes. Not everything is open to discussion.' The first and most difficult step has been made; some of the atomized and passive masses of [the] totalitarian past have become societies again. They

have turned their *as if* into living fact, winning their wager on history against all odds. They have already overcome the greatest of evils, which is the evil of doing nothing, of sliding downward into decay."

Or to make the same point in a different literary form: earlier in his essay, Baranczak quotes another Polish poet, Artur Miedzyrzeczki:

"What does the political scientist know?

The political scientist knows the latest trends

The current states of affairs

The history of doctrines

What does the political scientist not know?

The political scientist doesn't know about desperation

He doesn't know the game that consists

Of renouncing the game

It doesn't occur to him

That no one knows when

Irrevocable changes may appear

Like an ice flow's sudden cracks

And that natural resources

Include knowledge of the venerated laws

Ability to wonder

And a sense of humor."

I recognize that a host of other forces — economic ethnic, political — have been "in play" in the democratic revolution of the 1980's. But these "tangible" forces seem to have been taken into account in our press, and among policy analysts. What hasn't been given sufficient attention, in my view, is the *cultural* revolution that preceded, and set the foundation for, the democratic revolution. And so I would suggest, again, that unless one takes account of the culture-forming role of that remarkable samizdat publication, *The Chronicle of the Catholic Church in Lithuania*; unless one understands the importance of the

renascent Evangelische Kirche in East Germany; unless one gives adequate credit to the culturally transformative roles played by such figures as Josef Begun, Natan Shcharansky, Irina Ratushinskaya, Gleb Yakunin, Alexander Ogorodnikov, and Georgi Edelshtein in the Soviet Union, Cardinal Fresno in Chile, Cardinal Tomasek in Prague, and Cardinal Sin in Manila; unless one takes the full measure of the heroism of the Ukrainian Catholic Church, and the Siberian Pentecostals, and the Methodists of Estonia, and the Orthodox of Armenia and Georgia — unless one brings these and a host of other "intangibles" into one's analysis of "human rights in an era of democratic change," then one is going to be missing an essential, indeed irreducible, component of the current ferment. And U.S. policy will be impoverished thereby.

So there is a strong empirical case to be made that religious convictions, and the moral norms derived therefrom, have been a crucial part of the democratic and human rights revolutions in key arenas throughout the world. What does this empirical evidence say to those whose responsibility is the formation and conduct of U.S. foreign policy?

There has been considerable debate, over the years, about the relative weight to be assigned to various categories of "human rights." I would argue that history has validated the claim that civil rights and political freedoms are the precondition to securing, over time, those social and economic goods which some philosophical and political traditions would describe as "human rights." But can we press the argument even further, and ask whether some civil rights and political freedoms are even more basic than others? I believe we can. I would go even farther, and argue that religious freedom, codified in constitutional and statutory law and institutionally protected by the organs of government, is

A strong empirical case is to be made that religious convictions and the moral norms derived therefrom, have been a crucial part of the democratic and human rights revolution in key areas throughout the world.

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the most basic of human rights.

I set out this argument in propositional form, as follows:

1. The right of religious freedom establishes a fundamental barrier or distinction between the person and the state which is essential to any rightly ordered political community.

2. The right of religious freedom is a crucial component in establishing that distinction between "society" and "the state" which is fundamental to the democratic project.

3. The priority of religious freedom in any meaningful scheme of "human rights" is empirically confirmed, in modern times, by the totalitarian attack on religious belief and practice.

4. Democracies protect religious freedom; yet the relationship also cuts the other way: religious freedom is a fundamental guarantor of democracy because it is a safeguard against majoritarian or Jacobin tyranny, and because it contributes to the inculcation of those virtues (moral habits) which are essential to democratic governance.

5. The right relationship between religious freedom and the democratic project is best achieved in practice when there is no state "establishment" of religion.

Each of these propositions could be unpacked at considerably greater length than is possible here. But I think, even in this bare outline, the key point is clear: The right of religious freedom has a "public" meaning which is important for all of those who wish to nurture and sustain the democratic revolution in world politics.

To argue this is not to suggest that, in the established democracies, all of the problems attendant on the intersection of religiously grounded moral norms and public policy have been solved. They haven't been, even in our own society. But it is to suggest, and here I borrow

from American constitutional terminology, that the problems posed by the free exercise of religion are best addressed by more, not less, free exercise of conscientious religious conviction, rather than by chimerical attempts to create a public arena denuded of religious belief and religiously grounded moral claims.

Furthermore, the right of religious freedom is arguably the key test of the boundaries of *perestroika* and *glasnost* for it is that human right which most fundamentally challenges the claims of the totalitarian state. Were the USSR, and other communist states, to acknowledge, in law and in practice, that there is a privileged sphere of conscience at the heart of every human person, a sanctuary into which state power may not tread, then we would, indeed, be at a point of truly radical change. Thus the quest for religious freedom in the Soviet Union, so admirably championed by Assistant Secretaries Abrams and Schifter throughout this decade, is, from a policy perspective, just as important today, and arguably more so, than in the early years of this remarkable decade. Our humanitarian concern for persecuted believers remains, I trust, deep. The strategic implications of religious freedom in the USSR and other communist states are, I think, even more profound than may have been accounted for in the worlds of policy analysis and the press.

Having begun by lamenting, in what I hope is a friendly and sympathetic fashion, certain *lacunae* in the minds of diplomats and political scientists, let me end by taking account of one of their common concerns: *viz.*, how shall we sustain our own country's commitment to the defense and advance of human rights and democracy throughout the world, particularly under the dramatic circumstances we now see unfolding all around us?

The American people's commitment to democracy at home, and, *a posteriori*, to American support for the democratic revolution abroad, is not grounded in some abstract allegiance to Locke or Mill. No, it is grounded, for the overwhelming majority of our fellow citizens, in moral norms that are understood to derive from Biblical religion. Why are Americans tolerant of others' religious convictions? Why does religious pluralism "work" here in the United States? There are many reasons, but a fundamental reason is that most Americans believe it to be the will of God that we not kill each other over what constitutes the will of God. By extension, we can argue that American support for the human rights and democratic revolutions around the world is sustained by understandings about the inherent dig-

nity and inviolable rights of human beings — understandings that seem to require, under modern conditions, democratic forms of governance; understandings that, for the great majority of people, are derived from a conviction that the human person is made "in the image and likeness of God."

Does such an understanding inevitably drive the American people toward forms of Wilsonian moralism — even messianism — as they think about America's role in the world? Not necessarily. For, in the Jewish, Christian, and Aristotelian traditions, prudence remains chief among the political virtues — prudence understood, not as deal-cutting at the least common denominator, but prudence understood as the moral skill that allows us to bring moral principles into messy human affairs without making things worse than they already are.

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Religious understanding and moral norms, on the one hand, and political prudence, on the other, are not antinomies. Absent moral foundations, what we think is "prudence" will more likely be Realpolitik or, worse, policy based on *raison d'état*. Absent the virtue of prudence, moral norms and religious understandings can drift off into a zone of abstraction or, worse, turn politics into public zealotry.

The issue, then, is not whether religious understandings and moral norms will shape America's response to the democratic revolution, but how? Here, we in the free world have much to learn from the example of those brave democrats and human rights activists whose witness and accomplishments have seized the imagination of the entire world over the past several months, and indeed throughout the 1980's. □

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

## VIEWS OF THE WALL

Oliver S. Thomas  
General Counsel



The Civil Rights Act of 1964 was a church-state earthquake. While most Americans agreed that civil rights for blacks, women, and other minorities were long overdue, they did not agree on the extent to which churches and other religious institutions should be subject to antidiscrimination laws. Should white churches be forced to admit blacks? Should black churches be forced to ordain women? Should a church be allowed to discriminate on any basis in the hiring of nonministerial or support staff? These and other difficult questions were raised by the proposed Civil Rights Act.

As is often the case, Congress provided only partial answers to the questions. Churches, for example, would not be considered "public accommodations" and, thus, could exercise unfettered discretion in the selection of their members. In matters of employment, however, Congress gave churches the right to discriminate only on the basis of religious affiliation or belief, not on the basis of race, sex, or national origin.

Whether Congress has the power consistent with the First Amendment's religious liberty clauses to regulate the employment practices of churches continues to be a subject of intense controversy.

More is at stake in this debate than the mere resolution of difficult cases. Bedrock societal values and goals are at issue. On the one hand stands the First Amendment's "wall of separation" between church and state; on the other is a national commitment to eradicate discrimination on the basis of race, sex, national origin, and, more recently, age and handicap. The problem is complicated by the fact that both interests spring from the fountainhead of democratic values — human dignity.

Because human beings should be free to choose their deepest philosophical commitments without the threat of government coercion, religious liberty and its political corollary, church-state separation, have been enshrined in the First Amendment. In order to preserve and maintain this goal of religious liberty, the state is forbidden from traversing the sacred precincts of religion.

Similarly, there can be no true human dignity without a level playing field. Food, housing, jobs, etc., should be available to all Americans without regard to gender or skin color. Absent the removal of the barriers that prevent women, blacks, the elderly, and other minorities from fully participating in

society, there can be no justice and hence no real human dignity for large numbers of Americans.

Courts, as the final arbiters of the Constitution, must decide which of these fundamental principles will prevail: should they sacrifice religious liberty in the name of civil rights, or should they preserve church autonomy to the detriment of individual rights?

Twenty-five years of litigation have yielded the following answers.

As with membership, churches have virtually absolute control over the selection of those who will minister in their behalf. If a church wishes to hire only white males between the ages of 30 and 65 as its pastors, it may do so. We may criticize the church's decision, but the First Amendment shields it from any government regulation or judicial second guessing. Even those institutions that are merely affiliated with the church may discriminate on any basis in the selection of clergy. Hospital chaplains and theology teachers at religiously affiliated colleges and universities are among those whose positions lie beyond the reach of antidiscrimination laws.

With regard to nonministerial positions, the answers are a bit more complicated. For these employees, courts distinguish between pervasively sectarian institutions (e.g., churches, seminaries, and primary and secondary parochial schools) and those that are merely affiliated with religious organizations. As noted, the most prolific examples of the latter are church hospitals, colleges, and universities. The vast majority of courts has been unwilling to recognize a First Amendment defense to discrimination claims filed against this type of institution. However, even these affiliated institutions may be permitted to discriminate if the alleged discriminatory action is in fact based upon religious beliefs and

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practices. For example, a Baptist college might be permitted to refuse to hire an AIDS victim if the refusal was based not on the person's "handicap" but on his violation of the church's teachings on sexuality.

Many reasons can be given as to why the First Amendment has not been interpreted to exempt religiously affiliated institutions from generally applicable antidiscrimination laws: such institutions provide essentially "secular" services; such institutions are not so permeated with religion that religious and non-religious activities cannot be separated; they are eligible for and generally receive federal financial assistance either directly or indirectly; unlike churches, they are not engaged primarily in worship and core religious functions; unlike elementary and secondary schools, the primary goal of church colleges and universities is education, not indoctrination; they are open to the general public and are widely attended and supported by persons not affiliated with the sponsoring church; and their services generally are offered at market prices and are not provided gratuitously as in the case of most church ministries. Given the nature of such institutions, any burden imposed upon their religious exercise may appear minimal to a judge in light of the state's compelling interest in eradicating discrimination. For this reason, courts are unlikely to strike down legislative efforts to regulate the employment relationship between these institutions and their non-ministerial employees.

The most difficult cases involve non-ministerial employees of those institutions that are "pervasively sectarian." Is, for example, the church secretary protected by antidiscrimination laws, or does the First Amendment shield the church from all claims of discrimination? Few courts have addressed this complex issue, but recent decisions indicate that judges may be unpersuaded by a church's First Amendment claims. For example, a U.S. district court has upheld the sex discrimination claim of a typist-receptionist against the Greater New York Corporation of Seventh-day Adventists despite the Church's constitutional protestations. In the words of the court:

In this case we are dealing with the discharge of a typist-receptionist, not a minister. Nothing in the record indicates that, much less specifies how, [the] discharge was based on the doctrinal policies of the Seventh-day Adventist Church or that the relation-

ship between the Church and its clerical help touches so close to the heart of church administration as to be protected by the First Amendment from the commands of [the law]. Accordingly, that portion of the motion based on the First Amendment is denied.

Presumably, the Church's defense would have been stronger if its alleged discriminatory actions were compelled by religious doctrine. Few churches, however, could make such a claim as they generally do not have doctrines that require discrimination on the grounds of race, color, or national origin. Even sex discrimination, a doctrinal requirement in many churches, is confined to the selection of ministers. Indeed, I know of no religious organization whose formal doctrines compel it to pay black or female support staff less than their white male counterparts. Laws prohibiting discrimination on the basis of sexual orientation, on the other hand, likely would conflict with the doctrines of many churches, even at the support staff level. For example, the Southern Baptist Convention, the nation's largest Protestant denomination, recently passed a resolution indicating the staunch doctrinally based opposition of many evangelical churches to homosexuality. Obviously, forcing such a church to employ homosexuals, even at the support staff level, would constitute a substantial burden on its free exercise of religion.

The single most important case addressing the application of antidiscrimination laws to nonministerial staff in pervasively sectarian institutions would appear to be *Equal Employment Opportunities Commission v. Southwestern Baptist Theological Seminary*. In *Southwestern Seminary*, the court of appeals found that Title VII of the Civil Rights Act of 1964 covered even the employment practices of a theological seminary. Characterizing the seminary as wholly sectarian and the legal equivalent of a church, the court nonetheless held that application of Title VII's reporting requirements to the seminary's support staff did not violate the First Amendment. This was true despite the fact that at least four of the support staff were ordained. The court did, however, acknowledge that support staff might well lie beyond the scope of antidiscrimination laws if they performed ministerial functions. This would include ordaining other ministers, conducting weddings and funerals, and dedicating babies. Presumably, it would also include teaching, preaching, baptizing, serving communion, and performing other tasks the court considered ecclesiastical or religious. One commentator has stated: "As a general rule, if the employee's primary duties consist of teaching, spreading the faith, church

governance, supervision of a religious order, or supervision of or participation in religious ritual or worship, he or she would be considered 'clergy.'"

Obviously, such line drawing between the religious and nonreligious functions of church employees involves significant governmental entanglement with religion and, therefore, is highly suspect under the First Amendment. In the words of the Fourth Circuit Court of Appeals: "There is the danger that churches, wary of . . . judicial review of their decisions, might make them with an eye to avoiding litigation or bureaucratic entanglement rather than upon the basis of their own personal and doctrinal assessments of who would best serve . . . their members." Moreover, the Supreme Court itself has stated, "Both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere."

Such considerations have led a number of commentators to recommend that the First Amendment be interpreted so as to exempt entirely churches and other prevasively sectarian institutions from antidiscrimination laws. While I agree with these recommendations, a number of factors demand that churches pay close attention to the requirements of these laws.

First, numerous lower courts have interpreted the First Amendment more narrowly than these commentators. Second, society's overall sense of justice is offended by any act of invidious discrimination, even if committed by the church. In fact, the social justice argument may be stronger when the perpetrator of the wrong is an institution that purports to serve as a moral and ethical guidepost for the community. The Constitution may require courts to tolerate discrimination when the employment of ministers is at issue, but courts are less likely to countenance such practices at the support staff level.

In addition to the general lack of sympathy for churches that practice discrimination, a court's concern for protecting the free exercise of religion is diluted the farther one moves from the purely religious functions of the church. For example, some judges simply could not be convinced that a custodian is engaged in anything other than a purely secular job. To a lesser degree, courts also might be resistant to characterizing the church secretary's job as ministerial in nature. In short, any act of discrimination is frowned upon, and courts are likely to enforce a statute prohibiting such conduct if possible.

Even if one could convince the Supreme Court that churches should be exempted entirely from all antidiscrimination laws, vindication of a constitutional right is an expensive and time-

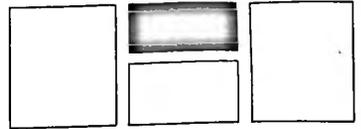
consuming process. Given the remote chance of a particular case reaching the Supreme Court, prudence suggests strict adherence to principles of nondiscrimination in the employment of nonministerial staff. This is not to suggest that churches cease to enforce their religious doctrines and practices among their support staffs.

I suggest three criteria to assist religious institutions in determining whether a particular employee's function should be considered ministerial and, therefore, exempt from antidiscrimination laws. First, does the employee perform any sacerdotal functions such as baptisms, communions, weddings, or funerals? Performance of these "priestly" functions on even an occasional basis will almost guarantee that an employee's job will be considered ministerial. Second, does the employee perform other functions, such as preaching, worship leadership, evangelism, or visiting the sick, that traditionally are associated with ministers? Even if the employee does not perform sacerdotal functions, most judges are likely to view one who performs these tasks as a minister. This is particularly true in Protestant churches where each member of the congregation is considered a priest, and the distinction between laity and clergy is minimal. Finally, is the employee ordained, licensed, or commissioned by the church? While ordination is by no means dispositive, it is nonetheless a factor judges may take into account when determining whether a particular employee's functions are ministerial.

The application of antidiscrimination laws to religious institutions will continue to spawn some of the most interesting and controversial cases in constitutional law. Civil rights activists likely will argue for more regulation of religious institutions, while advocates of religious liberty will argue for less. Balancing the competing interests of church autonomy versus equal opportunity will prove a difficult assignment for even the most astute judges as fundamental social values are at stake.

While the Supreme Court eventually may vindicate the churches' constitutional claim to complete exemption from antidiscrimination laws, its refusal to grant an appeal in cases such as *Southwestern Seminary* indicates a reluctance on its part to do so. Moreover, when it has been faced directly with the issue, the Court has invoked various doctrines to avoid deciding the ultimate question. Prudence suggests, therefore, that until and unless the Court alters its course, pervasively sectarian institutions proceed with caution before engaging in employment discrimination at the support staff level. If our ethics don't cause us to do right, perhaps the threat of a lawsuit will. □

# News in Brief



## Court hears argument in equal access case

WASHINGTON  
Attorneys in a dispute over the Equal Access Act focused their oral argument before the Supreme Court on what test should be used to trigger the law's protections.

The 1984 law stipulates that if a "limited open forum" exists at a public secondary school, that school must provide student-initiated religious clubs the same opportunity to meet on school property as it does to other nonacademic, extracurricular groups. Such a forum exists, according to the law, whenever noncurriculum-related student groups are allowed to meet on school grounds before or after the school day.

The attorney for an Omaha, Nebraska, school board told the justices that no limited open forum exists at Westside High School because all of the school's student clubs relate to its curriculum.

Allen E. Daubman, who represented the Westside Community Schools Board of Education, said even such groups as a chess club, scuba-diving club, and service club are curriculum related.

He argued in favor of a standard that would allow local school boards to determine whether student clubs relate to the curriculum of a high school.

But the attorney representing Bridget Mergens, who initiated the suit against the school board, advocated a test that would determine whether there is a "direct connection" between student clubs and a school's core curriculum courses.

The dispute arose in 1985 when the principal of Westside High School and the local superintendent of schools refused to allow Mergens and a group of fellow students to form a Bible club and meet on campus.

A federal district judge upheld the school board's position that a limited open forum did not exist. But the Eighth Circuit Court of Appeals reversed the ruling and ordered the school board to allow the Bible club to meet.

Jay Alan Sekulow, Mergens' attorney, urged the high court to uphold the appeals court ruling that a limited open forum does exist at Westside High School. He argued that groups such as the chess club are not curriculum related.

Although agreeing with Daubman that Congress did not specifically define

"curriculum related" in the Equal Access Act, Sekulow countered that the act's legislative history shows that Congress intended the term to require a direct relationship between a club and the curriculum.

But Daubman called Sekulow's proposed test "not very accurate and educationally unworkable."

U.S. Solicitor General Kenneth W. Starr, who shared Sekulow's 30 minutes of argument, also challenged the Westside school board's interpretation of curriculum related, calling it "open ended." He said Congress intended to eliminate discrimination against groups based on the content of their speech, including religious speech.

Justice Byron R. White, who dominated the questioning from the bench, prodded the attorneys to provide a more concrete standard for when the Equal Access Act should be applied and by whom — local school authorities or the court system.

But Chief Justice William H. Rehnquist and Justice Antonin Scalia pointed out possible problems with the school board's interpretation of the law.

"Your construction would allow any school district to avoid the act," Rehnquist told school board attorney Daubman.

If a school's curriculum is interpreted to include more than just its formal courses, Scalia said, "anything becomes part of the curriculum if the school wants to teach it, even just through clubs."

An opinion in the case is expected before the court ends its current term this summer. □

## City's bid to bar menorah rejected by Supreme Court

WASHINGTON  
The Supreme Court rejected an emergency request by the city of Pittsburgh for authority to bar a menorah from the steps of its City-County Building.

By a 6 to 3 vote, the court turned down the city's request, which was aimed at having the menorah taken down before the conclusion of Hanukkah.

City officials asked the full court to set aside an order Justice William J. Brennan, Jr., had issued that let Chabad, a Jewish organization, erect the menorah, which was accompanied by a sign that said, "Salute to Liberty."

Pittsburgh officials argued that the Jewish group should not have the power to determine what is to be displayed on

the steps of a public building. They argued that the area is not a "public forum" open to various messages by private citizens.

U.S. District Judge Barron P. McCune ruled that the city could not prevent display of the menorah, but the Third Circuit Court of Appeals postponed the effect of McCune's ruling.

Brennan then set aside the Third Circuit order.

The same menorah and a Christmas nativity scene located at the Allegheny County Courthouse in Pittsburgh were the subjects of a Supreme Court decision last summer.

The high court ruled then that the menorah's display was constitutional because it, unlike the nativity scene, was accompanied by a nonreligious symbol, a Christmas tree.

City officials said that ruling did not obligate them to allow display of the menorah, but McCune ruled that the steps of the City-County Building have become a public forum open to various types of expression. (AP)

## Federal court restricts aid to parochial schools

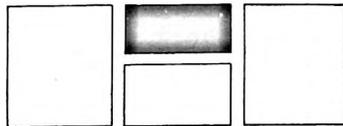
KANSAS CITY, Missouri  
A U.S. district court has struck down a Missouri arrangement that allowed parochial school students to receive a greater share of federal education funds than their public school counterparts.

Two Baptists — a pastor and a professor — filed suit in federal court in 1985 against then-U.S. Secretary of Education William Bennett, challenging guidelines established for allocating federal education funds.

Rudy Pulido, pastor of Southwest Baptist Church in St. Louis, and Hugh Wamble, a professor at Midwestern Baptist Theological Seminary in Kansas City, were joined in the suit by John Swomley, professor emeritus at the United Methodist St. Paul School of Theology in Kansas City. Americans United for Separation of Church and State provided support for the suit.

While secretary of education, Bennett issued a series of guidelines that set up an "off-the-top" system that gave first priority in allocating federal education funds to parochial schools. He also encouraged the use of public funds to buy portable classrooms for instruction at religious schools.

According to documents submitted in the case, the "off-the-top" plan meant that some parochial school students in



Missouri received four times as much federal aid as public enrollees.

Judge Joseph E. Stevens, Jr., found the funding plan to be unconstitutional because it had the effect of aiding sectarian institutions.

"This type of aid is not the type of 'indirect and incidental' benefit that the Supreme Court has recognized as constitutional," Stevens wrote. "Rather, this aid confers the type of direct benefit to the private schools that the Supreme Court has found impermissible because it provides 'a subsidy to the primary religious mission of the institutions affected.'

"While it is constitutional to use public funds to provide for remedial education of public school students, the Constitution does not require, and indeed this court finds that it forbids, the taking of federal funds from public school students in order to allow the services to be provided to private school students."

Although barring the placement of publicly funded portable classrooms on parochial school property, Stevens ruled mobile classrooms may be placed on public property adjacent to parochial schools. But he did say such close proximity may send a message to the public of church-state cooperation. (BP)

## NCC, State Department to hold regular meetings

NEW YORK

The National Council of Churches and representatives of the U.S. State Department have decided to hold informal meetings on a regular basis, agreeing that it should not require a crisis for them to talk to one another.

The plan for regular conversations could potentially lead to a new kind of relationship between the NCC and State Department, moving beyond the crisis-oriented kind of approach that has characterized most deliberations in recent years.

The concept of regular meetings grew out of a private meeting between Leonid Kishkovsky, NCC president, and several State Department representatives, including Assistant Secretary for Human Rights Richard Schifter. The private session grew out of an earlier meeting requested by NCC personnel to discuss the recent events in El Salvador.

Schifter said the agenda of the meetings essentially will be set by NCC and could be open to virtually anything in which the State Department has a role.

The intent, Schifter said, is to "exchange thoughts ... on matters (in which) the State Department may play a role."

Kishkovsky said religious leaders invited by the NCC will meet with State Department officials approximately every month or every other month to discuss international affairs, consider their implications, and share perspectives.

The first discussions between NCC-selected religious leaders and the State Department are expected to focus on Central America. (RNS)

## HUD says shelter may display Jesus' picture

WASHINGTON

The U.S. Department of Housing and Urban Development has revoked a ban on religious decorations in federally financed emergency shelters and told the Salvation Army that it may display a picture of Jesus in a shelter in New Britain, Connecticut.

Last May, HUD told Salvation Army officials that they could not keep a grant for the shelter because of the picture. The Army did not return the money or take down the picture, but neither did it apply for any more federal funding.

Robert Kenison, an associate general counsel for HUD, said the policy has been amended.

"Essentially it means that if there is no other indication of religious influence, religious decorations will be permitted," he said. (RNS)

in length only to that of Porter Routh of the Southern Baptist Convention. She was chairperson of the committee from 1981-84.

Miller, a native of Orange, New Jersey, was a graduate of Meredith College and earned graduate degrees from Yale Divinity School and the University of Pennsylvania.

She began her career in ministry as the pastor of First Baptist Church of Readsbury, Vermont. For seven years she served Massachusetts Baptists as a Christian Friendliness missionary and as director of Christian social relations.

She was appointed director of the ABC's Division of Christian Social Concern in 1962.

Her early years on the ABC national staff placed her in the center of the denomination's ongoing civil rights program. During one demonstration for racial integration, she was brutally assaulted.

"Few people personify the passion for justice and the concern for the whole gospel to the degree and for the extent of time as Betty Miller," said Paul Nichols, ABC National Ministries executive director.

"Betty Miller had a tenacious commitment to elemental fairness and justice and freedom for all people," observed James M. Dunn, BJC executive director. "She was the very soul of consistency, never wavering. You could count on Betty. No committee could have had a more supportive and enabling chairperson."

## Betty Miller, longtime committee member, dies

VALLEY FORGE, Pennsylvania

Elizabeth J. Miller, a longtime member of the Baptist Joint Committee, died December 16 of cancer.

Miller, 67, was manager of the individual and corporate responsibility unit for the American Baptist Churches' Board of National Ministries. In that position, she supervised a number of the ABC's outreach programs.

She began representing American Baptists on the Baptist Joint Committee in 1962 and continued in that role until 1989. Her tenure on the BJC was second



# Other Voices, Other Times

Let me tell you  
what it is like  
to live here  
in Virginia  
with the  
established  
Anglican Church

JOHN LELAND

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[This article can be used in an all-church setting or with young adult or high school groups. Persons assume the identities of these historical personalities. A simple costume — tricorn hats or linen shirts — adds to the drama. Questions may be handed out in advance. They may also be distributed among younger groups that are divided into competing teams.]

John Leland: I'm a Baptist preacher. My bride and I moved to Virginia in 1775 to help my Baptist brethren fight for their religious liberty. I'm not formally educated (none of us Baptist preachers are), but we preach a vital faith in our living Lord and our churches are exploding. Jealous clergy of the Established Anglican Church look down on us and our converts. One said recently: "Many people are so ignorant as to be charmed with sound rather than sense. And to them, the want of knowledge in a teacher ... may easily be made up, and overbalanced, by great zeal, an affecting tone of voice, and a perpetual motion of the tongue. If a speaker can keep his tongue running in an unremitting manner ... and can quote, memoriter, a large number of texts from within the covers of the Bible, it matters not, to many of his hearers, whether he speaks *sense* or *nonsense*." Sounds like sour grapes, doesn't it?. We Baptist preachers may lack knowledge and may speak "nonsense," but we're not political appointees with no spiritual qualifications and less moral character like many of the Episcopalian clergy.

Let me tell you what its like to live here in Virginia under the Established Anglican Church. The Church of England is established by law, and no other religious body has been allowed to erect church buildings in the towns, while the parish churches of the Established Church have been erected at public expense. Obviously, we all pay taxes to support that church — taxes we Baptists are too poor to pay anyway. Our ministers must register and get a license to preach and then can only preach legally in their own county, at specific places, always with the door open and only in the daytime. Marriages we perform are not recognized as legal. Our babies must be baptized into the Anglican Church — which is ridiculous because baptism is for those who accept Jesus as Savior — which a baby can't do. The church is not "everyone who lives in an area" — its "those who love Jesus Christ." Thirty Baptist ministers were imprisoned in Virginia in the 10 years before I moved here for preaching whenever they wanted to — and they continued to preach even from jail — for witnessing, for agitating for full religious liberty.

What am I going to do now that I'm here? Preach and baptize, of course. But also, I'm going to urge my fellow Baptists to continue to put pressure on the legislature, more and more pressure, organized pressure. We should write

petitions or "memorials" constantly, asking for specific relief from the burden of the religious establishment. We should write often, and when a spokesman is needed, I volunteer.

All the colonies are resonating now to the slogan "no taxation without representation." That's a good slogan in the religious realm too. As we fight to break from England, we can throw off the English State Church too. Our new state and nation WILL HAVE POLITICAL AND RELIGIOUS FREEDOM.

Thomas Jefferson: I can testify that the Baptists *did* put lots of pressure on the legislature, just as John Leland said they would. For a long time I've been involved in Virginia politics and very aware of the Baptists' constant agitation for religious freedom. Their ideas about religious liberty dovetail with mine. In fact, right in the middle of this Revolutionary War we're fighting (it's now 1779), I'm trying to get a bill on religious liberty through the Virginia Assembly. But even with the support of all those vocal Baptists and their petitions, my bill is going nowhere.

Patrick Henry: You all know what I'm famous for saying a few years ago ("Give me liberty or give me death."). I bet you don't know about my connection with the Baptists. As an ardent champion of liberty, I've sympathized warmly with Baptist struggles, and I have often aided their preachers when they got in trouble with the law. A Baptist historian will say of me in the future, "[Baptists] were fortunate to interest in their behalf the celebrated Patrick Henry: being always the friend of liberty, he needed only to be informed of their oppression; without hesitation he stepped forward to their relief. . . ."

The Revolution is now over and in this year of 1784 I've introduced in the Virginia General Assembly a bill to levy a general assessment of taxes for the support of teachers of religion, each taxpayer to designate the sect to which his money should go. Why do I favor such a bill? I find it unnecessary to strip all the privileges from the Established Church and reduce her to the common level of the dissenting churches. Instead, let's establish all churches, support the Christian religion by tax funds.

The reaction of the various churches to my bill is interesting. "The Episcopal clergy are generally for it [of course].... The Presbyterians seem as ready to set up an establishment which would take

them in as they were to pull one down which shut them out. The Baptists, however, standing firmly by their avowed principle of the complete separation of church and state, [have] declared it to be "repugnant to the spirit of the Gospel for the Legislature thus to proceed in matters of religion...." I respect the determination of the Baptists but I think they're too far out on this and they can't beat me.

But James Madison can. He's going to cause the defeat of my assessment bill. He's written a long, unbelievably effective document he calls "A Memorial and Remonstrance Against Assessments For Support of Religion." For example he says that he remonstrates against my bill because "it is proper to take alarm at the first experiment on our liberties" and "Who does not see that the same authority which can establish Christianity in exclusion of all other religions may establish with the same ease any particular sect of Christians in exclusion of all other sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment may force him to conform to any other establishment in all cases whatsoever."

As the tide turned against my bill, Madison in a brilliant move brought to the floor Tom Jefferson's long-languishing Statute for Religious Liberty and pushed it through to enactment. That statute will go down in history as one of Tom's greatest contributions and I'm for it. But I don't see that my assessment bill violated it, and I harbor real resentment against Madison for drubbing it so!

James Madison: I'm the man he represents. As a young man I, too, often appeared in Virginia courts to defend Baptist preachers who had been arrested. Religious liberty has always been my "cause." I hate tyranny in any form, especially religious tyranny!

When the newly drawn federal constitution was presented to the states for ratification, our emerging nation divided into "rats" (for ratification) and "anti-rats" (opposed to ratification). I was horrified to find that most Baptists were "anti-rats." The General Committee of Virginia Baptists met in 1788 to consider the question "Whether the new Federal Constitution, which had now lately made its appearance in public, made sufficient provision for the secure enjoyment of religious liberty." After study and discussion "it was agreed unanimously that, in the opinion of the Gen-

eral Committee, it did not."

I have never seen in the Constitution as it now stands those serious dangers which have alarmed Baptists and others. The only provision in the new Constitution touching religion is "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." This is a broad and adequate guarantee of religious liberty; plus the new government will be one of delegated powers and so we don't need any specific guarantee of personal liberties.

I'm a "rat!" I think the proposed Constitution is essential if America is to become a strong nation. John Jay, Alexander Hamilton and I have been in Philadelphia writing a series of papers we've called the "Federalist" in defense of the Constitution while the various states have been electing delegates to their ratifying conventions. I've just received word that Virginia Baptists, as part of their strategy to stop ratification, are backing John Leland against me as delegate to the Virginia ratifying convention from Orange County. I must go home and campaign.

John Leland: Remember me? When Mr. Madison returned to Orange County, he came to see me. We talked long and hard. I came to understand his dedication to passage of the Constitution; he understood the intensity of Baptist fears of it since it held no specific guarantees of religious freedom. I decided to withdraw from the delegate race and throw my support to Mr. Madison as I was convinced that he would see that proper guarantees were included in the document. He was elected to the Virginia Ratifying Convention by a huge margin because all the Baptists voted for him.

The Virginia Ratifying Convention was bitter! Mr. Madison refused to add a Bill of Rights or even a religious liberty guarantee at that time for fear other states which had already ratified would rescind if any changes were made. Patrick Henry wanted to attach amendments before Virginia ratified. Some Baptists supported him while others just kind of hung on to faith in Madison's eventually delivering what we wanted. Madison's position won by a very narrow margin — Virginia ratified as proposed.

When the first Congress under the new Constitution met, Madison responded to the Baptists' longstanding concerns by introducing into the House of Representatives a bill of rights to

secure personal liberties under the new government. It took a while before the amendment process was completed, but when finally ratified in 1791, the First Amendment read "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

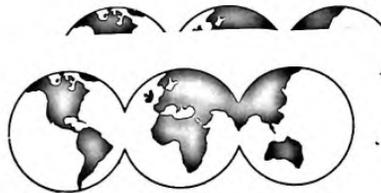
Many years later an historian, J.M. Dawson, wrote, "If the researchers of the world were to be asked who was most responsible for the American guaranty for religious liberty, their prompt reply would be 'James Madison'; but if James Madison might answer, he would as quickly reply, 'John Leland and the Baptists.'" The record shows that Baptists provided much of the original agitation which led to the enactment of the First Amendment. They have flourished under its protection for almost two centuries. When it has been threatened by revision or "improvement," Baptists have been among its stalwart defenders, at least until the present.

May we modern Baptists be true to our faith and our roots. □

## Twenty Questions

1. What church was the established church in Virginia, and what were its privileges?
2. Describe the burdens of establishment on Baptists and other nonestablished religious groups.
3. Who did the Anglican Church baptize in Virginia?
4. Who did the Baptists baptize? Why?
5. Why were Baptist preachers put in jail in Virginia?
6. Before the Revolution, what kind of action did Baptists take to get rid of the establishment of the Anglican Church in Virginia?
7. What two kinds of liberty did Baptists think the Revolution would bring to America?
8. What famous piece of legislation did Thomas Jefferson author in the pre-revolutionary period?
9. What did Patrick Henry do for Baptists?
10. After the Revolution, what kind of religious establishment did Patrick Henry work for?
11. What bill did Madison get the Virginia legislature to pass instead of Henry's bill?
12. As a young man, what did James Madison do for Virginia Baptist preachers?
13. What did the nicknames "rats" and "anti-rats" mean?
14. Were most Virginia Baptists rats or anti-rats? Why?
15. In the original proposed constitution for the new nation, what was the only mention of religion?
16. Who did Virginia Baptists decide to run against James Madison for the position of Orange County delegate to the Virginia ratifying convention?
17. Why did this man withdraw from the race and throw Baptist support to Madison?
18. Did Madison keep his promise to the Baptists? When?
19. When was the First Amendment added to the Constitution?
20. Write the words of the religion clauses of the First Amendment. □

# INTERNATIONAL DATELINE



## Spiritual renewal seen as major issue in Lithuania

Getting control of rampant social problems ranks ahead even of gaining independence from the Soviet Union as the most urgent issue facing the Republic of Lithuania, according to a lay church leader.

Albina Pajarskaite, head of Lithuania's Catholic social welfare agency, said five decades of communist rule and official atheism have left the republic with an epidemic of social problems, including drug addiction and abandoned children.

"There is a recognition among Lithuanians, and particularly in the church, that political independence will not save our nation — that spiritual renewal must take place," said Pajarskaite.

Pajarskaite, a retired agricultural expert, met with officials of American church social agencies in Washington, D.C. A roundtable discussion involved about a dozen intellectuals and religious leaders. □

## Revolt in Romania affects relations with churches

KESTON

Changes are being effected in the leadership of the Reformed Church in Romania in the wake of the revolt that swept away Communist party domination and is now moving the nation toward democratization.

The Reformed Bishop of Cluj, Gyula Nagy, has resigned and his colleague Bishop Laszlo Papp of Oradea has fled the country, according to an informed source in Cluj. Both bishops had collaborated closely with the Ceausescu regime.

Bishop Papp had a high profile for his persistent efforts to evict the dissident pastor, Laszlo Tokes, from his Timisoara parsonage through the civil courts — an action that led directly to the outbreak of antigovernment demonstrations there.

Since the early 1980s, Bishops Papp and Nagy were accused of conducting church affairs illegally by Tokes and his father, the distinguished theologian Istvan Tokes. Professor Tokes subsequently was dismissed as deputy bishop and banned from preaching in Cluj by Nagy.

Laszlo Tokes remains in Mineu, a remote mountain village, exiled by Papp and by Romanian authorities after he had spoken out against the Ceausescu regime's plan to demolish half the country's villages. He has decided to return

to his parish in Timisoara as soon as his congregation considers it safe.

In a related story, the new minister of culture, Andrei Plesu, appointed by the Council of the National Salvation Front, has publicly invited the patriarch of the Romanian Orthodox Church to retire to a monastery, because of his compromise with the Ceausescu government.

Criticism of the Romanian hierarchy has also come from students, who denounced the Orthodox clergy's connections with the secret police. Both Romanian politicians and foreign diplomats have accused the clergy of "destroying any possibility of forming a centrist political force of Christian inspiration in Romania."

The Romanian Orthodox Church, according to *Keston News Service*, has been subservient to the state ever since the late-19th century. Its leadership expressed support both for the prewar Fascist and the postwar Communist governments, frequently effusive in their praise for Ceausescu.

One statement "emphasized the religious freedom which the Religions in Romania have enjoyed during the last 45 years...." Another pledges the church's full support for Ceausescu's systematization program, under which thousands of Romanian villagers would have seen their homes razed and been forced to move into state-owned apartments.

Keston reports that an abrupt switch of allegiance has taken place by the Orthodox hierarchy, which since the overthrow of Ceausescu, declared its support for the National Salvation Front.

Metropolitan Nifan now denies the accusations of collaboration with the regime and pleads government pressure and the "climate of terror of the whole people" for the church's failure to "carry out our mission fully." Patriarch Teoctist adds that the church had suffered just like everyone else. □

## Orthodox leaders seek Thatcher's help in dispute

LONDON

Russian Orthodox Church leaders have cabled Prime Minister Margaret Thatcher requesting her help in solving a bitter church property dispute in the Ukraine. The church leaders warn that the dispute could erupt in widespread street fighting.

A number of incidents of sporadic violence have already been reported as Uni-ate (Roman) Catholics forcibly reoccupy

buildings and reclaim church property handed over by Stalin to the Russian Orthodox Church after World War II.

The Rev. Oliver McTiernan, a leading British expert on religion in the Soviet Union, confirmed that the telegram had been sent. British officials caught in the end of the year holidays, have not been able to deal with the request, he said. Father McTiernan is a frequent visitor to the Soviet Union.

Thatcher was singled out from other world leaders as a mediator, Father McTiernan said, because of her high profile in Moscow where she has met and won the respect of members of the Orthodox hierarchy. Orthodox leaders also seek her influence on the large Ukrainian exile community in London; they want pressure on their Uniate counterparts at home to moderate their demands and tactics.

Since 1946, the Orthodox faith has been forcefully imposed on Ukrainian Catholics. But the rivalry between the two churches goes back centuries.

Neither Glasnost nor the recent John Paul II-Gorbachev summit in Rome have allayed concern that bitter religious warfare is in the offing, though the Uniate Church has been promised semilegal status.

"Over the last 10 years some Orthodox leaders have been openly offensive to the Uniates," said Father McTiernan. "If a solution is not found soon, deep frustrations will boil over with very serious repercussions on Russia's fragile ecumenical movement." □

## Israeli court rules out citizenship for couple

An Israeli Supreme Court ruling that people who believe that Jesus was the Messiah cannot be considered Jews under Israel's Law of Return has been hailed by an official of the American Jewish Committee and denounced by the leader of Jews for Jesus.

The ruling, issued Christmas Day, was made on an appeal by a South African couple, Gary and Shirley Beresford, challenging a refusal by the Interior Ministry to grant them citizenship on grounds that they were not Jews.

Although the Beresfords were both born Jewish, they affirm belief in Jesus as Messiah. They applied for automatic citizenship on the basis of the 1950 Israeli law that grants such status to Jews from around the world.

In 1970 the Israeli Knesset adopted an



## NEWS-SCAN

amendment to the law defining a Jew as "a person born of a Jewish mother or who has been converted and is not a member of another religion." In a similar case in 1977, the Israeli Supreme Court ruled against an appeal from James Hutchens, former chaplain at Wheaton (Illinois) College, who said he and his family had converted to Orthodox Judaism while retaining their belief in Jesus as Messiah.

In the ruling in the Beresford case, Justice Menachem Elon wrote that Messianic Jews "do not belong to the Jewish nation and have no right to force themselves on it. Those who believe in Jesus are, in fact, Christians."

Rabbi A. James Rudin, national inter-religious affairs director of the American Jewish Committee, declared that "the Israeli Supreme Court's ruling is a positive contribution toward building constructive relationships between Christians and Jews, relationships that demand authenticity, integrity, and clarity."

But Moishe Rosen, founder and executive director of Jews for Jesus, charged that the ruling means that "the ultra-Orthodox are on their way to building a theocracy where their interpretation of Torah will be the law of the land. In some respects, it could become like an Islamic republic where the Koran is the basis of all law." □

### Baptists take to stage; present Christmas story

MOSCOW

The director of a Christmas eve production staged at the Moscow Art Theatre on Tverskio Boulevard was more interested in getting "nonbelievers rather than believers" to see his play.

Nikolai Yepishin, director of the Protestant Publishing House of Evangelical Christians-Baptists, said it was very important "that they should hear about the Gospel, which used to be a closed book for us."

It is equally important today, Yepishin believes, "to reach out to the hearts of our fellow citizens." Evidently, reports *Moscow News*, this idea is also that of the new minister of culture, whose involvement paved way for use of the Moscow theatre.

The time, the scene, and the cast of Yepishin's production are well-known to every Christian — Mary, Joseph, the baby Jesus, the city, Bethlehem, on December 24. Finally, the Magi, also

conceived "in the spirit of an evangelical plot."

Believers underwrote the costs, including costumes, scenery, and rehearsal halls in addition to renting the theatre's main stage for the telling of the Christmas story. □

### E. German churches active in move toward democracy

LOUISVILLE

Few Westerners realize the crucial role East German churches played in bringing democratic reform into the communist state, according to Glen Stassen, a professor at Southern Baptist Seminary.

Stassen, who reached East Germany just as the Berlin Wall began to collapse, found a movement of persistent prayer, quiet study and brave confrontation that helped shatter the barrier that divided Germany for more than two decades.

In addition to providing the proreform activists a place to meet, the churches also assisted protestors to articulate their demands and keep the demonstrations nonviolent, said Stassen, himself a longtime activist in the peace movement.

An ecumenical coalition worked two years to produce a document that spelled out demands dealing with democracy, human rights, peacemaking, and environmental issues, said Stassen. □

### 'Pastoral' visit reveals Romania's unsettled state

Representatives of four international and regional ecumenical agencies who visited Romania recently say that, while the emergency appears to have passed, churches will now have to provide resources for mid- and long-term rehabilitation efforts.

A report issued by the delegation said the purpose of the visit was to reestablish contacts with member churches of the four Geneva-based organizations — the World Council of Churches, the Lutheran World Federation, the World Alliance of Reformed Churches, and the Conference of European Churches.

Romania entered a state of intense political turmoil at the end of 1989, marked by the reported massacre.

The delegation reported that its visit "was of a pastoral nature to express solidarity with the people and the churches as a new page of history opened for Romania." □

**R**apid growth of the Christian church in China has placed a strain on ministerial leadership — the greatest challenge facing the church today, some say. *Baptist Press'* Michael Chute writes from Nanjing that a church opens every 36 hours, with the demand for workers far exceeding the limited supply of trained personnel. He notes that the Chinese Christian Council reported a total of 5 million Chinese Christians, although other estimates raise that figure some 10-fold. Fewer than 1,000 ordained ministers are available for work in China. . . . State licences for pastoral ministry will no longer be required under proposed laws on religion in Czechoslovakia. The new legislation would grant social equality to believers and result in near complete freedom for churches. . . . Young Catholics in Slovakia have calculated that since the Communist takeover bishops, priests, nuns, and laity in Slovakia have spent a total of 42,670 years in prison for their faith. . . . Estonian Baptists have created their own small seminary as part of a Baptist center currently being built in Tallinn. They launched a new magazine, *The Pilgrim*, whose first issue celebrates the 250th anniversary of the Bible in Estonian. . . . Journalist Marina Pavlova-Silvanskaya summarizes better than most the alternatives before the Soviet Union: "Countries that find themselves today in the blind alley of state-administrative socialism are faced now by a historical alternative — and it is not a choice between reforms or a return to some sort of an improved version of the past, but between the extremely difficult movement forward and violence . . . but violence is a dead end and antiproggress" . . . Even before the fall of the Ceausescu regime, Baptists in Romania were notably present in the vanguard of reform. Pastor Peter Dugulescu of Timisoara's First Baptist Church led tens of thousands in worship in one of the city's public squares. Paul Negrut, co-pastor of the Second Baptist Church in Oradea, preached at the same time to a huge open-air gathering in that city. Negrut is a member of the National Salvation Committee that was formed to set up Romania's provisional government. Longtime campaigner for religious freedom, Pastor Iosif Ton, returned to Romania for the first time since he was exiled nine years ago. . . . Following steps toward legalization of the Ukrainian Catholic Church, more than 600 Catholic parishes have applied to register with the Council for Religious Affairs. □

# Quoting

Dean Kelley  
*Proper Relations*

The phrase "separation of church and state" has often been used to characterize the proper relations between religion and government, but it suggests an almost geographical distancing that may not be feasible in our increasingly crowded world. It also has been criticized by some who contend that "there never has been an absolute separation of church and state," as though that meant there should be no separation at all.

No such nonsense is spoken of in the comparable principle of "separation of powers." Neither of those phrases is found in the Constitution; they are concepts — derived from John Locke and

Montesquieu and other political philosophers whose teachings were current in the 1780's — that underlay the specific provisions that the Founders wrote into our fundamental law. Rather than drawing sharp and unchangeable boundaries, they are principles to be approximated as best we can in the evolving circumstances of succeeding eras.

Rather than striving to bring executive, legislative, and judicial branches of government into as close proximity as possible, we should strive to maximize the differentiation among them, so that each can excel in its distinctive function. Likewise, rather than striving to bring religion and government into ever-closer proximity, we should strive to maximize the differentiation between them, so that each can excel in its distinctive function.

The key is not distance but differentiation, not resemblance but distinctiveness. Churches should not aspire to be pale imitations of the state nor to exercise powers of governance, but to impart the ultimate meanings of life by which human beings live. States should not aspire to be purveyors of ultimate meaning, promulgators of aspirational orthodoxies, nor proprietors of spiritual rites or ministrations, but to regulate and maintain the temporal conditions and relations upon which earthly existence depends. Each will have more than enough to occupy it without intruding upon the function proper to the other, and that is the essence of the "proper" relation between religion and government. □

[Before the American Bar Association]

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## Baptists and Religious Freedom



### Separation of Church and State

Religious liberty is a biblical principle and a Baptist distinctive. Because Baptists throughout their history also have advocated separation of church and state, the understandable tendency to equate the two sometimes surfaces. Yet the two — religious liberty and separation of church and state — are not synonyms.

A better way to look at these two related principles is to see separation of church and state as the political corollary to the biblical-theological idea of religious liberty. One of the classic dilemmas for Christians always has been the choice between God and country.

## Office on church policy may mean less state control

A Secretariat for Church Policy has been established by the Hungarian Council of Ministers to replace the State Office for Church Affairs (SOCA), which has controlled church life since 1951.

Named to head the new office, Barna Sarkadi Nagy was for the past four years the senior Deputy Chairman of the now defunct SOCA. He is widely regarded as being less bound by orthodox communist ideology than his recently deposed chief at SOCA, Imre Miklos.

The precise functions of the Secretariat are due to be defined later this year when the Hungarian Parliament is expected to pass a law on religion. Churches and various government ministries have inherited some of the functions of the SOCA. KNS

### SILENCE, from page 16

finality of their disclosures?

Although Bush and Tiemann's book will not provide all the answers, it will sensitize the reader so that, when the red flags start to wave in the breeze, he or she will have the good judgment to seek quality legal advice as well as divine guidance. [JBW]

## Life with Liberty Series

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For while sometimes Christians can affirm both, at other times they are forced to say with Peter and John, "We must obey God rather than men." (Acts 5:29) □

[Study guide includes questions, activities, and research suggestions.]

Spiritual roots require a constitution that will guarantee civil liberties and freedom of conscience, curtail government's power, and insulate the judiciary from political power plays.

## REFLECTIONS

James M. Dunn  
Executive Director



"Freedom's Spiritual Roots" is the theme for the 22nd biennial Religious Liberty Conference of the Baptist Joint Committee, to be held on October 1-3, 1990, here in Washington.

The topic, decided upon before events of the past few weeks in Eastern Europe, proves to be especially timely. The churches have been disproportionately influential in the struggle for human rights in Poland, Hungary, East Germany, and the Baltic states. Religious freedom, the *sine qua non* of all other rights and freedoms, has been a determinative aspect in these exciting revolutions. And as the people of Eastern Europe begin writing new constitutions and developing rules of law to protect their long-sought liberties, Americans are celebrating the 200th anniversary of the Bill of Rights.

Our conference in the fall could well be sub-labeled, "Baptists and the Bill of Rights." The tradition alive in the Baptist family links our forebears to the earliest stirrings for an American Bill of Rights. Also alive and well is a growing appreciation for the role of religion in predisposing the framers to persist until those guarantees for freedom were codified.

Samuel Stillman and Isaac Backus held out in the Massachusetts constitutional ratification convention until they got assurances that a Bill of Rights would be forthcoming. James Manning, another Baptist leader from neighboring Rhode Island, offered a lengthy and specific invocation at that Massachusetts Convention. It is said that he reported to the Almighty the reasons why Rhode Island would not ratify the document and suggested that the Lord knew quite well what it would take for the Massachusetts convention to be successful: the promise of a Bill of Rights.

Stillman, popular pastor of the First Baptist Church of Boston, had made it clear for several years that specific safeguards would have to accompany any acceptable constitution. He had actually drawn up a model Bill of Rights with 14 amendments. Finally, he and Backus led most of the Baptists and other dissenters to vote for ratification on the condition that a Bill of Rights would follow. That motley mix of disestablishmentarians turned out to be the "swing vote" that brought Massachusetts on board.

Approval by 9 of the 13 states was required for the Constitution to take effect. It was an uphill battle. Two of the notable delegates to the Constitutional Convention — George Mason and Elbridge Gerry — fought ratification. George Clinton, Sam Adams, and Patrick Henry also opposed the Constitution. A bitter fight lasted for months, the outcome uncertain until the last inning, and then the score was close.

New York was in favor by only three votes, 30 to 27, and Virginia, even with Madison's pleadings, voted for the Constitution by only 89 to 79. Virginia, like Massachusetts, faced a strong constituency for a Bill of Rights. In fact, Madison's initiative later in producing the Bill of Rights is tied directly to John Leland, other Baptists, Presbyterians, and "enthusiasts" whose support for the Constitution was predicated upon the specific guarantees contained in the first ten amendments.

Spiritual roots require a constitution that will guarantee civil liberties and freedom of conscience, curtail governments' power, and insulate the judiciary from political power plays. This is true because of the theological premise that humankind has inherent rights with which the

state may not tamper. Fyodor M. Burlatsky, chairman of the Supreme Soviet subcommittee on human rights, recently led a delegation of Soviet notables to Washington to confer with their counterparts on the Committee for Security and Cooperation in Europe (the Helsinki Commission). He admits that "For all our history — not only the Soviet period — we have not known a liberal tradition, that is, the tradition that every man has inalienable rights that the state cannot take away." There's the rub. The Soviet system views rights as items provided the citizens by the state, while we have claimed "certain inalienable rights." We see such rights as limits on the power of government, not a concession of the state, and not even a fragile flower rooted in social contract which created the political state.

The Baptist understanding of human rights that called for a bill of rights was compatible with the view of Jefferson when he said, "The God who gave us life gave us liberty at the same time." In fact, the Baptist estimate of humankind, our doctrine of God, our understanding of sin, our beliefs about the state, our distrust of religion, especially in its institutional expression, all contributed to a harmony with the enlightenment philosophy and its advocates like Jefferson and Madison.

Glen Stassen, a professor at Southern Baptist Seminary, suggests that author Max Stackhouse (Andover-Newton Theological School) sees the human rights basket of the Helsinki Accords largely as the result of fundamental beliefs originating from the free church Calvinists in England in the 17th century, in other words, Baptists and Congregationalists.

Stassen, himself the son of Harold Stassen, one of this nation's premier champions of human rights and the only living signer of the United Nation's Charter, has traced the particular set of presuppositions that led Baptists and other dissenters to be so dogmatic in their demands for what became the first amendment to the Constitution. He insists on recognition of the spiritual roots for human rights. "Christians especially can testify that human rights belong universally to all people and transcend all governments, created not by governments but by God."

Dr. Stassen strongly recommends the 1984 Stackhouse book in which Stackhouse credits 17th century Baptists and Congregationalists with holding to seven key beliefs that make the struggle for human rights essential to being Baptist: moral order that is prior to the state and must be obeyed; God's dynamic involvement in our lives; political authority, separate from the church and not absolute; government based on consent and on a covenant that emphasizes peaceful ways to change the government by freedom of speech and assembly, freedom to participate in political campaigns, and separation of powers and checks and balances; humankind's creation in the image of God, bestowing every person with inalienable rights; and human rights not only for individuals but also for covenanting communities of people "joined together by choice and conscience. . . ."

So, as we celebrate the liberations of 1790 and 1990, join us on October 1-3, in the First Baptist Church of the City of Washington. As we probe and prowl through the history of ideas to understand the way we are, plan to be with us. Mark your calendar!

As we look ahead to the meaning of freedom in the 1990's and the years beyond, we shall also look back to *Freedom's Spiritual Roots* and Baptists and the Bill of Rights. □

# REVIEWS



## THE RIGHT TO SILENCE: Privileged Clergy Communication and the Law.

John C. Bush and William Harold Tiemann, eds. Nashville, TN: Abingdon Press, 3rd edition, 1989.

**B**ush and Tiemann's book, *The Right To Silence*, has achieved near-classic status since its original publication in 1964. The book explores all facets of what has been variously dubbed the "priest-penitent" or "clergy-communicant" privilege. Although the scope and operation of the privilege differ from state to state, the privilege generally accords a person the right not to disclose — and to prevent others from disclosing — in a legal proceeding confidential communications made to a priest, rabbi, minister, or other clergy. All fifty states and the District of Columbia have passed statutes which recognize some form of this privilege.

Justifying a third edition of their book, the authors note that, in the five years since the second edition was published, there have been more court cases dealing with the privilege than were decided in the nearly 20 years after the first edition. Thus, the authors claim that this book "stands at one of the busiest intersections where religion and the law meet." (p.7).

The book is written so that attorneys, clergy, and lay persons alike can profit from it. The book has many dimensions and can be read on several levels. It is, first, a history of the development of the privilege. The authors trace the seal (secrecy) of confession from its biblical roots, through the church fathers and papal pronouncements, to its development during the Reformation and post-Reformation eras.

Although the English common law recognized the privilege as early as pre-Norman times, it was abrogated after the Restoration in the mid-17th century. When the American legal system adopted the late-18th century English common law as its own, the privilege

was not imported into American jurisprudence. Thus, the privilege is now a creature of statutes in this country.

The authors also trace the development of the theology of confession. What had been public and communal in the early church became private and individualized. After the Reformation, confession became less of a sacrament and more of an urged discipline. What was once administered only by an official clergy could later be heard by any Christian under the doctrine of the priesthood of all believers.

The book is also a legal treatise on the privilege itself. Some states require that the privileged statement be made during a discipline or practice which is required to be confidential by the rules of the religious body. Others loosen that requirement to include discretionary confessions. Some shield only what is said by counselees, while others include the entire conversation. Some require that the statements be penitential or confessional in nature; others recognize the entire counseling episode, regardless of what is said. In most states the privilege is lost if the communication is disclosed to or overheard by third parties.

Although typically arising in the counseling ministry in a local parish, the privilege affects a wide variety of relationships. Bush and Tiemann explore the parameters of the privilege also in the work of pastoral counselors, and military and prison chaplains, mental health practitioners or therapists who also happen to be "clergy."

One of the most interesting and vexing problems in this area is whether, despite the privilege, pastors or counselors ever have an ethical or legal duty to warn or to disclose threats of harm to others. Generally, clergy need not disclose past criminal conduct. They may well be required to warn of threats of physical harm to third persons or disclose stated intentions to commit future crimes. Along these same lines, in many states there is a statutory exception to the general rule of confidentiality in cases of child or elder abuse which may require disclosure of information despite the privilege.

Finally, the book can be used as a convenient handbook. In the Appendix, the authors set forth the privilege statutes from each state. The Appendix also lists the child and elder abuse provisions and the extent to which these statutes condition or suspend the operation of the privilege.

The privilege also has constitutional implications. Although mentioned from time to time, the authors fail to treat this important angle systematically. Indeed, this is one of the few weaknesses to the book. For example, if the privilege is limited to those church traditions with sacramental, auricular confession (but not extended to those who view confession simply as a desired practice), does the state endorse or promote one religion over another in violation of the establishment clause? Or, if the privilege attaches only to communications with ordained, credentialed clergy, has the state burdened with the free exercise of religion in church traditions which have a less structured notion of "clergy?" Does the requirement in some states that the communication be penitential create undue entanglement between the church and state as the state seeks to differentiate penance from the larger pastoral counseling context?

Despite this limitation, everyone will benefit from reading this concise, information-packed, and well-written book. But it would be particularly helpful for pastors, priests, rabbis, and other pastoral counselors. Probably more than any other profession, they are caught up daily in a dizzying, sometimes ambiguous, swirl of legal and ethical cross currents which impact their professional chores. Should a priest respect the privilege and keep quiet even when disclosure could prevent a suicide or physical injury to third parties? Should a rabbi remain silent and deprive injured litigants of the right to *all* the evidence bearing on the issue being tried? Should a minister break the privilege and disclose confidential information, risking being sued himself or chilling the pastoral counseling process by giving potential counselees cause to doubt the con-

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