

# REPORT from the CAPITAL



We have not been placed upon the courts in effect to impose our will. We have been placed upon courts to impose the will that lies behind the meaning of those who framed and, by their adoption, intended to impose the law and the constitutional law of this country upon us all.

JUDGE DAVID H. SOUTER

# REPORT from the CAPITAL

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

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**Cover:** New Hampshire Judge David H. Souter, President Bush's nominee for the U.S. Supreme Court, testifies before the Senate Judiciary Committee. By a 14-1 margin, the committee recommended confirmation of Judge Souter. (Photo, Mike Theiler, Reuters).

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## Judge Souter: Answers incomplete

The Baptist Joint Committee was not part of the parade of special interest groups that came to challenge Judge David Souter's nomination to the U.S. Supreme Court. These nominations are not made in a political vacuum, however. All kinds of special interests are involved and there's little doubt that the president had more than a few he favored when he chose Judge David Souter. Beyond the announcement of his nominee, President Bush provided little information to support his choice.

Testifying before the Senate Judiciary Committee, Judge Souter reinforced the impression that he also is a person of considerable privacy. In some areas of questioning, the substance of his responses left his interrogators wondering. It was obvious, however, that he benefited greatly by the Bork experience. Both conservative and liberal interests departed the Hart Senate Building unhappy over Judge Souter's reticence to disclose more of his judicial philosophy. The Baptist Joint Committee's attention was focused on the church-state issue as it was posed by senators Arlen Specter and Patrick Leahy. We reproduced a fragment of that interchange in this issue.

**The Hon. Francis A. Dennis**, former Liberian Ambassador and the corresponding secretary of the Liberian Baptist Missionary and Educational Convention, writes about the risk posed to that nation's Christian values by the appointment of a Moslem-oriented peace-keeping force. Social disruption over the past decade, heightened by the present civil war, has seen the indiscriminate shooting of innocent civilians; more recently came the announcement of the death of President Doe.

Baptists in America have a special interest in and awareness of the political situation in Liberia because of their relationship to Liberian Baptists through the Baptist World Alliance. Liberian Baptists in 1967 gained global prominence when then-president, William R. Tolbert, Jr., was elected president of that body. *The National Baptist Voice Newspaper* (NBC, U.S.A., Inc.) in a report by the head of its Foreign Mission Board, William J. Harvey III, raised the issues of the survival of Liberia and restoration of the rule of law in that nation.

**James Dunn** responds to inquiries from across the country regarding the state of the Baptist Joint Committee. His "reflections" are positive in nature and upbeat over the future prospects of this office because of the financial commitments being received from throughout the Southern Baptist Convention. Baptists will maintain their strong emphasis on religious liberty and church-state separation. Brent Walker's **VIEWS** addresses a current issue, charitable deductions. Staff is working with others to dissuade government from settling its deficit dilemma at great disservice to religious and service-oriented organizations. □

Victor Tupitza



● **Acclaimed by educators** and church-state separationists as a model for the rest of the nation for teaching about religion in the public schools -- North Carolina's pioneer emphasis on the role of religion in history and culture -- appears to have fallen victim to state's slashed educational budget and complaints by teachers that they have not been adequately trained for the task. Such training must be done on a hit-or-miss basis on the local level.

"The vast majority of teachers are trying to be fair and do their best," said Charles C. Haynes, project director of the Americans United Research Foundation in Washington. "But even among those fair-minded teachers," he said, there can be "mistakes that they don't even know they're making."

The Baptist Joint Committee shares a leadership role in the endeavor to remedy the absence of references to religion in school textbooks. Several independent studies brought that fact to national attention, and led to the formation of a coalition that prepared guidelines on teaching religion and the observance of religious holidays in public schools.

● **In light of the landmark *Mergens* decision** this summer and with the advent of a new school year, questions about the do's and don't's of Equal Access have proliferated. The Baptist Joint Committee is responding to these questions by assuming a leadership role in revising the Equal Access Guidelines, first published in 1984.

Along with Americans United Research Foundation, the BJC brought together a coalition of religious and educational groups to have input into the new guidelines. Some of these groups were early Equal Access supporters and signators to the original guidelines. Others opposed Equal Access, but recognize the present need for workable guidelines.

Oliver S. Thomas, general counsel of the BJC, has drafted a revision and the coalition has already met once to discuss that draft. Although uniformity of opinion in such a diverse group can hardly be expected, the participants worked amicably and in a spirit of compromise to produce helpful guidelines.

"Whatever our personal opinions were about Equal Access," claimed J. Brent Walker, the BJC's associate general counsel, "everyone's desire was to help teachers, principles, school boards, and parents to better understand the Equal Access Act and implement it in a way that benefits the student."

The coalition hopes to published the revised guidelines in the near future. They will aim to answer specific and practical questions that will arise under the general language of the statute as interpreted by the court. Anyone desiring a copy may do so by contacting the BJC directly.

● **The Baptist Joint Committee** has written Secretary of Defense Richard Cheney in response to a policy that restricts the mailing of "any matter containing religious materials contrary to Islamic faith" to service personnel involved in Operation Desert Shield. Bibles intended for personal use are understood to be among the literature banned out of deference to Saudi mail regulations and religious sensibilities.

James Dunn, citing the provisions of the Universal Declaration of Human Rights, Article 18 (1948), urged Mr. Cheney "to move as quickly as possible to remove or ameliorate the Saudi mail regulations which stand in the way of our service personnel's free exercise of religion." Mr. Dunn wrote, "While we can certainly understand the desire to be sensitive to our host nation . . . The fact that our service personnel are in an area of the world not protected by the free exercise rights in our Constitution does not mean they have lost their religious freedom."

● **A "contract"** on the lives of Anglican Bishop Desmond Tutu and that of secretary of the South African Council of Churches, Frank Chikane, was never carried out but brought to light the existence of the South African army's covert Civil Cooperation Bureau. Former policeman, Hendrik Marinus Thiert had said he would "think about" the offer but never followed it up. The Civil Cooperation Bureau, whose existence was unknown until January even to President Frederik W. deKlerk, was formed to infiltrate anti-apartheid and black nationalist groups.

# Judge Souter in Senate Hearings

This testimony was excerpted and abridged from hearings before the Senate Judiciary Committee. The substance of the questions by senators and responses of Judge David H. Souter have not been altered. Proceedings were transcribed by *Federal News Service* ©

**Senator Patrick J. Leahy, Vermont:** When you were Attorney General of New Hampshire, then-Governor Thomson issued a proclamation ordering that the flag over the State Capitol and flags at other state buildings be flown at half-mast, and do this on Good Friday to commemorate the death of Jesus Christ ... My question is this: do you agree that government has the obligation, under the First Amendment, to remain neutral toward religion?

**Judge David H. Souter:** I accept that as a personal principle. I recognize that it is a principle which is subject to much ferment at the moment in trying to delimit its contours. I recognize that there is a school of thought which has received articulation within the present Supreme Court that the establishment clause was restricted to a more limited purpose, that it was restricted to the purpose of avoiding the literal establishment of a state religion and was restricted to avoiding the expression of preference as between sects, which, I guess, in a historical context, would, of course, be Christian sects or denominations ...

And I think the only thing that I could say to you with respect to that or with respect to someone who was pressing that issue before the court is that, if I am there, on any issue I will listen respectfully to it.

**Sen. Leahy:** I appreciate that, and I would hope that all justices would listen to the arguments and consider them; but you spoke of your accepting it as a personal principle in your answer. Do you accept it as a legal principle?

**Judge Souter:** I certainly accept it as the prevailing law of the United States, as it has been during, for practical purposes, my professional legal lifetime, and I do not have, at this time, either an agenda or a personal desire to bring about a reexamination of that position.

The great difficulty that has come in establishment clause cases has come from the difficulty of applying the three-part *Lemon v. Kurtzman* test, and the concerns that have been raised about that



naturally provoke a search, not only perhaps for a different test of the standard which we think we are applying today, but a deeper examination about the very concept behind the establishment clause. But if I were to go to the Court, I would not go to the Court with a personal agenda to foster that; neither would I go in ignorance of the difficulty which has arisen in the administration of *Kurtzman*.

The only thing I was going to add is in the oft-noted conclusion, that we can find circumstances in which there seems to be an opposition between the theory of the establishment clause and the theory of the free exercise clause. And we have to recognize that as a problem for the Court to deal with.

**Sen. Leahy:** *Kurtzman*, like *Abington*, had the controlling test for determining whether government action violated the separation of church and state, was the secular purpose and effect test. That was also the controlling law or controlling test at the time you were Attorney General, is that correct?

**Judge Souter:** Yes.

**Sen. Leahy:** Now the governor issued the proclamation. You did not. I assume that you were not involved in the drafting of the proclamation, is that correct?

**Judge Souter:** I was not involved in the drafting of the proclamation that was litigated in that case. \*\*\*

**Sen. Leahy:** Now, the proclamation had references to the Christian religion, reverently observing Good Friday, and flag lowering. How could those be considered secular in light of *Abington* and *Kurtzman*?

**Judge Souter:** Let me, if I may, divide my answer to that question in two, Senator. I think I have to respond to the two different senses of that question. The

first is: How could I, as counsel for the state of New Hampshire, take a position in defense? Secondly, how would I, if I were a judge with the identical issue before me today, tend to view it? And if I may, I'd like to respond to you with those two distinctions in mind.

As to the first question, there was my responsibility as in counsel in any case in which I was representing the state speaking through the governor. And that is, was there a position which could be advanced on behalf of the position that he had taken consistently with the law as it existed, or as it might reasonably be argued that it ought to be, which was not a frivolous or wholly unreasonable position?

I believe there was, and took such a position. Essentially, the arguments which the lawyers in my office made were that although there were, of course, references to Jesus Christ as a religious figure, the tenor of the proclamation was to call to mind a set of moral principles which transcended the Christian religion.

So I took the position of the Court of Appeals position [which had overruled District Judge Skinner, who held against the state on that position] as a vindication of the one point which is most significant for my role, and that is: did I have a reasonable position to advocate in that case?

**Sen. Leahy:** Do you feel that the lowering of the flag met the secular purpose and effect test?

**Judge Souter:** If I were sitting as a judge today, I would probably have ruled, given that proclamation, the same way that Judge Skinner ruled.

**Sen. Leahy:** You made reference to the fact that as counsel for the governor you were upholding his position ... [B]ut you also had a oath of office to uphold the Constitution as attorney general. At what point does that oath say — and make you say to the governor — "This is an unconstitutional action"?

**Judge Souter:** The point at which it is clear that it is an unconstitutional action, and that there is nothing that can reasonably be brought before the court for adjudication.

There is a great difference between the kinds of judgments which an attorney general must make when he is asked for an opinion as to what, in his judgment, is the most appropriate and most likely constitutional action, on the one hand, and when he is asked to fulfill his role as

state's counsel, when the elected representatives of the people have taken a different position.

**Sen. Leahy:** You handled a case, *Wooley vs. Maynard* [as attorney general] that went all the way up to the U.S. Supreme Court. A couple, who were Jehovah's Witnesses, had moral and religious objections to the state license plate, "To Live Free or Die" motto, and they blocked it out. They felt so strongly about it, they ended up being prosecuted three times. I believe Mr. Maynard served 15 days in jail, rather than compromise his beliefs.

Now, when they challenged the state law that was prosecuting them, you opposed the Jehovah's Witnesses. But the Supreme Court, in an opinion written by Chief Justice Warren Burger, held the First Amendment prohibited New Hampshire from requiring these people to put the state motto on their license plate. In fact, the Chief Justice said, "The First Amendment protects the rights of individuals to hold a point of view differently from the majority and to refuse to foster in the way New Hampshire commands an idea they find morally objectionable." But in your brief, you dismiss the actions of the Jehovah's Witnesses as "bizarre behavior" and as "pure whimsey," even though they had been willing to go to jail for this.

What is your view of Chief Burger's statement about the First Amendment as protector of the rights of minorities, even very small minorities, who hold views different than the majority?

**Judge Souter:** There is no question about its correctness. There was no question about its correctness at the time of *Maynard v. Wooley*. The First Amendment would be worthless if that were not true. This issue in *Maynard v. Wooley* was whether requiring the display of a license plate with that motto was in effect requiring the person driving the car to appear to adopt or to affirm the truth or the soundness of the statement of the motto. I did not in fact believe that it was reasonable to construe a license plate requirement in that way, and in fact, the New Hampshire Supreme Court had already ruled on exactly that issue. It held that it was not, for First Amendment purposes, that kind of an affirmation that would be violative of the First Amendment. \*\*\*

So we might disagree about the application of the principle in that case, but the soundness of the principle is beyond dispute, and it was beyond dispute then.

**Sen. Leahy:** Thinking back on that, wearing your judge's hat, for example, would you regard the interests of the state in putting its motto on license plates to be so compelling that it would

justify prosecuting people who had religious objections to the motto, whatever it might be?

**Judge Souter:** The need to identify a motto on the plate as opposed to identifying numbers and letters by which the car can be identified is, of course, not a particularly compelling interest and it was not so regarded by the court at the time.

**Senator Arlen Specter, Pennsylvania:** The beginning of the Bill of Rights refers to freedom of religion: The Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. I have two questions. Let me put them both to you at the start. The establishment clause — and this goes to general approach — was defined by Justice Black in *Everson*: "In the words of Jefferson, the clause against establishment of religion by law was intended to erect a 'wall of separation between church and state.'" And the words, "a wall of separation between church and state" were Jefferson's.

There is a sharp distinction which Chief Justice Rehnquist makes in *Wallace v. Jaffree* where, referring to the separation between church and state, the wall of separation, Chief Justice Rehnquist says it should be frankly and explicitly abandoned. I believe, in terms of a general approach on the establishment clause, trying to get the general philosophy, that that's as good a starting place as any; and that's the first question on the First Amendment.

The second question goes to the free exercise clause and the opinion of the Court in *Oregon v. Smith*, where Justice O'Connor is very direct in strong criticism, saying that, "The majority opinion dramatically departs from well-settled First Amendment jurisprudence, unnecessarily removes the question presented, and is incompatible with our Nation's fundamental commitment to individual religious liberty." And she says that because of the essence which she cites a few pages later, "because there is the failure to require the government to justify any substantial burden on religiously motivated conduct by a compelling state interest, and by means narrowly tailored to achieve that interest."

My second question to you is, do you agree with Justice O'Connor that when you impede on the exercise of religion, that there ought to be those two factors — a compelling state interest and means narrowly tailored to achieve that interest?

**Judge Souter:** Let me start with your first question on the establishment clause and the appropriateness of preserving Justice Black's adoption and the Court's adoption of the Jeffersonian view

of a wall of separation.

The difficulty, I think, that is focused by the Court today comes to the fore because of the difficulty in applying the *Lemon v. Kurtzman* test. But for that difficulty, there is some question in my mind as to whether there would be the present ferment to rethink the very conceptual foundation of the establishment clause, which as you indicated a moment ago, Chief Justice Rehnquist has been doing in some of his own opinions.

I think, like a lot of people approaching the establishment clause, I am loath to talk about scrapping *Lemon v. Kurtzman* without knowing what comes next.

With respect to Chief Justice Rehnquist's position, I have never done personal research on the issue of original meaning on the establishment clause. I would receive evidence on the issue respectfully, if there were reason to present it before me, but it is not something upon which I can pass a judgment at this point.

What I think I can helpfully say is the difficulty which I think those who do indeed adopt the Jeffersonian view must face on the *Lemon v. Kurtzman* test. And in fact, it's a difficulty which has ultimately nothing to do with the final conceptual rethinking that may go on on establishment, if indeed it does go on. \*\*\*

**Sen. Specter:** I don't think that a broad analysis or treatise is required, consistent with *Lemon v. Kurtzman*, to make an answer to a fundamental question about whether you agree with the Jeffersonian principle articulated by Black and held by the Court for a long time about the wall of separation. \*\*\*

**Judge Souter:** I have had no reason personally, in either research or philosophy, to want to reexamine the view which was expressed in *Everson*. But my concern is that that view has been identified with the *Lemon v. Kurtzman* test. And we have to face the fact that in the implementation of that view, there is a difficulty which sooner or later the Court has to resolve.

**Sen. Specter:** I'll take that as a qualified yes. How about the free exercise question?

**Judge Souter:** On the free exercise question I have to be circumspect to a point, because I believe that the *Smith* case is subject to a motion for rehearing presently before the Court. And without any question, I think that the development of that issue is something that, if I were confirmed, would come before me.

But I think there are some things that, with a reasonable degree of specificity, I can say. The first is that I do not come here, and prior to the decision of that

Continued on page 14

## VIEWS OF THE WALL

J. Brent Walker  
Associate General Counsel



One year ago in this column I wrote about taxes. Specifically, I lamented the fact that taxpayers who take the standard deduction (i.e., those who don't itemize) are not allowed to deduct their charitable contributions, including gifts to churches and religious organizations. I argued that the tax law should be restored to its pre-1986 wording that allowed non-itemizers to take deductions for charitable contributions. Since then, legislation has been filed in Congress that seeks to allow such deductions.

Now, the other shoe is about to drop. We are faced with rumblings, if not formal proposals, that would eliminate the charitable deduction for *all* taxpayers—even those who itemize their deductions. In an effort to reduce the mounting federal deficit and to meet Gramm-Rudman targets, members of Congress and the Bush Administration are considering this drastic measure. The street word is that no deduction is sacred. Everything is on the table.

The participants in the so-called "budget summit" must hear our message loud and clear: taxing charitable contributions, including gifts to churches and religious organizations, would be foolish, unfair, and wrong. Don't tax charitable contributions!

Although a "Gilded Age" for some, the 1980's were lean years for public service and non-profit organizations. Despite the Administration's metaphorical "thousand points of light"—encouraging private sector voluntary service—public policy has not kept pace with the government's rhetorical flourishes.

For example, since 1982, government's allocation to non-profit organizations to fund public service projects, such as job training and child health, was reduced \$32.8 billion, exclusive of Medicare and Medicaid. During the same period, federal human service programs were reduced to the tune of over \$120 billion, with the expectation that essential services would be picked up by voluntary organizations and other governmental entities. On top of this, the Tax Reform Act of 1986 hit the non-profit, voluntary sector with destructive force because of: (1) the elimination of the charitable deduction for some 72 million non-itemizing taxpayers, (2) changes in the treatment of gifts of appreciated property to subject them to the Alternative Minimum Tax, and (3) the direct correlation between lower tax rates and the

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size of charitable contributions.

It is a curious twist of logic to expect religious and charitable organizations to shoulder more of the load of providing public and social services while at the same time reducing the tax incentive for charitable giving. Brian O'Connell, president of Independent Sector, a Washington-based coalition of over 700 foundations and non-profit groups, has observed: "For an Administration and Congress committed philosophically and practically to expansion of local volunteer effort, it is a contradiction for government to expect the voluntary sector to be the source of both greater cuts and increased services." Continuing, he stated, "Cutting back on the deductibility of charitable contributions not only would exacerbate the difficult problems charities presently face in meeting a wide range of human needs, but it is not consistent with long-standing public policy which has always sought to foster private initiative for the public good."

There can be little doubt that charitable giving is extremely sensitive to tax policy. For example, the 1986 Tax Reform Act had an especially adverse impact on contributions by upper income taxpayers. Those with incomes of \$1,000,000 or more gave an average of \$200,000 in 1986; in 1987, they gave only \$93,000. For the seven previous years, giving had never been less than \$138,000 for that income group. Moreover, the giving by lower and middle income taxpayers suffered dislocations after 1986. According to IRS data, charitable contri-

butions by non-itemizers increased by 40% in 1986—the only year non-itemizers were permitted to deduct *all* their charitable contributions. The figure fell off the next year when this deduction was taken away.

The elimination or capping of some deductions is a valid avenue to pursue in attempting to reduce the deficit. These, no less than tax increases, should be considered. However, it is particularly unwise and inequitable to eliminate or cap the deductibility of charitable contributions. Charitable contributions are unique. Unlike most deductions, these do not represent dollars saved or consumed or which in any way inure to the benefit of the taxpayer. Instead, they represent taxpayers' decisions to spend less on themselves and more on other people. It is patently unfair to require payment of taxes on money that the taxpayer has freely given away for charitable purposes.

Another proposal that has apparently been discussed is one that would put a cap or ceiling on *all* deductions. That is, the taxpayer could deduct up to a certain aggregate amount and then pay taxes on the rest. This kind of proposal would be equally ill-advised. As mentioned, charitable giving is particularly sensitive to changes in tax policy. If a cap is enacted on all deductions, it will have a much greater impact on charitable giving. This is so because charitable deductions are, in a very real sense, the only deduction that a taxpayer has much control over. There is little or no control over the amount of mortgage tax deductions, state and local taxes, or medical expenses, to name a few. An across-the-board cap will motivate taxpayers to improve their financial situation by lowering their charitable contributions so as not to exceed the cap. Non-profits will take the brunt of the cuts, particularly the religious community, which received nearly half of the total charitable giving in 1989.

The Baptist Joint Committee is working hard to convince the Administration and the Congress of the need to maintain the present tax position with respect to charitable contributions and even to expand it to include non-itemizing givers. We support the full deductibility of charitable contributions. If you feel as strongly as we do about this matter, write or call the President, your senators, and your representative as soon as possible. □



There's a "fundamentalism" that is simply honest and faithful to the Bible, and another "Fundamentalism" that is the stuff of theological terrorism, and spiritual and political tyranny. What irony, then, that the religious radicals called Baptists, who contributed so significantly to the Bill of Rights should now be represented among its detractors on the eve of the bicentennial of that document. Pulitzer Prize-winning cartoonist Doug Marlette of *Newsday* has captured the essence of the way the world sees Baptists. (JMD)

# News in Brief



## Court's decision leads to mixed views on Equal Access

DALLAS  
The recent Supreme Court ruling affirming "equal access" for religious clubs in public secondary schools offers Christian young people an unprecedented opportunity to bring the gospel to their campuses, according to a Texas Baptist youth Sunday School consultant.

At the same time, on-campus religious groups must be truly student-initiated and not a covert means of proselytizing by adult outsiders, warned J. Brent Walker, associate general counsel of the Baptist Joint Committee on Public Affairs.

Ruling in *Westside Community Schools v. Mergens*, the Court in early June upheld the constitutionality of the 1984 Equal Access Act that makes it unlawful for any public secondary school which receives federal funds and has a "limited open forum" to discriminate against student religious groups that meet federal guidelines.

"Equal access is an open door, and we must run through it," said Chris Lieburn, the consultant of the Baptist General Convention of Texas. "If our young people don't seize the opportunity for Christ, others will enter with some kind of tainted gospel."

Larry Tucker, superintendent of the Leonard Independent School District in north Texas, believes the Supreme Court simply affirmed a policy already in place in many small schools throughout the South. These schools, he said citing a Fellowship of Christian Athletes chapter, have been meeting at Leonard High schools for about eight years without controversy.

In larger, urban districts, however, the situation differs. The school board in Irving, Texas, for example, rejected the proposed creation of a limited open forum in Irving school district high schools. Following the complaint of one parent, it decided to prohibit any non-curriculum related student groups from meeting pending the *Mergens* decision.

Voting with the majority, Paul Dunn, a member of the Las Colinas Baptist Church in Irving and a Sunday School teacher there said, "I feel very strongly that the burden of a child's religious education lies with parents and with our churches."

BJC attorney Walker cautioned against

youth ministers practicing "remote control" of on-campus religious group meetings. "It is important for youth ministers to live up to the spirit, as well as the letter of the Equal Access Act," he said.

"The 'spirit' of the act is to protect students' right to speech and assembly and to draw a distinction between protected 'student speech' on religious matters and prohibited 'state speech,'" Walker explained.

Nothing in the 1984 Act prohibits students from inviting other students to on-campus Bible studies or leading them to faith in Christ as a result of the religious meetings, he said. Nor, said Walker, is there any prohibition of student groups from being identified with a particular church or denomination. BP

## Religious lit. in schools a rising church-state issue

NEW YORK  
Distribution of religious literature on public school campuses is expected to emerge as a major church-state battle during the new school year.

"I think distribution of Christian literature in schools will be the legal issue of the '90s, religious rights" attorney Jay Sekulow told Religious News Service. Sekulow, of Christian Advocates Serving Evangelism (CASE), represented students in Omaha, Nebraska, where students were upheld by the Supreme Court's decision in a case testing the Equal Access Law.

Confrontation, often leading to lawsuits, already has occurred in the Orlando and Dallas areas and in small towns such as La Junta, Colo., where school authorities told students they could not distribute Christian publications on school property.

In an Atlanta-area high school case, Mr. Sekulow is challenging decisions that told students they could not have a Bible at school, wear items having Christian content, or pass notes about a Christian group's meeting.

Apparently there are no widely accepted norms for handling literature distribution in public schools. In some cases, authorities base their decision on grounds of separation of church and state. In other instances, cases have reached the federal court level, where judges in some states have ruled that students have a constitutional right to distribute religious literature.

Mr. Sekulow believes the high court drew a relevant distinction in the Omaha case. He cited part of the decision that states: "There is a crucial difference between government speech endorsing religion which the establishment clause forbids and private speech endorsing religion, which the free speech and free exercise clauses protect."

Whereas in Colorado Springs, where a school authority told students they may not distribute publications in high school, a federal judge in Colorado ruled that students have a constitutional right to hand out religious literature.

At least three other federal judges in Illinois and Pennsylvania have made similar rulings, said Tim Hastings of the Caleb Campaign staff. Mr. Sekulow filed a lawsuit in Florida where students were prohibited in May from distributing literature. The Seminole County school board near Orlando in August voted to allow distribution with some limitations.

A lawyer for the American Jewish Congress, Marc Stern, said his organization opposes distribution of religious literature in public schools if it is done in a way that takes advantage of having a "compelled audience."

He said his organization has joined school authorities in a Dallas case to oppose students handing out Christian literature to students getting off school buses and using portable loudspeakers to announce Christian messages.

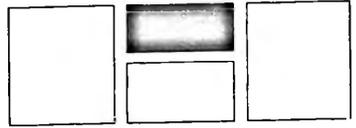
Mr. Sekulow believes controversy over the distribution of religious materials will escalate because it is "the logical leap from the Bible clubs" issue. RNS

## Bible reading dispute polarizing Cal. community

BENICIA, Calif  
A California mayor's refusal to issue a statement proclaiming 1990 the International Year of Bible Reading has touched off a church-state clash raising charges of anti-Semitism.

The battle began last spring when Mayor Marilyn O'Rourke of Benicia, California, turned down a request by a local minister to issue the proclamation. Although such statements have been issued by President Bush and the governors of 36 states including California, Mayor O'Rourke declined on grounds of church-state separation.

Richard W. Shafer, a member of the City Council who describes himself as a



born-again Christian, brought the matter to a vote of the council, where it passed 3-2 over the mayor's opposition.

Several citizens have agreed to be plaintiffs in a suit against the city challenging the constitutionality of the measure.

"This has caused a permanent breach in Benicia that will not be able to be remedied," said the mayor, who is Jewish. "It says that you are unwelcome here, that this is a Christian town.

The Rev. Cameron W. Wilson of the Calvary Community Church in Benicia, said that if "Jewish organizations" continued to challenge things like the Bible reading proclamation, "they can only expect to generate a backlash by people around the world against Jews." □

## Suit charges NEA with hostility toward religion

WASHINGTON

The Rutherford Institute has filed a lawsuit against the National Endowment for the Arts, charging the federal agency with taking a position of "open and notorious hostility toward religion" in violation of the First Amendment to the Constitution.

The suit, filed in August in U.S. District Court in Washington, says that by funding art that allegedly denigrates Christianity, the arts agency has violated the establishment clause, which requires government neutrality toward religion.

As an example, the lawsuit cites a \$15,000 NEA grant for a catalogue and exhibition by New York artist David Wojnarowicz titled "Tongues of Flame." The catalogue included a depiction of Jesus as a drug addict with a hypodermic needle in his arm.

According to the lawsuit, the federal funding for the catalogue conveys "a message of hate and animosity toward institutionalized religion" that "bears the direct involvement, sponsorship and endorsement of the federal government." □

## Court will hear appeal of Falwell tax-free bond

The Virginia Supreme Court has agreed to hear an appeal of a ruling by a circuit judge that the Rev. Jerry Falwell's Liberty University is eligible for a \$60 million tax-free bond issue.

Circuit Judge Mosby Perrow ruled in March that the university's primary purpose is to provide a liberal arts education

and not religious indoctrination. He said the sale of the bonds would not constitute state aid or violate the establishment clauses of the state or federal constitutions.

But the Rev. Nathaniel Habel and Haynie Kabler, two residents of Lynchburg, Virginia, where the university is located, say the school continues to be an integral part of Mr. Falwell's religious ministry despite its effort to downplay some of its Christian distinctives.

They say all student applicants are required to submit religious testimonies and students at the school must attend religious worship services several times a week.

Americans United for Separation of Church and State is providing legal assistance for the plaintiffs. "Jerry Falwell has the right to use his university for religious training, but he has no right to force the taxpayers of Virginia to underwrite discriminatory activity," said Robert Maddox, executive director of Americans United. □

## Held to be crucifixion, painting ordered removed

A painting that has been on display in the auditorium of the Central School in Schuylerville, N.Y., since 1965 has been ordered removed by Federal Judge Howard G. Munson.

The 10-by-12 foot artwork by former student Craig Martin was ruled by Judge Munson to be a figure whom the average observer would believe to be Jesus Christ at his crucifixion.

The decision supported the objection of a couple who are raising their children in the Jewish faith and believed that the display of the painting implied the schools' endorsement of religion. □

## Festival cancels group over Bible-burning act

NEW YORK

The director of an arts festival in Lewiston, New York, that receives funds from state and federal agencies canceled a performance scheduled for September 1 after learning it was to have included the burning of Bibles.

David P. Midland, president of the Artpark festival near Niagara Falls, said he canceled the performance by a group called Survival Research Laboratories because the Bible burning was "not the performance we contracted for."

He said he learned that the group's posters in San Francisco advertising the event had urged people to donate Bibles for the purpose. Noting that "Bibles can always be obtained for free from hotels, churches ... your parents' house," the poster added, "Be advised that in certain instances theft is a moral obligation."

Tom Conroy, a spokesperson for Gov. Mario Cuomo's press office, said the cancellation was "not a question of censorship." He said that the governor believes in freedom of expression, "but it can be consistent with that philosophy not to hire someone to perform." □

## UCC loses battle to reverse broadcast deregulations

WASHINGTON

The United Church of Christ has lost a four year legal battle to reverse an important part of the deregulation of broadcasting that began during the Reagan administration.

The denomination, long a leader in communications policy issues, in 1986 challenged federal rules that have weakened the traditional obligation of broadcasters to air public-interest programming.

The rules, upheld by a federal appeals court here in August, allow applicants for radio and television licenses to make only general promises to comply with their public service obligations.

The case stemmed from the denomination's efforts to block the awarding of licenses to the Cleveland and Baltimore subsidiaries of a home shopping network which sells merchandise via TV.

Beverly J. Chain, director of the church's office of communication, said the court's decision means that "Groups like the United Church of Christ will now have to turn to Congress and ask for legislation that will protect the public from any more of the Reagan administration's deregulatory fallout." □

## Cemetery cross divides on political-religious lines

U.S. District Judge Edward Dean Price ruled that a public cemetery cross rising to the height of 75 feet creates a "political division along religious lines" in violation of the Constitution and must be removed.

Earlier, members of the cemetery board had refused to remove the cross, denying that it was a religious symbol. □

# Liberia and the Christian Faith

Following the American Civil War — when freed African Americans could not earn a livelihood; when they were denied equal rights; when they could not enjoy the privileges granted to citizens in the great "American Democracy;" when they were barred from every avenue of advancement in the land of their birth for which they and their fathers gave their strength and life to build into a great state — they thought deeply of how their forebears were forced to leave their native Africa to travel thousands of miles in cattle ships to help build the economic infrastructure of an alien race. They thought of the contributions of eight generations of black people that had aided in making America great.

Their thoughts undoubtedly also turned to Liberia, a nation founded in 1822 on the West Coast of Africa by the American Colonization Society, a group composed of white and black Christians. The group included such stalwarts as Supreme Court Justice Bushrod Washington, James Madison, Paul Cuffe, General Andrew Jackson, House Speaker Henry Clay, Treasury Secretary William Crawford, Congressman Daniel Webster, Francis Scott Key, and the Reverends Robert B. Finley, Lott Carey, Ralph R. Gurley, among many others.

This article was prepared by the Honorable Francis A. Dennis, former corresponding secretary of the Liberian Baptist Missionary and Educational Convention. Mr. Dennis has served as Liberia's Ambassador to the U.S., Canada, the United Kingdom, the Soviet Union, Poland, and Cote d'Ivoire. He is a member of the First Baptist Church of Washington, D.C.

The motivations of those who organized the Colonization Society were decidedly mixed. Some viewed emigration as a convenient device to resolve the delicate question of race. Supporters, such as Robert Finley, a Presbyterian minister from New Jersey, William Thornton, a leading Quaker from New York, John Caldwell of the American Bible Society, and a host of Baptist, Methodist, African Methodist, Congregationalist and other Protestant spokesmen, saw the resettlement of African Americans as a vehicle for Christianity for the spreading of the Gospel to Africa. Others, moved by secular humanitarian considerations, took the position that the liberated African Americans were capable of improvement, self-government and self-determination.

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Liberated African-Americans were capable of improvement, self-government and self-determination.

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Before the first emigrants sailed for Africa in 1821, they invoked the blessings of the Almighty God on their pilgrimage, and pray unceasingly for divine guidance and direction. While aboard ship, they organized the first Christian Church — Providence Baptist church. Many of the early leaders of Liberia were influential clergymen who had a strong missionary orientation.

In more than 150 years of its existence, Liberia has managed to respect and live in amity with her many ethnic groups, and has maintained the principle of religious freedom guaranteed by the Constitution.

The church and the government have always worked hand-in-hand for the development and advancement of the Liberian people. Most of the social, political and economic changes in Africa today were motivated by Christian



teachings. From the beginning, Liberia fostered public education within the limits of her meager resources. When the government lacked the necessary financial resources, the Christian churches established schools and built hospitals and medical clinics to meet the needs of soul, mind and body. More and more of the African American settlers accepted children of the various tribes into their homes, where they trained and educated them. Successive Liberian leaders have affirmed their commitment to bring the tribal people into the mainstream of Liberian society, and the major Protestant denominations supported this commitment.

The United States Congress had appropriated \$100,000 to resettle freed African Americans. Almost all of this amount was spent on the charter of ships to transport the emigrants, and very little for setting up, developing and administering a government. There were no blueprints and designs for establishing a government whose future leaders had no prior opportunity to participate in organized government, or to know the rights and privileges of citizenship. Yet, by 1847 Liberia had built herself into an independent constitutional republic. Her courts of justice were equally open to all for the redress of grievances, for the remedy of injuries and for the punishment of crimes. Her churches for the worship of her Creator bear testimony to her piety and to her acknowledgement of the Providence of God.

Despite her size and limited resources, Liberia has used diplomacy and persuasion to provide unparalleled leadership in Africa. The Organization of African Unity, the African Develop-

# Churches face compliance with new disabilities law

By Kathy Palen

ment Bank and the Economic Community of African States were all originally proposed by the Liberian government. It was the first African state to be elected to the Security Council of the United Nations.

The present civil war, which began in Nimba County, northern Liberia, last December, places Liberia's future and its historic Christian values at great risk. In August, the Economic Community of West Africa (ECOWAS) sent in a peacekeeping contingent of some 3,000 troops made up of men and women from Nigeria, Ghana, The Gambia, Sierra Leone, Guinea and Togo to help bring hostilities to an end and stop the massacre of innocent civilians. Five of the six contributing states are predominantly Moslem-oriented. Liberia has a strong affinity to Christianity. The Mandingoes, a Moslem people, are one of the parties to the Liberian conflict. Historically, the Mandingo tribe resented the entry of Christian missionaries in the Northern interior of Liberia because of their efforts at conversion and the ultimate disruption of the Mandingo monopoly over trade in that region. Moreover, the establishment of Christian mission stations in the northern towns of Ganta, Bolahun, etc., serve as bulwarks against the southern penetration of Mandingoes and other Moslems.

This participation by five Moslem-oriented nations in the Liberian conflict must not be taken lightly. It could give the Moslems their one great "opportunity" to influence the course of events in the next few months, and consequently, the future of the Liberian nation.

With the expansion of Islamic influence around the world generally, and in Africa in particular, the involvement of the five Moslem states in the destiny of Liberia raises the question of how objective and fair they can be. Therefore, it is important that the nations of Christianity examine this aspect of the peacekeeping efforts, call attention to the probability of undue influence, and maintain vigilance over the situation before it is too late and a century and a half of missionary and evangelical work comes to halt. Christian principles remain the cornerstone of public policy in Liberia, and our Christian values must be maintained in order to give us strength to face the 21st century with renewed hope. □

Churches and church-related organizations can be affected by a new law that provides broad anti-discrimination protections to individuals with physical and mental disabilities.

Those entities should take several steps to ensure compliance with the Americans with Disabilities Act, according to a memo issued by the Baptist Joint Committee on Public Affairs. The memo, outlining information about the new law and its application, was sent to Baptist state newspaper editors, agency executives and other church personnel.

In general, the law prohibits discrimination on the basis of disability in employment, public services and public accommodations. Its applicability does not depend upon the receipt of federal funding.

Although the law includes several exemptions for religious organizations, it still will apply to some churches and church-related organizations.

Beginning July 26, 1992, the law's employment discrimination provisions will prohibit all employers with more than 25 employees — that number will drop to 15 or more employees two years after the effective date — from discriminating against qualified people with disabilities. The law will require employers to make "reasonable accommodation" to such employees, unless those accommodations would pose an "undue hardship" on the employer.

Although the ADA's employment provisions will apply to all employers, a religious entity will be allowed to give "preference in employment to individuals of its particular religion" and to insist that its employees "conform to the religious tenets" of the religious entity.

"This partial exemption for religious employers from Title I is best illustrated by an example involving persons who are infected with contagious diseases, such as AIDS, that do not pose a direct threat to the health or safety of other individuals in the workplace," according to the BJC memo. "If such a person seeks a non-ministerial position (e.g., custodian, receptionist) with a church, he/she probably cannot be denied employment solely on the basis of the disability. On the other hand, the applicant can be denied employment based upon religious considerations (e.g., denominational affiliation, failure to adhere to the church's teachings concerning sexuality). A church is, of course, free to discriminate on any basis in the hiring of its ministerial staff."

In addition, religious entities, which are completely exempted from the law's public accommodations provisions, may be required to make their facilities reasonably accessible to their employees.

Churches and church-related organizations that will be affected by the Americans with Disabilities Act should take several steps in anticipation of complying with the law, according to the memo. Those entities should:

- Review all job descriptions in light of the new law. The ADA prohibits discrimination against a disabled person who can, with or without reasonable accommodation, perform the "essential functions" of the employment position. Attention should be given as to what the essential functions are. A written description, prepared before advertising or interviewing applicants for a job, will be evidence of what those essential functions are.

- Review employment standards, criteria and procedures to eliminate not only discriminatory intent, but also effect.

- Refrain from making inquiries of an applicant about his or her disability, except to the extent it bears on the "ability of an applicant to perform job-related functions" or relates to the applicant's religious qualifications for the job. A medical examination may be required only after an offer of employment is made, with the offer made contingent upon the results of the examination, and only if all employees are subject to such an exam regardless of disability.

- Separate medical records from personnel records. The ADA requires that medical information be collected and maintained on separate forms, kept in a separate file and treated as confidential.

- Review all work rules and regulations to ensure they do not discriminate against people with disabilities.

- Train supervisors and human resource personnel to make them aware of the ADA.

- Obtain legal advice on the extent of the law's applicability before undertaking any building projects or structural renovation.

- Post notices, in an acceptable format to applicants and employees, describing the applicable provisions of this law. □

[Readers having a particular, fact-specific legal question should seek the services of a qualified attorney, according to the memo. In addition, they may call the general counsel's office of the Baptist Joint Committee at (202) 544-4226.]

# INTERNATIONAL DATELINE



## Spirit of new freedom refreshes BWA Congress

SEUL, Korea  
Winds of freedom from around the world swept through Seoul, Korea in mid-August and were in evidence when some 10,649 Baptists from 85 nations worldwide gathered for the 16th Congress of the Baptist World Alliance.

Freedom was most dramatically in evidence in the participation of 177 pastors and laity from Eastern European nations — Bulgaria, Romania, Yugoslavia, the Soviet Union, Czechoslovakia and East Germany — marking the first time in decades that Baptists from some of these nations were free to attend an international Christian gathering.

"We in Estonia are in darkness," Ingmar Kurg, editor of a church newspaper said following the ceremony. "I was crying when the lamps came on in the stadium. Perhaps this light coming from Asia will be a light for us, too."

Soviet Pastor Sergei Nikolaev, calling for prayer, said "People around the world are tired of words; they want to see Jesus." Nikolaev, superintendent of Russian's Northwestern Association of Baptist Churches, implored the audience, "So let's pray together in the spirit of faith and remember what is impossible for man is possible for God."

Newly elected BWA President Knud Wumpelmann began his five-year term by pledging attention to Baptists in the east and south, which he believes will increasingly impact the Christian church in coming years.

"Some get scared of differences," Wumpelmann acknowledged, "but variety is a gift of God which enriches us. None of us can express the full truth, but together we understand God's love."

In an address frequently interrupted by loud applause, Charles Adams, president of the Progressive National Baptist Convention, USA observed: "We hesitate to talk about love in the church because we distrust, doubt and disbelieve that love is really what the church and the world needs most."

"Love seems too simple, too sentimental, too lenient for the rulers of the world and the leaders of the church." Dr. Adams added that Christians are prone to prefer the "disciplines of truth and the enforcement of power" to the "attractions of love and the persuasions of Grace."

The BWA General Council, meeting during the congress approved several items: Buenos Aires, Argentina, as the site of the Congress meeting on July 11-15, 1995; \$1.7 million in funding goals for world aid projects for 1990, hunger relief to receive \$300,000 with an additional \$300,000 appropriated for the distribution of Bibles in the USSR; an allocation of \$100,000 for earthquake recovery in the Philippines and the Baptist Seminary in the USSR; and \$50,000 each to Nicaragua and El Salvador for needs related to civil strife.

Resolutions adopted by the full Congress included: endorsement of the Seoul Covenant, a challenge to present the gospel to every person by the end of the 20th century; denouncement of religious persecution and intolerance, particularly the reappearance of anti-Semitic practices and slogans; condemning violence against any person or groups of persons, and calling upon Baptists to foster movements for peace, justice and the preservation of the creation.

Retiring president Noel Vose, presiding over the resolutions session, told delegates such resolutions allow the BWA to "give public expression, as a body, to our worldwide concerns and public expression of our love, thankfulness and appreciation. BWA

## Nicaraguan Baptist asks U.S. to increase aid to '80s level

The Chamorro government in Nicaragua is taking away some of the benefits the country had gained under the Sandinista regime, a Nicaraguan Baptist leader told the Baptist World Alliance Commission on Human Rights.

In addition, the Rev. Thomas Tellez, executive secretary of the Baptist Convention of Nicaragua reported that Catholic churches in Nicaragua are being allowed to retain tax exemptions denied the Protestant churches, for Mr. Tellez an indication of "clear favoritism."

The removal of the exemptions causes "serious hindrance to programs, such as health, education, service to the elderly and orphans' housing," Mr. Tellez said.

Reporting on other social problems in Nicaragua, the Baptist leader spoke of extreme shortages of supplies in public hospitals, cancellation of subsidies for public education and other services, and a rate of inflation now at a "crippling"

1,000 percent.

Mr. Tellez called on the government of the United States to increase its allocation of \$300 million in aid to Nicaragua — of which only \$60 million has been sent — to match the levels of money spent in the 1980s on aid to the contra rebels. □

## Cathedrals crumbling, Anglican seeks tax relief

BOURNE, England

A request of the government for public funds for the upkeep of Britain's crumbling cathedrals, some of which are in danger of collapse, has been made by Archbishop of Canterbury Robert Runcie.

"There have been worrying signs of late of cathedrals finding increasing difficulty in raising through appeals the large sums of money they require," the archbishop wrote in a letter to Prime Minister Thatcher.

Dr. Runcie said the 44 historic cathedrals can no longer be maintained through private means. Unless the taxpayer chips in, there is a real danger that many world famous examples of Britain's heritage would fall into a "spiral of decay," he claimed.

The Rev. Bill Patterson, the Dean of Ely, told *Religious News Service* that the Runcie letter asked politicians to acknowledge cathedrals "as the spiritual side of national and cultural heritage."

"The New Cathedral Measure," passed last year by the Church of England and signed by the Queen, as the law of the land reduces the control of local deans and chapters over cathedral buildings.

The law appoints an independent, more centralized body of mostly Anglicans, but including representatives of other religious bodies and higher education, to oversee the maintenance of cathedrals. This arrangement, in part, is believed to be a strategy for achieving government funding. □

## U.S.-Cambodia talks raise hope for Cambodia church

Talks between the United States and Vietnam over Cambodia's future may spell hope for the church in Cambodia, reports Cambodia Christian Services (CCS).

The negotiations began in August amid reports from western relief agency



## NEWS-SCAN

sources already in Cambodia that Khmer Rouge communist rebels are "making advances" on the capital city. More than 120,000 refugees, driven from their provincial homes, have already flooded around the city in "squatter" conditions.

After 15 years of communist rule and despite the worsening civil war, Joe Kong, Chairman of CCS, hopes the negotiations will, at the very least, open the way for more western Christian ministries and relief agencies to enter the country.

In April this year, the Vietnam-backed Cambodian government once again officially recognized Christianity. Religion had been abolished since the Khmer Rouge's reign of terror from 1975 to 1979, when churches were closed or destroyed.

Mr. Kong still fears for provincial house churches in Cambodia — far from the capital city — because Khmer Rouge soldiers have captured large parts of the countryside.

It was these gains that prompted U.S. Secretary of State James Baker to withdraw U.S. recognition of the resistance coalition and to announce plans for negotiating with Vietnam over Cambodia's tentative future. □

### Bible a 'hot' item on book markets in USSR

KESTON, England

*Literaturnaya gazeta* reporting on the issue of black market trade in books on Kuznetsky Bridge in central Moscow, revealed that certain traders whose "specialty" is dealing in Bibles continue to fetch high prices for Bibles on the black market.

One such trader, S. Dimitri, interviewed in the article, gave current prices: a Bible plus commentary costs 100 roubles, and Children's Bibles a similar amount.

He also says that the Lopukhin Bible is being sold officially at 385 roubles at Zagorsk. When Bibles were scarce, these would be sold for up to 450 roubles; the ceiling now is 400.

Since Bibles are not given an official price by the state, S. Dimitri does not consider such trade to be illegal and sellers can be fined only for selling Bibles in an unofficial place.

What is the source of these Bibles? Practically every one comes from places such as Sweden, the USA and Great Britain. Speculation by some observers

holds that many of the Bibles appear on the black market after having been confiscated at customs.

The fact that people pay the equivalent of at least two months wages underlines the urgency of establishing an effective printing base within the country. □

### 'Discretion' advised for chaplains in Saudi Arabia

American troops stationed in Saudi Arabia and the military chaplains who serve them are technically in violation of Saudi law every time they practice certain religious rituals.

Christians who use wine to take Holy Communion and Jews who say a Sabbath prayer over wine are in violation of Saudi law barring alcohol drinks. The law, like many in Saudi Arabia, is based on the teachings of Islam, the only state-recognized religion in the country.

Col. Meredith R. Standley executive director of the six-member Armed Forces Chaplains Board in Washington, said the board is taking a look at its policy in such areas. Meanwhile, he said, chaplains have been instructed "to be careful how they conduct their ministry to people in their service . . . so as not to offend the host nation."

Air Force chaplains in Saudi cities where American troops are stationed at airports among Arab civilian and soldiers do not wear their insignia — a cross or a star of David. But in the field, the insignia is worn, explained a spokesperson who serves the Pentagon office of the Army chief of chaplains. □

### Romanians anxious over return of religious rights

A group of 10 Romanian Orthodox clergy and laity have published a statement calling for the speeding up of discussions between the church and the government on religious education in schools, such classes having been abolished by the communist government which ruled the nation from 1947.

Since the overthrow of former President Ceausescu in December, 1989, churches have been calling for the return of religious education. The procedures have moved so slowly that hopes for reinstating classes this autumn has not been possible.

The Group for Reflection and Renewal of the Orthodox Church calls the delay "inadmissible." □

**H**ungarian Reformed Bishop Laszlo Tokes of Oradea was seriously injured in a car accident in August. The driver of the Mercedes in which he was traveling swerved, skidded before crashing into a telegraph pole to avoid a cyclist. He is now recovering much more quickly than expected. Although Tokes has received many death threats in Romania, a spokesman said there was nothing suspicious about the way the accident happened. . . . **One-third fewer Christians reside in The German Democratic Republic (GDR)** than official church statistics show, according to a recent poll conducted by a sociological institute in East Berlin. The poll revealed that 21 percent of the adult population consider themselves as Protestants, and just 3.6 percent as Catholics. Meanwhile, an opinion poll in West Germany disclosed that the religious views of the citizens of the two Germanies diverge considerably. In answer to the question, "How important is God in your life?" 10 percent of West Germans replied "completely unimportant," while for the East Germans the percentage was 42. . . . **Cuban Catholic Archbishop Jaime Ortega** has called on the Cuban authorities to pass a law guaranteeing religious freedoms. The archbishop pointed out in his diocesan bulletin that the Cuban constitution guarantees freedom of worship, but there is no specific legislation to put this guarantee into practice. He also noted that the atheistic stance of the ruling party precludes involvement of Catholics in the party and in state affairs. . . . **"Come, Holy Spirit — Renew the Whole Creation,"** is the theme for the Seventh World Assembly of the World Council of Churches as it meets February 7-20, 1991, in Canberra, the capital of Australia. Men and women from over 100 countries are expected to attend the event, joining the 1,000 voting delegates who meet to review the Council's work, set program policies and outline new directions to guide the global ecumenical organization through the next seven years. . . . A "Peace Prize" has been established by the Baptist Union in West Germany. To become eligible, Baptist young people must perform the civil service alternative to military service. Asserting that civil service is "peace service," the prize intends to recognize those who contribute toward overcoming racial and national prejudices through social and diaconal ministries. □

# CORRESPONDENCE

As a retired American Baptist pastor, I am concerned that the Southern Baptists have been taken over by the Theological Egotists, who seem to know little about Baptist history and less about the struggle of our Baptist forefathers for religious freedom and the separation of church and state. These Theological Egotists are like the Pharisees who Jesus condemned because they thought they were the only ones who knew God and His will for the world.

I cannot replace the \$340,000 cut in support of your work, but as a protest against their unBaptistic stance, which is to me an unChristian one as well, I am sending you the enclosed check to help.

I sincerely hope there will be other Baptists, Southern, American and many of our other varieties, who believe in the importance of your ministry on our behalf in Washington — and that they will be moved to contribute generously to assure your witness will not be endangered by the lack of funding.

Jack E. Jones  
Milwaukee, Wisc.

It is with appreciation for the Baptist Joint Committee on Public Affairs and pride in the congregation of Third Baptist Church, St. Louis, MO., that I write this letter.

Following the ruthless decisions among the fundamentalist controllers of the SBC that resulted in the 1990 SBC messengers cutting the BJCPA by 87%, our church initiated a process whereby we could send a contribution. It comes as an expression of confidence, a reminder that thousands of churches believe in the principles of religious liberty, soul freedom, and separation of church and state. This gift comes with the prayer that countless individuals and autonomous congregations will more than fill the financial gap created by SBC cutbacks.

John F. Anderson  
St. Louis, MO. □

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200 Maryland Ave., N.E.  
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Like thousands of other sincere Southern Baptists, I was outraged by the action of the Convention to defund the Baptist Joint Committee. However, I hope that other states will do as our Virginia Baptist Budget Committee is recommending to our General Association next November.

In the meantime, here's a check from one who has stood for and who throughout his ministry has tried to educate Baptists to understand the meaning of religious freedom.

I believe in what you are doing, and I hurt with you over what the convention has done. But I hope that you will "hang in there." Real Baptists are not unfamiliar with being a minority group.

John M. Tubbs  
Dutton, VA

A great, thoughtful and important "REFLECTIONS" on the Caesar/God dualism.

James Autry  
Des Moines, IA

I suppose that the move to drastically reduce Southern Baptist support of the Baptist Joint Committee is caused by a feeling that some of its positions are too liberal. This feeling should be thoughtfully examined. The word *liberal* means: having, expressing, or following social or political views or policies that favor nonrevolutionary progress and reform. The word *conservative* means: tending to favor the preservation of the existing order and to regard proposals for change with distrust. These words should not be allowed to predetermine one's position on a question without thinking.

Take for example the current wave of liberalism in Europe.

1. The old line communists are now being called conservatives.

2. The ones who want to liberate their country from hard-line communism are called liberals.

3. That means American conservative anti-communists are now cheering the liberals.

The words *liberal* and *conservative* are not useful here. Consider another example of the war in Afghanistan.

1. The government is communist.  
 2. The Afghan rebels want to "liberate" their country from the communists who want

## RESOURCES

### Life with Liberty Series

- \_\_\_\_\_ Baptists and Religious Freedom  
 \_\_\_\_\_ Separation of Church and State  
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These pamphlets feature information about Baptist involvement in religious freedom and church-state affairs.

Sample set of 5, \$1.00; 1-25 copies, \$.20 each; 26-200 copies, \$.15 each; 201 or more copies, \$.10 each. All prices are postpaid

Souter, from page 5

case or after it, have not had personal reason to want to reexamine the strict scrutiny test which has been applied in a lot of cases since *Sherbert*.

I recognize the reasoning of the majority opinion. I understand what the Court was saying in the *Smith* case. But I also recognize the fact that the case could also have been examined under the *Sherbert* standard. As you mentioned or indicated a moment ago, that is exactly what Justice O'Connor did in her concurring opinion.

I do not know whether we should take the *Smith* opinion as being a total rejection of *Sherbert*. The one thing I do know is that the way the opinion was written, *Sherbert* seems to have been reduced to a rule for unemployment compensation cases. I can tell you that I did not so read it, and I did not so read its application to, let's say, the *Yoder* (Amish School) case as resting upon the kind of analysis which the court indicated would be its only justification for applying it there.

Sen. Specter: Well, I hope the *Smith* case doesn't go that far and I hope that your predisposition to side with Justice O'Connor comes to fruition if you are confirmed, because the basic requirement of requiring a compelling state interest and narrowly tailored means to achieve that interest seems to me very fundamental in the free exercise clause, just as I believe that the standards of Jefferson and Black on the "wall", however you articulate it, keeping that as a basic philosophy to be very important.

Judge Souter: May I add just one thing, Senator. I would not want you or anyone else to take what I said this morning as a commitment, if I were on the Court, to join with Justice O'Connor if this matter were brought before me. What I do want you to understand is that I would approach the issue if it came before me with exactly the view of the value of the strict scrutiny test which I described to you.

Sen. Specter: I accept that, Judge Souter. I do not believe that it's appropriate to ask you for commitments. □

to "conserve" their revolution. In knee-jerk fashion, American conservative anticommunists rushed to support guerrilla "liberators." (\$1 million a day).

3. If they win, the rebel "liberators" we support will turn Afghanistan into a fundamentalist Moslem state like Iran, where other religions are methodically and brutally stamped out. The words *liberal* and *conservative* would be confusing here.

The Baptist Joint Committee struggles to conserve religious liberty and to liberate us from any present or future encroachment by the government. Let's keep it strong.

Kenneth J. Nettles  
Gulfport, Ms.

As agents, advisors, intercessors, hired hands and gofers, we perform a range of functions, from some of the most exciting to some of the most mundane.

## REFLECTIONS

James M. Dunn  
Executive Director



Many of you, aware of recent events, have commiserated with this staff, as Southern Baptist Convention current elected leaders have turned away from meaningful partnership with other Baptists. Those leaders have also turned the SBC away from the distinctives of church-state separation, the priesthood of all believers and the autonomy of Baptist entities.

Remember, however, the SBC is *not* all Southern Baptists. In state conventions, local churches, the Southern Baptist Alliance and through the new Cooperative Missions, Baptists in Southern Baptist life are supporting the Baptist Joint Committee as never before.

There is genuine interest about the Baptist Joint Committee, and about how staff goes about its work. One question we often hear is, "What size is the BJC staff?" Frequently the answer — eight — surprises people. One fellow said, "I had no idea so few people could raise such a ruckus." We're also asked about the way we spend our days, and so ...

Routine chores fall into several categories. The triple "R" function actually takes a lot of time. Research, resource, and referral duties allow us to respond to letters, calls, visits, interviews by media, politicians and people like you on a wide range of church-state questions.

The "curbside counsel" aspect of BJC work has become increasingly important in this litigious society. Since general counsel Buzz Thomas was joined one year ago by J. Brent Walker, these two lawyers spend most of their time responding to legitimate concerns of individuals, institutions and organizations of Baptist life. They cannot possibly go to court for you, but they do provide valuable direction on all sorts of religious freedom issues. Beyond responses to specific questions both attorneys keep a busy writing and speaking schedule to bring church-state law within the reach of us ordinary mortals.

These two tasks are kin to the legal and legislative monitoring, watching the courts and the Congress, that so many count on the Baptist Joint Committee to do. It's not so simple, though. Someone must scan the *Congressional Record* every day. Rosemary Brevard reads carefully the utterly boring *Federal Register*. Other staffers read *Congressional Quarterly*, *Law Week* and a total of over 100 periodicals just to keep up.

Monitor we must, but BJC involvement seldom stops there. This year we have filed nine briefs, *amicus curiae*, helped to shape several major pieces of national legislation and we are currently a coordinator of the campaign to pass the Religious Freedom Restoration Act of 1990 (HR 5377). So, you see that Buzz, Brent and Rosemary to a disproportionate degree are responsible for the "product" of the Baptist Joint Committee.

Beyond that all of us serve a liaison function with anyone looking for Baptists on Capitol Hill. We link all breeds and brands of Baptists with their targets in Washington. As agents, advisors, intercessors, hired hands and gofers, we perform a range of functions, from some of the most exciting to some of the most mundane. This liaison job also involves bridging to other religious, educational, and religious freedom groups, to Congress, to the courts, to federal bureaucracy, to foreign embassies and to media. Which leads us to the next major function — information services.

Someone must get out the news, interpret the court decisions, explain the laws and try to understand the regulations. Kathy Palen had been the director of information services for five years. She has just gone off to theological seminary in further preparation for ministry. We will miss her. Our hope is to have announced her successor by the time you read these words.

Victor Tupitza has been the editor of this magazine for the past dozen years engaged in information and education. The news service and magazine are only part of the educational mission of the BJC. Religious Liberty Day, conferences, conventions, pamphlets, and video tapes all contribute to the teaching ministry about religious liberty.

What about the executive director? Mocking the self-announced humility of some fellow denominational servants, we referred to ourselves thirty years ago as "denominational serpents." Now, I have "denominational serpent's" elbow. You've heard of "tennis elbow?" Well, I've torn up my tendons toting biblical messages, manuscripts, and magazines on planes once or twice every week in recent years.

As I travel, many of you who read this page ask how much I need to be on the road. Typically, my response is that I could work full time at this desk in Washington or profitably spend every week on the road with backers of the BJC in the various conventions and conferences. The decision, with Susan Hill my administrative assistant ably keeping the office running and the books balanced, has been to spend my days "on the field." Assisting in making it all possible is public affairs assistant, Gordon Northcutt, who as traffic manager handles a steady flow of calls, mail, and information.

That work schedule for the summer and September of 1990, defying the decalogue, appears to be a roll call of states: CO, GA, IA, IL, LA, MD, MO, MS, NC, NJ, NM, NY, OH, PA, SC, SD, TN, TX, VA, and WV. Even so, with wife and tithe, we make it to our home church most weeks.

You must be aware, however, that the Baptist Joint Committee has become more dependent than ever on the specific constituency for whom we work.

We shall do a better job than ever of education, awareness, and consciousness raising about church-state issues.

We shall seek lay involvement. Tell others about the magazine. Subscribe for them. Let us know of interested laypersons.

We shall work as never before at networking to affect government. Write us about your concerns. Invite us to speak in your area.

We shall focus even more intensely than in the past on religious liberty and its corollary the separation of church and state. There's plenty to do on that narrow agenda.

We shall be proactive and positive, not simply a watchdog barking warnings or a little red fire truck responding to emergencies.

We shall be vitally interested in your concerns at the local level. The fodder on which we feed is your commitment to religious freedom, informed and active.

Ask us. Tell us. Read us. Write us. Visit us. Invite us.

All kidding aside, we denominational serpents are your servants. □

# REVIEWS



## THE FIRST FREEDOM: Religion and the Bill of Rights

Ed., James E. Wood, Jr., Waco, Texas: J.M. Dawson Institute of Church-State Studies, Baylor Univ., 1980. 181 pp.

Editor James Wood has brought together an eclectic collection of essays all related to the theme of religion and the Bill of Rights. As such, it is a "fitting tribute to the bicentennial of the Bill of Rights" (vii).

Seven essayists, consisting of three experts in American constitutional law and four experts in American religious history (including editor Wood), contribute to a "reexamination of the clauses' original intent and their appropriate application in contemporary American society" (viii).

Dr. Wood writes a short introductory essay entitled, "Religion and the Constitution." The essay provides an historical backdrop to the themes addressed in the six other essays. He concludes by substantiating a reexamination of the Bill of Rights, which is the stated purpose of the book.

The essay by David Little, "The Reformed Tradition and the First Amendment," is an attempt to refute the theory that the First Amendment was more the result of political compromise than principled intention (a theory advanced by Justice Rehnquist in *Wallace v. Jaffree*). Little contends that "certain principles nurtured and refined by the Reformed tradition, and particularly by Roger Williams are in fact indispensable for understanding the First Amendment." By tracing a "Lockean connection" and a "Baptist Amendment," Little convincingly argues that Madison's initial reservations concerning a Bill of rights were not due to a lack of conviction. Little's essay, however, does not offer the kind of forceful refutation of Rehnquist, Meece, et. al., that is offered by those who have questioned the central role of "original intent."

Edwin Gaustad's short essay, "Religion and Ratification," is a compelling

reminder of the ironies, ambiguities, and tensions that surrounded public reaction to the last clause of Article VI of the Constitution. It is only toward the end of the essay that one realizes that Gaustad is telling a success story — the story of an unlikely text that became law. The reader is forced to ponder again the phrase — "No religious Test" — and how it came to be written down and ratified.

In "The Bill of Rights: Reflections on its Status and Incorporation," Henry Abraham briefly traces the history of the Bill of Rights from early interpretations up to mid-1989. He is especially interested to show a transition from limiting only the federal government to limiting both state and federal governments. While Abraham's essay is historically and academically rigorous, many would not share his optimism concerning the American judicial guardianship of our cherished religious freedoms. This especially holds true in light of Justice Scalia's recent opinion in *Oregon v. Smith*.

One of the two best essays in this collection, Douglas Laycock's "Original Intent and the Constitution Today," contains some of the best available advice on text interpretation. Laycock correctly recognizes that there are two issues concerning original intent: "what the framers intended" and "the proper role of original intent." He emphasizes that it is the text itself that should concern us and not so much the myriad of reports and stories surrounding the text. He argues that the two regnant schools of first amendment interpretation — nonpreferentialism and institutional separationism — rely too heavily upon historical conjecture. Laycock contends that the founders' intent is most often either unclear or "not responsive to the questions asked in our time" (108). While original intent may be a starting point and the text itself must be the focus, he concludes that it is we who bear the responsibility of applying the Constitution to contemporary society.

A similar approach is taken by John F.

Wilson in "Original Intent and the Quest for Comparable Consensus." Wilson tries to redefine the role of critical historians in light of the fact that "original intent" only further reveals the influence of early American society upon the drafting of the Constitution. Rather than attempting "to establish the definitive interpretation of particular clauses," he contends that critical historians contribute more to the judicial interpretation of texts by accentuating the "cultural distance between 1789 and 1989." Why? Because religious and other freedoms were not secured once and for all, but rather must be won again by each succeeding generation.

The final essay by Leo Pfeffer makes an excellent case for the unity of the Establishment and Free Exercise clauses. Quoting an article he had published in 1958, Pfeffer sums up his argument: "that separation guaranteed freedom and freedom required separation." His essay consists almost entirely of summarized court cases involving both religion clauses of the First Amendment. It is well documented and provides important information for the student of court interpretations of the First Amendment.

There is much work to be done concerning the proper role of "original intent." Legal hermeneutics has yet to struggle through all of the implications of modern theories of interpretation. This book is barely a step in that direction. The primary weakness is its loose organization around the theme of "original intent." While each essay makes a separate contribution, only Laycock and Wilson focus both on what the framers intended and the role of intention in present-day society. Consequently, the value of this book lies in its parts rather than its whole. □

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### Reviewer

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