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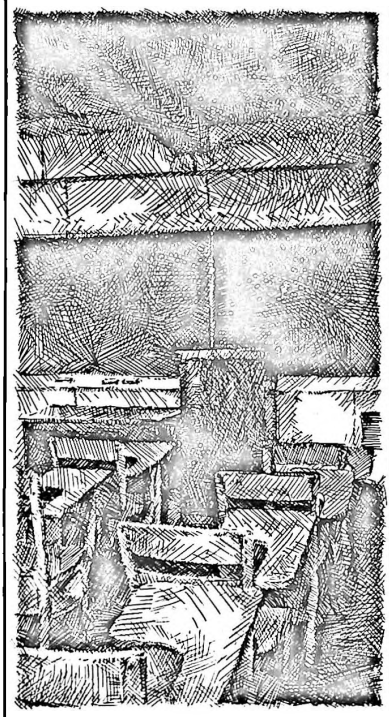
REPORT from the CAPITAL



The Equal Access Act and the Public Schools

QUESTIONS AND ANSWERS

REPORT from the CAPITAL

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

Vol. 46, No. 3 **March 1991**

Articles

Features

Cover: The cover sketch of a classroom scene is provided by Steve Mosley of the Department of Publications and Distribution at the North Carolina Baptist Convention.

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BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS
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Equal access, diverse players

Meaningful accomplishments often are known as much for their participants as for their results. Such may prove to be the case for the recently issued equal access guidelines. The results clearly are consequential. In the absence of federal regulatory guidance, the guidelines will serve as the baseline for implementation of the 1984 Equal Access Act, upheld in 1990 by the U.S. Supreme Court. Equally impressive is the diverse coalition of religious and educational groups that drafted the consensus guidelines. The 21 organizations represent a broad spectrum of U.S. educational and religious interests, including both supporters and opponents of the 1984 legislation that bars discrimination against religious and political clubs in public secondary schools that allow extracurricular club meetings.

In Views of the Wall, **Oliver S. Thomas**, who, along with **Charles Haynes** of Americans United Research Foundation and the First Liberty Institute at George Mason University, chaired the coalition that labored four months to produce the guidelines, assesses their importance to school officials grappling with free speech and free exercise questions. The guidelines, which were distributed to school officials throughout the nation, appear on Pages 6-7.

Perhaps no recent decision by the U.S. Supreme Court has caught the attention of church-state observers more than the 1990 opinion in which the court moved away from its long-held compelling interest test in deciding free exercise claims. The court reshaped the free exercise playing field by holding that the state of Oregon needed only to demonstrate a reasonable, not a compelling, interest in denying members of the Native American Church the right to use peyote as a sacrament. BJC Associate General Counsel **J. Brent Walker** notes that the less-stringent reasonableness test already is having a detrimental effect on free exercise claims in the nation's courts.

A rare glimpse at a Native American Church prayer meeting is provided by **Greg W. Goering** of the Mennonite Central Committee's Washington office. It is offered to readers of *REPORT* as a unique opportunity to gain understanding of the Native American Church.

The relationship between hope and freedom is a vital one, as **James M. Dunn** contends in "Reflections." Hope and freedom are inextricably linked. Genuine hope, he says, is tied to the freedom to change. In a world racked by war, poverty and injustice, hope rooted in such freedom is essential.

Book reviews this month are written by Mississippi native **Holly Hollman**, who is serving as a spring semester intern in the legal services department of the Baptist Joint Committee. Ms. Hollman graduated from Wake Forest University in 1989 with a bachelor of arts in politics. Following graduation, she worked as a paralegal for a nonprofit family law research organization in Winston-Salem, N.C. □

Larry Chesser

WASHINGTON OBSERVATIONS

news/views/trends

A FEDERAL APPEALS COURT HAS RULED that a prayer at an annual middle school graduation ceremony violates the Establishment Clause. This is yet another case in a long succession of split decisions on this issue. The Justice Department has asked the U.S. Supreme Court to review this case. In its brief, the Solicitor General urges the court to overturn the *Lemon* test -- the time-honored standard by which the court has decided Establishment Clause cases over the years. The brief calls for a more relaxed standard that would permit greater state encouragement of religion so long as the government does not show preference to one religion over another and does not coerce anybody into believing something contrary to conscience.

The Solicitor General's argument, if adopted by the court, would be most unfortunate. This softened view of the Establishment Clause would give free reign to civil religion and tend to water down religion's prophetic influence on government. It would do to the Establishment Clause what the Court's 1990 decision in *Oregon v. Smith* did to the Free Exercise Clause. Just as *Smith* makes it easier for government to inhibit one's free exercise directly, this new standard will allow government to meddle in religion under the guise of helping it. Both would promote majoritarian religion at the expense of minorities. (JBW)

THE RELIGIOUS FREEDOM RESTORATION ACT is scheduled for reintroduction in the House of Representatives later this month. Designed to restore the protections for religious exercise lost in last year's so-called peyote decision, the bill is supported by dozens of religious and civil liberties groups, ranging from the American Civil Liberties Union and People for the American Way to the Christian Legal Society and Concerned Women for America. Reps. Stephen Solarz, D-N.Y., and Paul Henry, R-Mich., are the bill's primary House sponsors. Sens. Joseph Biden, D-Del., and Orrin Hatch, R-Utah, are the primary Senate sponsors.

The Baptist Joint Committee legal staff has been actively involved in drafting the bill and considers it the most important legislation affecting religious liberty ever introduced in Congress. Hearings on the bill are expected later this spring. (OST)

NASSAU COUNTY (NEW YORK) SOUGHT TO PREVENT The Christian Joy Fellowship from distributing religious pamphlets outside Nassau Memorial Coliseum during a Judas Priest concert. The federal court of appeals upheld the trial court's ruling in favor of members of the Fellowship, holding that the area outside the coliseum was a traditional "public forum" and that the distribution of religious leaflets was protected speech. The court noted that "in many cities in suburban environs ... , the municipal stadium has replaced the town meeting hall as a gathering place for large segments of the population to engage in meaningful discourse."

This opinion was well-reasoned and will provide precedent for expressive activities in similar locations such as airports, stadia, and other public fora. However, it should not be read to authorize such speech in our public schools or on purely private property. (JBW)

The Equal Access Act and the Public Schools

QUESTIONS AND ANSWERS

Charles Haynes and
Oliver Thomas release guidelines

The Equal Access Act became law on August 11, 1984, passing the Senate 88-11 and the House 337-77. Congress's primary purpose in passing the Act, according to the Supreme Court, was to end "perceived widespread discrimination" against religious speech in public schools. While Congress recognized the constitutional prohibition against government promotion of religion, it believed that nonschool sponsored student speech, including religious speech, should not be excised from the school environment.

The Supreme Court, by a vote of 8-1, held in *Westside Community Schools v. Mergens* (1990) that The Equal Access Act is constitutional. This brochure is designed to help school board members, administrators, teachers, parents, religious leaders, and students understand and conform to the Act.

The title—The Equal Access Act—explains the essential thrust of the Act. There are three basic concepts.

The first is ***nondiscrimination***. If a public secondary school permits student groups to meet for student-initiated activities not directly related to the school curriculum, it is required to treat all such student groups equally. This means the school cannot discriminate against any students conducting such meetings "on the basis of the religious, political, philosophical, or other content of the speech at such meetings." This language was used to make clear that religious speech was to receive equal treatment, not preferred treatment.

The second basic concept is protection of ***student-initiated and student-led meetings***. The Supreme Court has held unconstitutional state-initiated and state-endorsed religious activities in the public schools. (This Act leaves the "school prayer" decisions undisturbed.) However, in upholding the constitutionality of the Act, the Court noted the "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."

The third basic concept is ***local control***. The Act does not limit the authority of the school to maintain order and discipline or to protect the well-being of students and faculty.

While the Act does not cover every specific situation, an understanding of the three basic concepts—as fleshed out by the questions and answers below—should be a sufficient guide for addressing most situations.

Many of the sponsors of this brochure were actively involved in the debate over equal access. Some supported the Act, others remained neutral, and some opposed it. All of the sponsors, however, agree that the provisions of the Act need to be understood clearly as public secondary schools develop policies concerning student groups.

The following questions and answers indicate how the Act is to work:

(1) Q. What triggers the Equal Access Act?

A. The creation of a "limited open forum." A limited open forum is created whenever a public secondary school provides an opportunity for one or more "noncurriculum related student groups" to meet on school premises during noninstructional time. The forum created is said to be "limited" because it is only the school's own students who can take advantage of the open forum. Outsiders are not granted an independent right of access by the Act.

(2) Q. Must a school board create a limited open forum for students?

A. No. The local school board has exclusive authority to determine whether it will create or maintain a limited open forum. However, if a school has a "limited open forum," it may not discriminate against a student group because of the content of its speech.

(3) Q. What is a "noncurriculum related student group"?

A. In *Mergens* the Supreme Court interpreted a non-curriculum related student group to mean "any student group [or club] that does not ***directly*** relate to the body of courses offered by the school." According to the Court, a student group directly relates to a school's curriculum ***only*** if (1) the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; (2) the subject matter of the group concerns the body of courses as a whole; ***or*** (3) participation in the group is required for a particular course or results in academic credit.

Schools may not substitute their own definition of "noncurriculum related student group" for that of the Court.

(4) Q. Did the Supreme Court give any examples of "noncurriculum related student groups"?

A. The Court noted that unless a school could show that groups such as a chess club, stamp collecting club, or community service club fell within the definition of curriculum related set forth by the Court, they would be considered noncurriculum related for purposes of the Act.

In *Mergens*, the Court found at least three groups that were noncurriculum related for that school: (1) a scuba club, (2) a chess club, and (3) a service club. Each of these clubs was found to be noncurriculum related because it did not meet the Court's criteria set forth in question 3 above.

(5) Q. What examples did the Court give of curriculum related student groups?

A. The Court noted that "a French club would directly relate to the curriculum if a school taught French in a regularly offered course or planned to teach the subject in the near future. A school's student government would generally relate directly to the curriculum to the extent that it addresses concerns, solicits opinions, and formulates proposals pertaining to the body of courses offered by the school. If participation in a school's band or orchestra were required for the band or orchestra classes, or resulted in academic credit, then those groups would also directly relate to the curriculum."

(6) Q. Who determines which student groups are in fact curriculum related?

A. Local school authorities, subject to review by the courts. However, the Supreme Court has made clear that a school cannot defeat the intent of the Act by defining "curriculum related" in a way that arbitrarily results in only those student clubs approved by the school being allowed to meet.

(7) Q. When can noncurriculum related student groups meet?

A. A limited open forum requiring equal access may be established during "noninstructional time" which is defined as time set aside by the school before actual classroom instruction begins or after it ends.

(8) Q. Can noncurriculum related student groups meet during the school day?

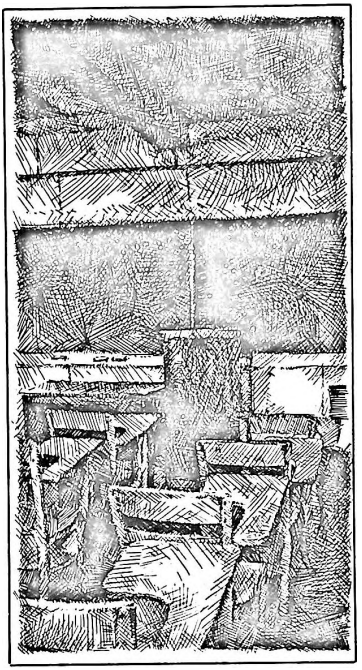
A. The Equal Access Act is not triggered by student club meetings that occur only during instructional time. The constitutionality of allowing or disallowing student religious clubs to meet during instructional time has not been expressly ruled upon by the Supreme Court.

(9) Q. To what schools does the Act apply?

A. The Act applies only to public ***secondary*** schools (as defined by state law) that receive federal financial assistance.

(10) Q. May a school establish regulations for meetings that take place in its limited open forum?

A. Yes. The Act does not take away a school's authority to establish reasonable time, place, and manner regulations for



its limited open forum. For example, a school may establish a reasonable time period on any one school day, a combination of days, or all school days. It may assign the rooms in which student groups can meet. It may enforce order and discipline during the meetings. The key is that time, place, and manner regulations must be uniform and nondiscriminatory.

(11) Q. May schools promote, and teachers participate in, some club meetings and not others in a limited open forum?

A. Some of the Act's language implies that schools may not sponsor any noncurriculum related club. Other language suggests that schools can sponsor all noncurriculum clubs except religious ones. Subsequent to the *Mergens* decision, some schools have in fact promoted, or assigned teachers to teach, drama or debate clubs and the like even though the school does not offer formal instruction in these subjects or give credit to those who participate in such clubs. There may be other clubs (such as political clubs) for which school sponsorship is inappropriate. School sponsorship of some noncurriculum related student clubs does not mean, however, that a limited open forum does not exist or that nonsponsored clubs may not meet.

(12) Q. May a school require a minimum number of students to form a noncurriculum related club?

A. Not if it "limit[s] the rights of groups of students." Care must be exercised that the school not discriminate against numerically small student groups that wish to establish a club. If the number of clubs begins to tax the available space in a particular school, one teacher might be used to monitor several small student groups meeting in the same large room. The key is to be flexible in accommodating student groups that want to meet.

(13) Q. What does "student-initiated" mean?

A. It means that the students themselves are seeking permission to meet and that they will direct and control the meeting. Teachers and other school employees may not initiate or direct such meetings, nor may outsiders.

(14) Q. May outsiders attend a student meeting?

A. Yes, if invited by the students and if the school does not have a policy barring all "nonschool persons." However, the nonschool persons "may not direct, conduct, control, or regularly attend activities of student groups."

A school may decide not to permit any nonschool persons to attend any club meetings, or it may limit the number of times during an academic year a nonschool person may be invited to attend.

Obviously, no nonschool person should be permitted to proselytize students who are not voluntarily attending the meeting to which the nonschool person is invited.

(15) Q. May teachers be present during student meetings?

A. Yes, but there are important limitations. For insurance purposes or because of state law or local school policy, teachers or other school employees are commonly required to be present during student meetings. In order to avoid any appearance of state endorsement of religion, teachers or employees are to be present at student religious meetings only in a "nonparticipatory capacity."

The Act also prohibits teachers or other school officials from influencing the form or content of any prayer or other religious activity.

(16) Q. May a teacher or other school employee be required to be present at a student meeting if that person does not share the beliefs of the students?

A. The Act provides that no school employee may be required to attend a meeting "if the content of the speech at the meeting is contrary to the beliefs" of that employee. If a school establishes a limited open forum, however, it is responsible for supplying a monitor for

Continued on Page 7

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

VIEWS OF THE WALL

Oliver S. Thomas
General Counsel

John Baker would have been proud. On Jan. 30, the new equal access guidelines were released to the public. In oversimplified terms, the Equal Access Act provides that public secondary schools that allow extracurricular club meetings may not discriminate against student religious or political clubs. After seven long years of litigation, we have finally moved beyond debating the constitutionality of equal access (the Supreme Court affirmed its legality last year in *Westside Community Schools v. Mergens*) to insuring its proper implementation.

It was, after all, John Baker, the late general counsel of the Baptist Joint Committee, who directed the monumental task of compiling the first equal access guidelines in 1984. When the Supreme court in *Mergens* provided a detailed description of the sorts of extracurricular meetings that would trigger the Act, however, the guidelines cried out for revision. Key Jewish and educational groups that had opposed equal access were also added to the list of organizations sponsoring the new guidelines. While several questions remain for the courts (for example, is equal access required in states whose own constitutions forbid religious club meetings), most are answered in the new guidelines. The considerable expertise of the sponsoring organizations makes the guidelines a safe harbor for school districts seeking to comply with the act.

As the BJC's current general counsel, it was my privilege to serve on the drafting committee. My colleague Charles Haynes of Americans United Research Foundation and the First Liberty Institute at George Mason University and I introduced the new guidelines at the National Press Club with the following joint statement that should be of interest to our readers:

A broad coalition of 21 national educational and religious groups releases today *The Equal Access Act and the Public Schools: Questions and Answers*. These are *consensus* guidelines designed to help school board members, administrators, teachers, parents, students and religious leaders conform to the Equal Access Act.

Passed by Congress in 1984, the Equal Access Act was held to be constitutional by the Supreme Court in the 1990 case *Westside Community Schools v. Mergens*. Some of the organizations sponsoring these guidelines opposed the Act, others supported it. In the wake of the Court's decision upholding the Act, however, all of the organizations represented here today agree on the urgent need to clarify the meaning of "equal access" in the public schools.

The sponsors of these guidelines worked together over a period of four months to find agreement on how the Equal Access Act should be understood and implemented by the schools. The final document contains the collective expertise of leading religious and educational organizations representing views that span the political and philosophical spectrum. The guidelines provide reliable legal information and many practical suggestions for resolving disputes over extracurricular student groups.

The broad coalition of sponsors is as follows:

- American Academy of Religion
- American Association of School Administrators
- American Federation of Teachers
- American Jewish Committee
- American Jewish Congress
- Americans United Research Foundation
- Association for Supervision and Curriculum Development
- Baptist Joint Committee
- Christian Legal Society
- Department of Education, U.S. Catholic Conference
- First Liberty Institute at George Mason University
- General Conference of Seventh-day Adventists
- National Association of Secondary School Principals
- National Association of Evangelicals
- National Conference of Christians and Jews
- National Council of Churches of Christ in the U.S.A.
- National Council on Religion and Public Education
- National Council for the Social Studies
- National Education Association
- National PTA
- National School Boards Association

The guidelines begin with a discussion of the three basic concepts of the Act:

1) Nondiscrimination: The Act provides for equal, not preferential, treatment for religious speech.

2) Student-initiation: The Act protects only student-initiated religious groups. The school prayer decisions, prohibiting government speech endorsing religion, are left intact.

3) Local control: The Act does not limit the authority of the school to maintain order and discipline.

The guidelines then address the most important and commonly asked questions about the Equal Access Act, such as:

- What triggers the Act?
- Must a school board create a limited open forum for students?
- What is a "noncurriculum related student group"?
- When can student groups meet?
- May teachers be present during student meetings?
- May outsiders attend?

This project is part of a larger, ongoing effort to find common ground for resolving controversies concerning religion and the public schools. A number of the organizations here today were involved in drafting the original equal access guidelines in 1984. Many of the sponsoring organizations worked together to produce *Religion in the Public School Curriculum* and *Religious Holidays in the Public Schools*, two question and answer brochures that have been distributed to more than 500,000 administrators, teachers and parents throughout the nation. These collaborative efforts are a clear signal that the religious liberty principles of the First Amendment, when properly applied, provide the civic framework for resolving disputes and for living together as citizens of one nation.

The Equal Access Act and the Public Schools: Questions and Answers will be distributed immediately to every public secondary school principal in the nation and will be made widely available to school boards, teachers, parents and religious groups through the combined efforts of the sponsors. We salute the representatives of the participating organizations for the goodwill, patience and commitment to principle that made this historic agreement possible.

* * * *

A word about implementation: Equal access limits as well as enables. It does not sanction meetings during instructional time or teacher participation in religious club meetings. Nor should equal access be viewed as a beachhead for adult missions organizations in the public schools. Indeed, schools are free to draft policies banning all nonschool persons from attending extracurricular meetings. Equal access will guarantee that the constitutional rights of *students* are respected. No longer will a particular student group be discriminated against simply because its orientation is religious.

Protecting the rights of high schoolers to practice their religion as long as it does not infringe upon the rights of others is in accordance with our highest traditions as Baptists and as Americans. People of good will can applaud the work of the coalition that has produced these new guidelines. □

Equal access, from Page 5

every student group meeting if a monitor is required.

(17) Q. Does the assignment of a teacher to a meeting for custodial purposes constitute sponsorship of the meeting?

A. No.

(18) Q. Does the expenditure of public funds for the incidental cost of providing the space (including utilities) for student-initiated meetings constitute sponsorship?

A. No.

(19) Q. If a school pays a teacher for monitoring a student religious club, does this constitute sponsorship?

A. Congressional debate apparently took for granted that payment of a school-required monitor for any club was an "incidental cost of providing the space for student-initiated meetings."

(20) Q. Does the use of school media to announce meetings of noncurriculum related student groups constitute sponsorship of those meetings?

A. No. The Supreme Court has interpreted the Act to require schools to allow student groups meeting under the Act to use the school media—including the public address system, school paper, and school bulletin board—to announce their meetings if other noncurriculum related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum related student groups in a nondiscriminatory manner. Schools, however, may inform students that certain groups are not school sponsored.

(21) Q. Do school authorities retain disciplinary control?

A. Yes. The Act emphasizes the authority of the school "to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary." Furthermore, the school must provide that the meeting "does not materially and substantially interfere with the orderly conduct of educational activities within the school." These two provisions, however, do not appear to authorize a school to prohibit certain student groups from meeting because of administrative inconvenience or speculative harm. For example, a group cannot be barred at a particular school solely because a similar student group at another school has caused problems.

(22) Q. What about groups that wish to advocate or discuss changes in existing law?

A. Students who wish to discuss controversial social and legal issues such as abortion, drinking age, the draft, and alternative lifestyles may not be barred on the basis of the content of their speech. The school is not required, however, to permit meetings in which unlawful conduct occurs.

(23) Q. What if some students object to other students meeting?

A. The right of a lawful, orderly student group to meet does not depend on the approval of other students. All students enjoy the constitutional guarantee of free speech. It is the school's responsibility to maintain discipline in order that all student groups are afforded an equal opportunity to meet peacefully without harassment. The school must not allow a "hecklers' veto."

(24) Q. May any groups be excluded?

A. Yes. Student groups that are unlawful, or that materially and substantially interfere with the orderly conduct of educational activities, may be excluded. However, a student group cannot be denied equal access simply because its ideas are unpopular. Freedom of speech includes ideas the majority may find repugnant.

(25) Q. Must noncurriculum related student groups have an open admissions policy?

A. The Act does not address this issue. There are, however, several federal, as well as state and local, civil rights laws that may be interpreted to prohibit student groups from denying admission on the basis of race, national origin, gender, or handicap.

(26) Q. What may a school do to make it clear that it is not promoting, endorsing, or otherwise sponsoring noncurriculum related student groups?

A. A school may issue a disclaimer that plainly states that in affording such student groups an opportunity to meet, it is merely making its facilities available, nothing more.

(27) Q. What happens if a school violates The Equal Access Act?

A. The law contemplates a judicial remedy. An aggrieved person may bring suit in a U.S. district court to compel a school to observe the law. Violations of equal access will not result in the loss of federal funds for the school. However, a school district could be liable for damages and the attorney's fees of a student group that successfully challenges a denial by the school board of its right to meet under the Act.

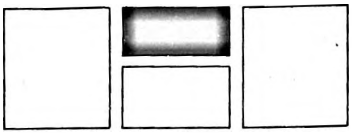
(28) Q. Should a school formulate a written policy for the operation of a limited open forum?

A. If a school decides to create a limited open forum or if such a forum already exists, it is strongly recommended that a uniform set of regulations be drawn up and made available to administrators, teachers, students, and parents. The importance of having such a document will become clear if the school either denies a student group the opportunity to meet or is forced to withdraw that opportunity. When the rules are known in advance, general acceptance is much easier to obtain.

(29) Q. What about situations not addressed in these guidelines?

A. Additional questions may be directed to the organizations listed as sponsors of this publication.

News in Brief



Top Ohio court rejects clergy malpractice suit

The Supreme Court of Ohio has joined California and other states that recently have rejected so-called "clergy malpractice" lawsuits.

The court's decision, however, left open the door for malpractice claims against clergy.

The state's high court reversed an earlier appeals court ruling and dismissed local, state and national organizations of the Seventh-day Adventist Church from a lawsuit filed by an Ohio couple who attended the Hill Church in Knox County.

In a complaint filed in the Knox County Court of Common Pleas, the plaintiffs alleged malpractice, fraud, intentional infliction of emotional distress and non-consensual sexual conduct on the part of the church's pastor. The lawsuit also named as defendants the Ohio Conference of Seventh-day Adventists, Columbia Union Conference of Seventh-day Adventists and the General Conference of Seventh-day Adventists.

The complaint contended that the church organizations were liable for the pastor's alleged actions based on legal doctrine under which employers may be held responsible for their employee's misconduct. The plaintiffs also alleged the church was negligent in hiring the minister.

The trial court dismissed the case against the Seventh-day Adventist organizations but was reversed by the appeals court, clearing the way for the case against the church organizations to proceed to trial. The churches then appealed to the Supreme Court, which dismissed the complaint against them.

The case against the minister is pending in the trial court. But before it could decide the church groups' request to be dismissed from the suit, the Supreme Court said it first had to determine whether the plaintiffs could bring a clergy malpractice claim against the minister.

In holding there was no basis for a clergy malpractice claim against either the minister or the church groups, the court cited a previous Ohio case that bars malpractice claims when plaintiffs can seek redress through established legal theories such as fraud, duress or assault.

The ruling left open the possibility, however, that clergy malpractice claims may be pursued when no other legal options are available to plaintiffs. The court defined malpractice "as the failure to exercise the degree of care and skill normally exercised by members of the clergy in carrying out their professional duties."

Addressing the question of the church's liability as employer of the pastor, the court held that a church or other organization is not liable for an employee's intentional misconduct or other actions outside the "scope of employment."

"The Seventh-day Adventist organization in no way promotes or advocates non-consensual sexual conduct between pastors and parishioners," the court said. The ruling stated that the church did not hire the minister to rape or assault members and that the plaintiffs alleged no specific fact showing the church groups reasonably could have foreseen the alleged misconduct."

The court also dismissed the negligent hiring complaint, noting that the plaintiffs failed to present facts that indicated "the individual hired had a past history of criminal, tortious or otherwise dangerous conduct about which the religious institution knew or could have discovered through a reasonable investigation."

Several religious groups, including the Baptist Joint Committee, the American Jewish Congress, the National Association of Evangelicals and the National Council of Churches, filed a friend-of-the-court brief urging Ohio's highest court to reverse the appeals court.

"The case is a definite win for religious liberty, but it's unfortunate the Ohio Supreme Court didn't slam the door on this misbegotten theory of clergy malpractice once and for all. If a painter rapes a woman, we call it rape—not 'painter malpractice,' " said BJC General Counsel Oliver Thomas.

"While the Ohio court dismissed the claim against the church based on the minister's alleged sexual misconduct, churches should be aware that they could be held liable in such cases, particularly if the minister has a history of past misconduct. Conversely, a church could be held liable for failure to warn if it concealed information about a minister's past misconduct from an inquiring pulpit committee or other prospective employer," he said. □

Court rejects inmate's plea to hold separate services

DENVER

A prison inmate does not have a constitutional right to a religious service on his own terms, the U.S. 10th Circuit Court of Appeals ruled Jan. 23.

An inmate at the federal prison in Leavenworth, Kan., has sued because prison authorities denied permission for the Church of Christ to hold Sunday worship services apart from all other Christian groups.

The inmate, Raymond Lee Clifton, claimed that the general Christian worship services were inappropriate for members of his church because musical instruments are used in those services. The "non-instrumental" Churches of Christ do not use instrumental music in their worship services.

The appeals court ruled 3-0 that valid interests of the prison justify the restrictions imposed on Clifton. It noted that Church of Christ inmates at Leavenworth have another weekly meeting time, although not always on Sundays.

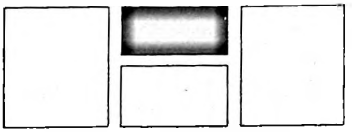
Prisoners "do not maintain their rights to the same degree as other citizens," the court said. □

Florida school board agrees to discontinue Bible reading

The school board of Nassau County, Fla., has agreed to discontinue the reading of Bible stories in a fifth-grade class and to pay attorney fees and up to $15,000 in damages to a family that complained about the practice.

The settlement was announced Jan. 28 in a case filed by the American Civil Liberties Union on behalf of Donald and Louise Hatch, whose 9-year-old daughter, Nicole, is in a fifth-grade class at Emma Love Hardee Elementary School in Fernandina Beach.

The lawsuit complained that teacher Martha Mitchell's practice of reading Bible stories for five minutes each day violated the separation of church and state. Stephen Hurm, an attorney for the Rutherford Institute, had argued that Ms. Mitchell was using the Bible stories to teach literature and not as a devotional exercise and that therefore the practice



was constitutional.

The board admitted it was wrong in permitting the Bible reading. The attorney fees and other costs will be paid with $35,000 raised by Concerned Citizens of Nassau County, a group that favored the Bible reading.

According to Marshall Wood, the board's attorney, "both parties are pleased with the settlement."

The board had first planned to take the issue to the U.S. Supreme Court, but it decided to settle the lawsuit after being advised by a lawyer that its chances of winning were slim. □

ABC leader requests prayer for end to Persian Gulf war

VALLEY FORGE

American Baptist Churches General Secretary Daniel Weiss has urged ABC churches to pray for a speedy end to the Persian Gulf hostilities and "to express pastoral concern for those on all sides who are at risk, including civilians and military personnel."

In a letter to the nearly 5,800 ABC congregations across the United States, Weiss also called for "the immediate initiation of negotiations under the United Nations auspices to seek a just, equitable and peaceful solution."

He urged American Baptists to pray for the ABC military chaplains serving in Operation Desert Storm and to "resist threats to the civil liberties and well-being of Arab-Americans ... or persons who profess the Muslim faith."

"We should renew our commitments to interfaith dialogue and cooperation as a means of bringing the full resources of the religious community to bear on the search for an end to this war," he said. "We minister in the name of Jesus Christ to persons filled with fear, anxiety and despair. In Christ, however, we are to be people of hope and faith."□

Private school tax plan in New Hampshire criticized

A program that grants $1,000 tax breaks to families in Epsom, N.H., that send their children to schools other than the local public high school has drawn concern from some observers who see it as a threat to public education and church-state separation.

The plan was enacted in December in the town of 2,800 people in south-central New Hampshire as part of an effort to reduce local property taxes, which are among the highest in the nation. Epsom has no high school of its own but pays a fee to a regional high school for each student it sends there.

The ordinance was devised by Jack Kelleher, a former town selectman, who said he based much of the language on the U.S. Supreme Court's 1983 ruling in *Mueller v. Allen*. In that 5-4 decision, the high court ruled that states may provide aid in the form of tuition tax deductions to parents who send their children to parochial schools.

Ken Preve, a college administrator with a 15-year-old son in Bishop Brady High School in Concord, 12 miles west of Epsom, said, "It's a matter of pure economics for the town; it saves the town money. The issue of church and state has nothing to do with it."

But Ted Comstock, a staff lawyer for the New Hampshire School Boards Association, said he thinks the Epsom plan violates the First Amendment and the New Hampshire Constitution's prohibition against using public money for church schools. His group and the New Hampshire branch of the American Civil Liberties Union are considering filing a lawsuit against the program. □

Professor accuses university of religious discrimination

MEMPHIS

An assistant professor of criminology at Memphis State University has filed suit against the school, charging that he was denied a renewal of his contract because of his Christian convictions and extracurricular activities.

The suit, filed in U.S. District Court in Memphis, charges that Byron R. Johnson was told that his contract was not being renewed because he "did not fit in" and that "given his philosophical leanings, he should consider teaching at some smaller religiously affiliated school."

The complaint was filed by the Rutherford Institute, a civil liberties organization specializing in the defense of religious freedom. Larry Crain, the attorney for the plaintiff, said that "given Dr. Johnson's accomplishments as a professor, the university's actions against him for merely engaging in extracurricular campus activities raises a strong presumption that his termination was motivated out of religious discrimination."

Victor Feisal, the university's vice president for academic affairs, said that universities may legally refuse to renew the contracts of non-tenured faculty like Johnson without giving reasons. In such cases, he said, "there is no right to have expectations of continuing employment." □

Prayer case plaintiffs ask judge for anonymity

DENVER

Four persons have told a federal judge that they fear physical,economic or social retaliation because they are suing to stop an Idaho school district from allegedly sponsoring prayers at school events.

They expressed those fears Feb. 5 in affidavits supporting their effort to use pseudonyms in their lawsuit filed in U.S. District Court in Boise. The American Civil Liberties Union's Mountain States Regional Office in Denver is representing the plaintiff in the lawsuit against Madison School District 321.

The lawsuit alleges that the prayers at high school athletic contests and at graduation ceremonies are unconstitutional because they are "intended to promote religion" in the schools. It says most of the students and faculty in the high school are members of the Church of Jesus Christ of Latter-day Saints.

ACLU staff counsel Stephen L. Pevar cited several critical public reactions to the lawsuit as justification for anonymity. One of his examples was a letter to the editor of the Rexburg (Idaho) Standard Journal that said, "I think the two families who filed the lawsuit against the school district ... ought to be tarred and feathered and driven out of town." □

At risk

New court test hinders free exercise claims

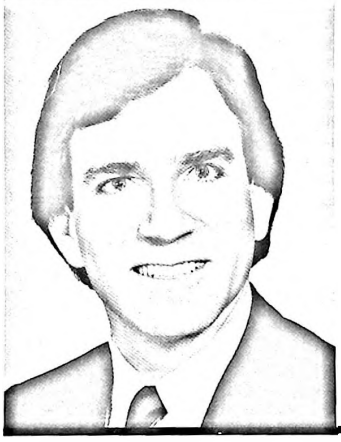
Last year the Supreme Court dropped a constitutional bombshell that nearly destroyed the First Amendment's free exercise clause. The case, *Employment Division v. Smith*, should have been fairly routine. Two members of the Native American Church claimed that they had a free exercise right to use peyote as a sacrament in their religious worship. Most constitutional scholars expected the court to apply established precedent and simply decide whether the state of Oregon had demonstrated a "compelling interest" in restricting the Native Americans' religious practice.

The compelling state interest doctrine requires that any attempt by government to burden an individual's religious liberty will be closely scrutinized by the courts. The courts will allow such governmental action only if the state demonstrates that it was advancing an interest of the very highest order and that it had chosen the least restrictive means of doing so.

Few court-watchers were surprised when the court ruled that the Native Americans did not have a right to ingest peyote as a sacrament. But they stood in slack-jawed amazement when Justice Antonin Scalia, writing for a 5–4 majority, all but overturned the compelling state interest doctrine itself and substituted a less stringent "reasonableness" test under which the government will almost always win. Justice Scalia wrote that our pluralistic society cannot tolerate strict judicial scrutiny of every alleged violation of religious liberty because to do so would court "anarchy." He even called this liberty-protecting doctrine a "luxury" that we can no longer afford.

Hoping to communicate forcefully the gravity of the court's erroneous decision, some 18 religious and civil liberties groups and 55 constitutional scholars joined in a petition for rehearing. The court summarily denied the petition.

In the 10 months since *Smith* was decided, our worst fears about its consequences have been realized. It has directly impacted some 15 state and federal court decisions which have already been reported in the law books. (One can only speculate on the number of additional such cases pending in the trial courts across the country.) The precedential tentacles of the *Smith* decision extend far beyond peyote and the Native American Church. They have reached to cases involving religious objections to traffic ordinances, mandatory autopsies, burdensome zoning laws, restrictions on prisoners, and historical landmarking regulations. *Smith* has affected not only minority sects — such as the Amish, Hmongs and Quakers — but mainline Episcopalians, Orthodox Jews, Roman Catholics and Baptists as well.



But they stood in slack-jawed amazement when Justice Antonin Scalia, writing for a 5–4 majority, all but overturned the compelling state interest doctrine itself and substituted a less stringent "reasonableness" test under which the government will almost always win.

—J. Brent Walker

Under the less stringent reasonableness standard called for by *Smith*, free exercise claimants have won only three of the 15 cases, and in two of those cases the state court did an "end run" around *Smith* and based its decision on its own state constitution. And several of the lower federal courts that were required to follow *Smith* did so reluctantly and made their displeasure clear in their written opinions.

What is the answer to this most unfortunate situation? First, we can continue to take free exercise cases to the Supreme Court and argue that *Smith* should be overruled or at least limited in its application. However, even a cursory reading of the *Smith* decision reveals that the majority knew exactly what it was doing. Also, it was mainly the younger justices who led the way. Thus, there is little reason to think that the court will reverse itself anytime soon.

Second, we can continue to bring cases through the state court systems and ask the state supreme courts to rule in favor of free exercise under the state constitutions. As mentioned, this has already been done. But, this avenue is not entirely satisfactory because not all states have more generous free exercise provisions in their constitutions.

The Baptist Joint Committee believes the best solution to this problem lies with Congress. In the waning months of the 101st Congress, Reps. Stephen Solarz, D-N.Y., and Paul Henry, R-Mich., introduced the Religious Freedom Restoration Act. This bill seeks to undo the damage that was done by *Smith*. It will not legalize peyote or advance anyone's particular religious belief or practice. Rather, it will turn the clock back and restore the compelling state interest test to all free exercise cases.

The bill has broad bipartisan support. To have Barney Frank and Newt Gingrich in the House and Joseph Biden and Orrin Hatch in the Senate all cosponsoring a bill is remarkable. The bill has been endorsed by a diverse coalition of religious and civil liberties groups. Who can imagine a more motley alliance than one that includes the American Civil Liberties Union and the National Association of Evangelicals, the American Jewish Committee and the American Muslim Council? The bill will be reintroduced and taken up by the new Congress shortly.

It is time for all lovers of liberty (especially our "first liberty" — the free exercise of religion) to rally behind this legislative initiative. Re-establishing the compelling state interest doctrine would not be to court anarchy. It is precisely *because* of the rich mix of religious practice in our country that we need strict judicial scrutiny of any attempt to limit or homogenize it. And, the robust religious liberty that this doctrine promotes is not a luxury we can ill afford. It is a fundamental *right* we cannot afford to live without. □

Customs observed

Inside a Native American Church service

(EDITOR'S NOTE: In April 1990 the U.S. Supreme Court held that members of the Native American Church have no constitutional right to ingest peyote in religious ceremonies. In its ruling, the high court severely diminished its reliance on the long-standing compelling state interest test to settle free exercise claims. The Baptist Joint Committee takes no position on the use of peyote or any other controlled substance in religious ceremonies but rather has focused its efforts on restoring the standard for evaluating all free exercise of religion claims. A rare glimpse inside a Native American Church prayer meeting is provided by Greg W. Goering, policy advocate at the Mennonite Central Committee's Washington office and is shared with readers of REPORT as insightful information.)

I recently had the distinguished privilege of attending a prayer meeting of the Native American Church held at Greenbelt National Park in suburban Maryland near our nation's capital. The meeting was a typical one in all respects except for two. First, rarely since the founding of the Native American Church have non-Indians been invited to attend one of their prayer services. Some church members were uncomfortable knowing their leaders had invited a small number of outsiders to observe firsthand their religious ceremony. Second, seldom has the Native American Church been compelled to hold a meeting in such a visible place as Washington, D.C. However, these two abnormalities are easily understood once this particular meeting is placed in its historical context.

In April the U.S. Supreme Court handed down the ruling in *Oregon Employment Division v. Smith*. At issue was the right of Native American Church members to ingest peyote in religious services despite the state's categorization of peyote as an illegal drug. Twenty-three states have specific exemptions under their anti-drug laws for the sacramental use of peyote; Oregon is not one of them. The *Smith* decision ruled that the First Amendment does not extend protection to Native Americans in their use of peyote as a sacrament.

The Native American Church leaders understood the gravity of the Supreme Court ruling and thought they could no longer practice their religious traditions in isolation from mainstream society. They were driven out of necessity to self-consciously invite outsiders into their circle of worship and to practice their ritual form of worship where those in power would have to take notice. It is in the midst of this political turmoil that I stepped into the church's unusual prayer meeting.

I was somewhat apprehensive about entering this new experience, but arriving about an hour before its 7 p.m. commencement gave me the chance to meet my Native American friends who would be conducting the ceremony. Their welcome and hospitality soon put my fears to rest.

Reuben Snake, one of the meeting organizers and founder of the Native American Religious Freedom Project, explained to me the significance of some of the symbols beforehand. To enter one of the three tepees (conical tents with base diameters of 25 feet) erected for the service, I needed to bend over forward through the low doorway, in effect bowing toward the ground in reverence for the holy space. Inside each of the tepees was centered a half-moon fireplace on the smooth, level earthen floor. The fireplace consisted simply of a carefully erected log fire encircled on the side opposite the door by an arc built up from the ground. Formed from fine sand, the semicircular arc stood about 4 inches above the soil floor and tapered sharply at the ends, disappearing into the earth at one end and reappearing at the other. The arc, patterned in the way of the half-moon ritual, symbolized the visible portion of a continuous circle since to the Native American Church all existence is without end. Only part of our life, they say, is embodied with form, hence the exposed arc of the circle representing the physical life on earth.

The fire was of utmost importance to the church's form of worship. The participants sat cross-legged on mats around the inner circumference of the tepee. Facing the fireplace, they communicated with God using the flames as a conduit.The Divine spoke to them and bestowed blessings upon them through the fire, and the worshipers' prayers were offered up with the burning embers and smoke. Often during the meeting, cedar shavings were thrown into the fire, the burnt offering of a petitioner, and sparks ascended on their way to be received by the Creator. As the cedar particles crackled, the worshipers, with hands outstretched, received divine blessings and ritually anointed their bodies.

In each tepee the roadman functioned as cantor and facilitator. For the tepee in which I sat, George William Hensley, a Winnebago and president of the Wisconsin Avenue Native American Church, served as roadman. He led prayers and singing and assumed responsibility for the orderly conduction of the meeting. At various points ceremonial tobacco was rolled in corn leaves by the worshipers. A small log, one end glowing hot from contact with the fire, was passed around as a lighter for each participant to ignite his tobacco. There was a clear distinction between smoking for pleasure and this kind of ritual puffing on the smoldering cigars. The rhythmic inhaling and exhaling sent curls of smoke wafting upwards, lifting prayers to God for peace, healing and blessing. Verbal prayers were often uttered corporately or by individual worshipers appointed by the roadman. During the evening, prayer themes petitioned for peace in the Middle East and aid for understanding the non-Indians who make the laws of the land and who have recently restricted the right of the church to use peyote sacramentally. Prayers were usually directed toward "God the Creator" or "God the Father." A clear and customary Christo-centric spirituality emerged amid the ceremonial material and traditions to which I was unaccustomed.

The largest portion of the meeting centered on singing songs from the Winnebago tradition. The songs were led in turn by each participant, beginning with the roadman and proceeding around the circle clockwise as did all other movements. Each song leader would begin a melody in the Winnebago tongue with other worshipers joining the nasal, almost chant-like verse, in unison. During each chorister's turn, she would hold a ceremonial staff vertically in front of her with an eagle feather and collection of sage strands in hand. A drummer sitting immediately to the leader's right would be responsible to pound a steady beat on a small water drum. The drummer could be either the person already sitting to the leader's right, a special friend or relative appointed by the leader or the roadman's chosen drummer for the evening. Anyone trained in the church discipline and the Winnebago tradition could lead songs. The youngest was a boy of 6 years who could belt out a tune as well as most.

At times amidst the singing, the lan-

Continued on Page 14

INTERNATIONAL DATELINE

European Baptists ask Gorbachev for restraint

Writing on behalf of the 800,000 members of the European Baptist Federation, the president and general secretary of the European Baptist Federation appealed to General Secretary Mikhail Gorbachev for "constraint on the part of your government in your dealings with the people of Lithuania."

Peter Barber, president, and Karl-Heinz Walter, general secretary of the Baptist office in Hamburg, Germany, asked the Soviet leader "to exercise patience and to pursue a policy of peaceful negotiation."

The Baptist leaders said that a favorable response to their letter would be seen as "a signal to all involved in the Persian Gulf crisis that justice and peace can be established and maintained without resort to armed force." □

BWA leaders seek action on religious freedom law

McLEAN, VIRGINIA

Concerned about the delay of the Romanian government in passing the promised law on religious freedom and resistance within government to such a law, the Baptist World Alliance (BWA) has written Romanian President Ion Iliescu to encourage him and the government to approve the new legislation.

In the letter to Iliescu, General Secretary Denton Lotz and President Knud Wumpleman praised the Romanian leader for the progress already achieved toward a democratic government, but said that "the lack of a law guaranteeing religious freedom is a glaring weakness in the progress toward democratic reform."

The BWA leaders told Iliescu that it is their understanding that the new law on religious freedom would guarantee religious freedom as defined by the United Nations and accepted within European and other democratic countries. □

Medical society created by Bulgarian Baptists

VARNA, BULGARIA

Bulgarian Baptists, at a meeting held in the town of Kazanlak, took the initiative in establishing the first Christian organization in their country for people working in the field of medicine.

The new organization, which has Ljubomir Grozev as its chairman, has two purposes: to spread the Good News among medical workers, and to use their profession to help, "with Christian responsibility, the suffering Bulgarian nation."

Named The Organization of Bulgarian Christian Medical Workers, it has expressed a desire for contacts with similar organizations in other countries. □

Argentine church leader rejects political pardons

BUENOS AIRES

A leader of the Roman Catholic Church in Argentina has taken an unusually harsh position in repudiating the presidential pardons of former military commanders and guerrilla leaders by ordering that those pardoned not be given Holy Communion in his diocese.

Archbishop Miguel Hesayne, head of the Rio Negro Archdiocese in southern Argentina, issued an order in January to all priests in his diocese that the nine military chiefs and three ex-terrorist leaders granted amnesty in December are "not to receive communion until they show some sign of repentance for their horrendous crimes against humanity."

The archbishop said his decision was based on the statements of those pardoned following their release from prison. In their statements, they sought to justify their conduct during the period of brutal military dictatorship and civil war that lasted throughout the 1970s and into the next decade.

Archbishop Hesayne and a few other bishops long have been outspoken critics of the violent crimes committed by both sides during the years of military rule, although much of the church hierarchy has been silent. □

Somber mood replaces euphoria in Europe

NEW YORK

The initial euphoria that resulted from the overthrow of Communist dictatorships in Eastern Europe has been replaced by a more somber mood, according to speakers here at the seventh annual conference of Religion in Communist Dominated Areas.

Panelists gathering at the Interchurch Center noted that the countries in the area still have a long way to go to reach democracy, since Communists remain entrenched even in the churches, and religious groups are struggling for power and influence in the vacuum that resulted from the overthrow of the old systems.

Olga S. Hruby, editor-in-chief of the periodical that sponsored the conference, related that when she visited her native Czechoslovakia in July, "I was astonished to find how much communism had taken a foothold in the country," and "stunned" by "the re-emergence of fascism" as demonstrated by incidents in the past year in which skinheads and punks have assaulted African and Vietnamese workers.

Jeffrey A. Ross, a member of the board of directors of the Anti-Defamation League of B'nai B'rith, commented that "religion can be either part of the problem or part of the solution" in Eastern Europe. He noted that "it can play a role of leading people to a new moral center," but at the same time, "religion can be a focus for very narrow interests." □

Islamic scholars critical of actions by Saddam

While Christians have been debating whether U.S. military actions in the Persian Gulf comply with the "just war" teachings, Muslims have been placing the actions of Iraq against the "just war" teachings of Islam, the claims of Iraqi President Saddam Hussein notwithstanding.

Most Islamic scholars say that Iraq's actions, including the invasion of Kuwait last August and the targeting of civilians in Israel, are at variance with Muslim principles. Saddam has referred to his military thrusts as "a day of holy struggle against the infidels. It is one of Muhammad's days."

Mohammade T. Mehdi, the Iraqi-born president of the National Council on Islamic Affairs in New York, wrote in his 1990 book, ***Islam and Intolerance***, that the "use of force is forbidden in Islam except in self-defense." He said that Muslim rulers have employed force for the expansion of their domains in the interest of increasing their power, not serving Islam.

Another Islamic scholar at Hampton University in Yorktown, Va., says that in Islam, as in Christian tradition, "war has to have some moral purpose. There is no such thing as inherent violence in Islam."

Jihad is a term used to mean "holy war," although Muslim scholars say its meaning is closer to "doing one's utmost" or "striving." Only a council of religious leaders, never a political leader, has authority to declare an authentic jihad.

Saddam "is an example of what happens when this principle of ijma'

(collective religious leadership) is not followed," says Amer Haleen, acting secretary general of the Islamic Society of North America.

"We have an example here of one man plunging his country — and indeed the entire world — to the brink and subjecting his country to the horrors of war because the principles of Islam are not followed."

Haleen stresses that "suppression of Islamic principles is what fosters extremism, and the vast majority of Muslims are not extremists. It's the same if you rob the West of its Christian heritage; you would have a different civilization without the humane values it honors." □

Church leaders berate crackdown by Soviets

General secretaries of four international ecumenical organizations based in Geneva, Switzerland, have issued a joint statement against the Soviet crackdown in Lithuania, declaring that "news of this hostile intervention has been met with shock, deep disappointment and outrage among our member churches in Europe and throughout the world."

The statement was issued in January as the National Salvation Committee, backed by Soviet troops, tried to consolidate control of the Baltic republic which declared its independence from the Soviet Union in March 1990.

The ecumenical leaders appealed to the Soviet government to "instruct its armed forces to desist immediately from the use of force in imposing its political will on the people," and to "honor the commitment made by the democratically elected leaders of Lithuania, Latvia and Estonia to enter into peaceful negotiations on all matters related to questions of mutual security, trade and self-determination."

Their statement urged the leaders of the Soviet Union "to return to the course of perestroika and democracy that has offered so much promise to the people of the Soviet Union, Europe and the world" and to "recognize the fact that no amount of physical and mental coercion will silence the people's will to freedom and self-determination."

General secretaries of the World Council of Churches, the Conference of European Churches, the World Alliance of Reformed Churches and the Lutheran World Federation signed the statement. In addition, the American Jewish Committee and the Rutherford Institute individually issued similar supportive statements. □

Baptist minister anxious to resume work in Israel

The more conflict in the Middle East intensifies, the more anxious the Rev. Alex Awad is to return to his congregation in East Jerusalem.

At the same time, he concedes, the escalating violence makes it less and less likely that the Israeli government will issue the visa he has been trying to obtain for the past two years.

If he were permitted to return, Awad would take up duties as a lecturer at Bethlehem Bible College, which is operated by one of his brothers, and return as pastor at the East Jerusalem Baptist Church. His work there would be supported by the United Methodist General Board of Global Ministries.

Awad, an ordained Southern Baptist minister, said he has had no recent news of his visa, "which indicates again that my problem is on the shelf."

"It is very, very unlikely that the government would even consider my (application)," said Awad, who is a missionary with the United Methodist Board of Church and Society. □

Vatican refuses request to withdraw suspension

The Vatican has refused a request to restore the priestly faculties of Maryknoll Father Miguel D'Escoto, who was suspended in 1985 when he would not step down as foreign minister in the former Sandinista-led government of Nicaragua.

Head of the Vatican Congregation for the Evangelization of Peoples, Cardinal Jozef Tomko, in a letter to Maryknoll, indicated that "Until such time as Father D'Escoto changes his position and is willing to commit himself in writing to obey the canonical norms regarding political activity on the part of ecclesiastics," the office will not lift the suspension.

According to Father Donald Doherty, head of media relations for Maryknoll, the Vatican response to the request for lifting the suspension was confusing. "Miguel is associated with the communal, or community, movement of Nicaragua," he said. "But nobody is denied political expression in the church. I can be a Republican or Democrat, so it's not clear what their objection is.

"Maybe they're afraid he'll be another Aristide," he said, referring to Jean Bertrand Aristide, a priest dismissed from the Salesians of don Bosco Order because of his political involvement. □

NEWS-SCAN

Paul Vychopen, a former pastor, is the new general secretary of the Baptist Union of Czechoslovakia. Pavel Titera, Union president, said the situation in his country remains complicated, particularly in a moral and spiritual sense. He said, "We have outside freedom, but we need inner freedom as well." ... **The former primate** of the Anglican Church of the Province of New Zealand and then governor general of New Zealand, Sir Paul Reeves, was officially installed as the first official representative of the Anglican Communion to the United Nations. Sir Paul is of mixed British and Maori (Polynesian) ancestry, and his installation ceremony included Anglican ritual and elements of Maori folk tradition as well. ... **The notoriety created** by the murder of the six Jesuits slain on the campus of the University of Central America in San Salvador has caused an outpouring of financial support, according to a North American priest who is part of a team of replacements. Father Charles Beirne said, "The murderers say that the job is done—that they have destroyed the university. But if they think they can destroy the university by killing its rector, they're fooling themselves." Like his predecessors, he has become an outspoken critic of two of the most powerful forces in El Salvador—the wealthy class and the U.S. embassy. ... **The National Council of Churches** of Christ has modified its identifying logo. This version replaces the familiar ecumenical ship used by Christians around the globe since its adoption in 1974. The new symbol features a teal-colored boat with the cross of Christ as its mast, riding deep purple waves which suggest the world, the waters of baptism, and the winds of the Holy Spirit. Its release comes as the NCC celebrates its 40th anniversary. ... **A renegade Roman Catholic priest**, disciplined by his church for engaging in political activity, has vowed to fight the punishment despite the threat that further insubordination could lead to permanent removal from the active priesthood. Jose Maria Ruiz Furlan, better known here as "Padre Chemita," handed over the keys to his parish Feb. 11 in Guatemala City after a weekend of sit-ins at his Santa Cura de Ars Church and a confrontation at the Archbishop's Palace in Guatemala City. Church officials ordered Father Ruiz to give up his parish and take a month-long spiritual retreat in Spain after campaigning for mayor of Guatemala City. □

Customs, from Page 11

guage would drift into English. I often heard the words "Jesus Christ our Savior" or "Jesus Christ our only One."

Between complete circles of singing, the jar of medicine was passed from which Native American Church members could partake. Usually the worshiper emptied a small spoonful into her hand raising the herb to her mouth to chew the granular substance. The divine medicine, peyote, was eaten with utmost respect and reverence. To the church member peyote is the flower of God, and its sacramental consumption is considered the path to communion with the Creator, much like the Eucharist supper is to Catholic worshipers or the Lord's Supper is for Protestant and Anabaptist seekers. Under its influence God is made manifest to them to teach and to heal and to rebuke. Many Native Americans who eat peyote report that its taste is bitter and some experience nausea. However, its unpleasant taste and physical effect are more than offset by the spiritual enlightenment it brings them.

At one point when the divine medicine was traversing the circle, the roadman explained his deep sense of grief over the Supreme Court ruling restricting the use of peyote. "White man has taken our land and our dignity and our rights. Now this divine medicine is all we have left and he's going to take it away too. I pray that he will not, that he will see this peyote is important to our way of worship, and we are not here to have some chaotic orgy. I want my grandchildren for years to come to be able to worship in this way that we have for years past."

Following the divine medicine around the circle was a large pot of peyote tea. Each participant drew a cupful from the pot and drank a dose of the herbal liquid. After the tea another round of songs was initiated.

Throughout the evening, members would exhort one another and offer words of thanks and encouragement. For example, one participant began a lengthy discourse directed at another, "Brother, you treat me well and I thank you for that." At one point, Norman Snake, a younger brother to Reuben, opened his Bible and shared a number of scripture passages with the group, including Acts 4 and John 1. All rituals proceeded in an orderly fashion directed by the roadman.

Several hours into the eight-hour service, which concluded about 4:30 a.m., my body began to ache from sitting in the unfamiliar position. My caucasian counterparts and I squirmed, having to change postures frequently to prevent various body parts from falling asleep or becoming unbearably sore. Our discomfort was in contrast to our Native American friends who seemed capable of maintaining their positions for long periods of time with only subtle shifts. At one point the roadman acknowledged the difficulty in sitting on the hard earth for long periods of time. He continued, giving his testimony about the God who took on human form and walked the earth. He reminded us how Jesus had endured great suffering on behalf of humanity, bearing the cross, nails severing the nerves in his wrists. The Native American Church believed they could sit uncomfortably on the ground for a few hours contemplating and identifying their discomfort with the sacrificial life of Christ.

Sometime about 2 a.m., the roadman went out of the tent to face the four corners of the earth. In each of the four directions he offered prayers for those in the armed service, for religious freedom and for other needs. When finishing his prayer in each direction, the roadman blew his high-pitched flute made from an eagle bone. The Winnebago tradition believes that in the four corners are positioned God's angels or chosen spirits with the charge of watching over the earth.

In spite of the unfamiliar paraphernalia and uncommon rituals, I left the meeting with a sense of awe and respect. I left with a sense of wonder and mystery. What took place that night was no less than an epiphany, a manifestation of the divine. ☐

Reviews, from Page 16

process, schools will make their own decisions about admission decisions subject only to nondiscrimination requirements, and schools will set their own tuitions.

Politics, Markets, & America's Schools is a challenging, scholarly work on choice in the schools. Though their proposal deserves careful consideration, it leaves out a fundamental part of the debate: the issue of church-state separation. Their proposal does not require that religious schools participate, however, the authors say that they could be included "as long as their sectarian functions can be kept clearly separate from their educational functions." Civil libertarians and church-state separationists know that this is not an easy task. Chubb and Moe ignore the implications for religious liberty that would result from using public funds to support distinctly religious institutions.

If the trend in school reform continues to move toward choice, it is imperative that the matter of church-state separation be given more thoughtful consideration. Neither of these books does an adequate job of addressing the issue. Our schools can be improved, even fundamentally restructured, without sacrificing our tradition of religious liberty and church-state separation. ☐

—K. Hollyn Hollman

Humankind is wired for hope.

REFLECTIONS

James M. Dunn
Executive Director

"Thar's uh goal mahn en thuh skaiee sum sweet day."

"That's the way my pre-kindergarten ears heard the closing theme song of Gene Autry's weekly radio program. About 5:30 every Sunday afternoon in the late 1930s, on KRLD, Dallas, the famous cowboy troubadour ended his program with this song.

In my childish theology, there was nothing wrong with picturing heaven as a "gold mine in the sky." After all, heaven is up and the streets have to be paved with something.

The Christian hope has come to mean much more than that. One should not shrink from the other-worldly dimension of a forward-looking faith. One can find comfort in the promise of what is yet to be. But Karl Marx was wrong when he said, "Religion is the sigh of the oppressed creature, ... the opium of the people." Our hope is more than "pie in the sky by and by."

In fact, hope offers a unique and irreplaceable dimension of freedom. Hope has roots in memory. It is, in a sense, based on facts. No power on earth can successfully challenge what one knows to be one's own personal experience. "One thing I do know. I was blind but now I see!" (John 9:25).

Hope, then, is tied to the past. History forms the backdrop. Because God brought the children of Israel out of Egypt, they knew what God could do. Because Jesus Christ conquered death and rose on the third day, we know what God can do.

All people everywhere, in all lands and at all times, have had this hankering. Humankind is wired for hope. At some level, all earth's inhabitants are conscious of an empty space that God alone can fill. To use computer terminology, all mortals are programmed for hope.

Christian hope is not unrelated to the ordinary hope hungers of the mass of mankind. It is, quite simply, the piece that completes the puzzle, the answer to the riddle, the satisfaction to the thirst.

This vote for tomorrow, this affirmation of the future, this confidence that there will be more is, in its rawest form, common to all flesh. Every time a farmer plants a seed, every time people marry, every time a child learns or a teacher teaches, there exists some glimmer of hope.

Christians rest in the confidence that the God of history is not finished with ***his story***. One looks back to what has been, in the Bible, in the story of the church, in a Baptist tradition of the priesthood of the believer and in one's own personal spiritual experience.

Hope, then, also pervades the present. It offers a "very present help." The freedom needed to experiment, to change, to engage in adventures is undergirded by hope.

Hope is a powerful force in the active life, a factor that binds together head and heart and hand. Hope glues together virtue and deed, character and acts, values and conduct. One's mental perspective, and even her capacity, is affected by a hopeful mood.

Hope, then, relies on the past, enlivens the present, and offers meaning and direction for the future. John Macquarrie, in his book ***Christian Hope***, explores in depth the many dimensions of the doctrine of hope. He speaks of the relationship of hope to freedom:

> Hope is inseparable from human freedom and human transcendence. This in turn means that hope belongs essentially to any truly personal existence. Where freedom is denied, whether in practical terms through oppression or in theoretical terms through some deterministic ideology, hope is denied also; and where hope is denied, persons are being destroyed, for to be a person means, among other things, to be constantly projecting oneself in hope toward goals in which personal being will find fuller expression and satisfaction.[2]

And so, hope and freedom are intertwined. A rigid, fixed, and static view of life dashes hope and denies freedom. In a world view in which the course of events is fixed, determined in advance, there is no place for hope. Not all discontent is hope. Not all optimism is hope. Not all wishful thinking is hope. Not all piosity is hope. Hope, rather, is tested by an awareness of freedom for oneself and for others; because only in the free opportunity to change things, and for God to change persons, is there hope.

From the garden of Eden, men and women made in the image of God have been able to respond—***response able***, so responsible and free. It is the human hope that projects into the future that same responsible freedom. Freedom and hope are bound inextricably. Where there is freedom there is hope. Where there is hope there is freedom.

Hope then is pervasive freedom. It relates in all points on the time line, past, present, and future. Hope regulates every aspect of human personality—the intellectual, emotional, and volitional. It is required in both the intensely personal and overtly social phases of life. In quiet contemplation or busy activism, hope is essential. In every Christian virtue—faith, love, freedom, truth, justice, mercy, and other fruits of the spirit—hope activates. In secular ideology or Christian thought, hope is a component.

Hope is measured by an acceptance of others with compassion, because it is in oneness with all of the human family that hope flourishes.

Hope is marked by vision. One hopes, and acts accordingly, because the God who is the beginning and the end of hope holds the future.

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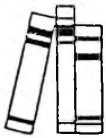
[1] Marx, Karl. "Toward the Critique of the Hegelian Philosophy of Right." *German-French Yearbooks*, 1844.
[2] John Macquarrie, ***Christian Hope*** (New York: The Seabury Press, 1978), 8.

REVIEWS



Choice in Schooling: A Case For Tuition Vouchers

David W. Kirkpatrick, Chicago: Loyola Univ. Press, 1990. 222 pp.

Politics, Markets, and America's Schools

John E. Chubb and Terry M. Moe, Washington, D.C.: The Brookings Institution, 1990. 318 pp.

I was first introduced to the phrase "choice in school" while having dinner with a neighbor. The topic of conversation was the recent local elections, and my hostess, mother of three, began telling of her work for the school board candidate who was for "choice." Enlivened by this novel idea, I had more than a few questions—How will it work? How do you know? What about poor kids? Though my friend made convincing arguments for radical change, I soon realized that this subject provoked more questions and demanded more consideration than one night's dinner forum would allow. Two recent books provide a frame of reference for examining the issue and show that the idea of choice in school is far from novel.

David W. Kirkpatrick's **Choice in Schooling: A Case for Tuition Vouchers** offers the casual reader some reasons why "choice" has become popular in the school reform debate. Beginning with the notion that "mere tinkering" with the same old system is not enough, Kirkpatrick builds his case for tuition vouchers as a possible remedy for the education crisis.

The book is organized chronologically, tracing the history of what Kirkpatrick calls "the idea that will not die." The idea is to fund education through students (by government issued vouchers) rather than making direct appropriations to institutions.

Kirkpatrick does not detail a specific policy proposal. He simply believes that all parents should be able to choose what school their child attends.

The author builds his case on his objections to the current system of public schooling, starting with what he sees as the undue influence of government in the control of the schools. Though he is committed to education, he is opposed to the government's excessive interference in how it is achieved. "Government essentially coerces parents to send their children to a government mandated, funded, owned, operated, and regulated institution. It is not name-calling to describe this practice as socialism." He finds no evidence that government schools produce better citizens or a better educated populace.

Kirkpatrick argues that the reforms typically advocated by teachers and other members of the education establishment—higher teacher pay, greater per student expenditures, and smaller class size—do not and will not work. "Professions," he says, "like other 'establishments,' are rarely changed from within. Experts are experts of the status quo, of what is rather than what can be or what should be." For Kirkpatrick, reform should restrict bureaucracy and increase parental choice.

Kirkpatrick's most significant (and most repeated) objection to the current system is that it limits individual freedom. If government must provide for education, it should do so in a way that would enhance, not restrict, the freedom to choose. He uses the G.I. Bill (Serviceman's Readjustment Act of 1944) as a model for the kind of plan he would support—one that would allow vouchers to be used at any school. He also points to students with special needs. Since many states offer a voucher system to enable handicapped or special education children to attend nonpublic schools, Kirkpatrick asks why such benefits are not available to all students.

Kirkpatrick fails to systematically deal with the constitutional concerns that a voucher program may raise and his comments reveal that he is soft on church-state separation. He has no problem with supporting religious institutions through tuition vouchers. He does not distinguish between choice in higher education (the G.I. Bill) and his plan for elementary and secondary schools. He mentions the Supreme Court's ruling that "religion will permeate the area of secular education" in basic education but does not address this objection to funding religious organizations.

Choice in Schooling provides an easy starting point for grappling with the notion of tuition vouchers. Kirkpatrick does not pretend to have the definitive word on the issue and includes a lengthy bibliography and a list of organizations that may offer further guidance.

Politics, Markets, & America's Schools by John E. Chubb and Terry M. Moe of the Brookings Institution offers another view of "choice." This work provides a comprehensive approach to addressing the current system of education by examining the causal foundations of effective schools.

The authors assert that the reasons the educational reforms of the 1980s will not work are because they are restricted to the domain of policy and leave the underlying institutions of educational governance unchanged.

Most of the book is dedicated to examining public and private schools and determining what effect school organization has on student achievement (the measure of a school's effectiveness). Chubb and Moe draw their conclusions from data collected in a nationwide survey of 20,000 students, teachers, and principals.

The authors conclude that school organization is one of the most important influences on student achievement. They find that the way schools are organized now works powerfully to discourage school autonomy and, in turn, school effectiveness. Therefore, if public schools are to become substantially more effective, the institutions that control them must be changed.

Unlike other reformers, Chubb and Moe call choice a "self-contained reform" that should not be combined with other strategies. "It has the capacity all by itself to bring about the kind of transformation that, for years, reformers have been seeking to engineer in myriad other ways."

Finally, the authors put their theory into a proposal guided by the principle that "public authority must be put to use in creating a system that is almost entirely beyond the reach of public authority." They suggest that states be responsibile for organizing the framework and setting criteria for what constitutes a public school. The authors then make policy suggestions that include: students will be free to attend any public school with a "relevant scholarship" (voucher), every effort will be made to provide transportation, a Parent Information Center will be established to help parents know their options and to handle the application

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