

# REPORT from the CAPITAL

## Judging Thomas

### Church-state views examined

*U.S. Supreme Court nominee Clarence Thomas declined during five days of testimony to take a definitive stand on free exercise of religion.*

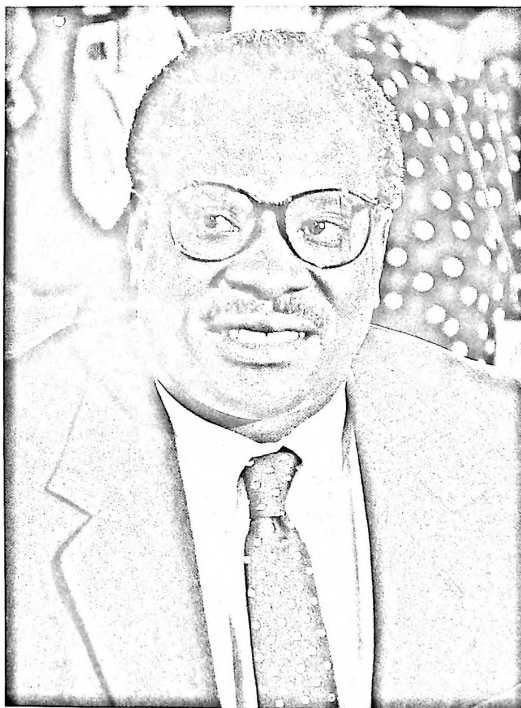
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*Will the real Clarence Thomas please stand up?*

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# REPORT from the CAPITAL

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

Vol. 46, No. 9

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**Cover:** Photograph of Clarence Thomas at recent Senate Judiciary Committee hearings is by Pam Parry.

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## Thomas and religious liberty

**F**ive days of intense-to-benevolent questioning of U.S. Supreme Court nominee Clarence Thomas by the Senate Judiciary Committee appears to have changed little. The panel had yet to hear from public witnesses and the first vote had yet to be counted, but no senator appeared to be swayed by the process. Those predisposed to support President Bush's nominee gave no indication that anything Thomas said changed their minds. Likewise, those who had expressed doubts or had questions about the nominee's qualifications or judicial views appeared to be left with many of the same reservations and question marks with which they began the hearings.

Three writers in this issue of *REPORT* deal directly or indirectly with the Thomas nomination to the high court.

**Pam Parry** provides a first-hand look at the extensive hearings, focusing particularly on Thomas' response to questions about how he views the First Amendment's religious liberty protections. Her coverage takes a look at the struggle by some senators to determine whether the nominee was most clearly represented by his speeches and writings of the past or his testimony before the panel.

In "Views of the Wall," Associate General Counsel **J. Brent Walker** discusses Thomas' testimony and reflects upon how his confirmation would influence the Supreme Court's rulings on religious liberty issues. Walker concludes that Thomas generally voiced "right" answers to questions about church-state relations, but how he would vote as a justice is far from certain.

In a pre-hearing article, Brigham Young University Law School professor **Frederick Mark Gedicks** contends that religious conservatives have mistakenly believed that conservative Supreme Court nominees would protect their free exercise rights. With their quick acceptance of the Thomas nomination without scrutinizing his free exercise views, Gedicks says many religious conservatives show no sign of having learned from the past.

Knowing what God has done in the past is essential to maintaining hope in the present, **James M. Dunn** asserts in "Reflections." The Baptist Heritage Calendar produced and distributed by the Baptist Joint Committee will play a vital role in connecting Baptists with their past.

**Patrick N. Horn** says Derek Davis' *Original Intent* is an "unqualified success" at providing excellent reading about church-state relations for the layperson. □

Larry Chesser

**THE UNITED STATES SENATE** is scheduled to vote Oct. 8 on the confirmation of Supreme Court nominee Clarence Thomas. The Senate Judiciary Committee sent the nomination to the Senate chamber without a recommendation, splitting 7-7 over a favorable report. Although the vote was deadlocked, many observers think Thomas has a good chance of becoming the 106th justice and second black man to sit on the nation's high court. The court begins its next term Oct. 7. Regardless of the status of Thomas' nomination, retiring justice Thurgood Marshall will not remain during the next term (even though he previously announced he would stay until his successor was in place). (PAP) ●

**LAST MONTH WE** announced a prayer vigil to be held Oct. 2 outside the Israeli Embassy in Washington. The purpose of the gathering was to support Rev. Alex Awad's efforts to obtain a permanent visa from the Israelis to allow him to pastor East Jerusalem Baptist Church. The scheduled meeting between various church and denominational leaders and the Israeli ambassador was called off by the Israelis, but the prayer vigil went forward. About two dozen people from a variety of churches and religious organizations attended. George McClain of the Methodist Federation for Social Action led the time of singing, prayer and preaching. The meeting with the ambassador has been rescheduled for sometime during the second week of November. Alex asked me to express to his Baptist friends his great appreciation for their prayerful concern and support. (JBW) ●

**THE RELIGIOUS FREEDOM RESTORATION ACT (H.R. 2797)** now has more than 100 bipartisan co-sponsors, surpassing the number it had last year when Congress adjourned. Co-sponsors are being added weekly as grassroots efforts to contact representatives are intensified. The Coalition for the Free Exercise of Religion, the main force supporting the bill, continues to meet and coordinate its lobbying efforts. The coalition consists of more than 45 religious and civil liberties groups. Members that recently have been added include the Southern Baptist Christian Life Commission, the Episcopal Church, House of Bishops of the Episcopal Church and the Mennonite Central Committee U.S. If you have not urged your representative to support RFRA, do so now! (KHH) ●

**THE UNITED STATES SUPREME COURT** begins its term on Oct. 7 with 69 cases pending, including the Rhode Island graduation prayer case, *Lee v. Weisman*. Additionally, there are more than a dozen church-state cases that the court will have to decide whether to review. (JBW) ●



U.S. Supreme Court nominee Clarence Thomas faces members of the Senate Judiciary Committee.



# Fancy footwork

## Thomas dodges firm free exercise stance

Calling religious freedom a value all Americans can agree on, U.S. Supreme Court nominee Clarence Thomas declined to take a definitive stand on free exercise of religion Sept. 13 during Senate confirmation hearings.

Thomas, 43, also continued his refusal to talk about abortion throughout the five days of questioning by the Senate Judiciary Committee. If confirmed, Thomas would become the 106th justice and second black man to sit on the nation's high court.

At press time, public testimony for and against Thomas had just begun. Baptists were among the witnesses scheduled to testify, including official representatives of the National Baptist Convention, U.S.A. Inc. and the Progressive National Baptist Convention Inc. Those two denominations, along with the National Baptist Convention of America, oppose Thomas' nomination.

Religious liberty questions were among many personal freedom questions raised during the hearings.

Committee Chairman Joseph Biden Jr., D-Del., pursued Thomas' view about religious exercise on the fourth day of hearings.

Biden said the free exercise of religion is central to American life and deserves the highest level of support. Biden asked Thomas specifically about the *Oregon Employment Division v. Smith* decision in which a narrow majority stripped away longstanding free exercise protections.

"In *Smith*, the court held that government no longer has to demonstrate a compelling interest before restricting

religious practices. Writing for a 5-4 majority, Justice Antonin Scalia said government need only show a reasonable basis for its actions. Justice Sandra Day O'Connor said she would have upheld the ban against the religious use of peyote—the specific issue in *Smith*—without abandoning the compelling interest test.

Biden asked Thomas which approach he favors.

Thomas said "we all value our religious freedoms" and a departure from the traditional approach raises "an appropriate reason for concern." But he said he did not have a preference for either justice's approach.

"My concern would be the Scalia approach could lessen religious protections," said Thomas, a federal judge.

"Well, Judge it does," Biden said, noting there is no question the *Smith* decision does lessen religious protections.

Biden repeated his question.

Thomas said any test that lessens those protections is a matter of concern, but the reason he is not being "absolutist" in his response is that as a sitting judge he would have to take time to think about the specifics of the case.

"The approach we should take," Thomas added, "maximizes these protections."

Frustrated at Thomas' repeated refusals to give a categorical answer, Biden said the committee will have a new standard during future confirmation hearings. He pointed to Justice David Souter's refusal to answer questions about abortion as the "Souter standard,"

and said now there will be a "Thomas standard" because "you are answering even less than Souter."

Biden added that Souter told the committee he agreed with O'Connor's approach in the *Smith* case.

On the second day of testimony, Thomas affirmed the Jeffersonian wall separating church and state as "an appropriate metaphor."

Sen. Paul Simon, D-Ill., asked Thomas about the First Amendment ban against government establishment of religion. Simon focused on the validity of the three-part *Lemon* test requiring government neutrality toward religion. Under the test, government actions are required to have a secular purpose, neither advance nor inhibit religion and avoid excessive entanglement of church and state.

Simon noted the Supreme Court has used the *Lemon* test since 1971 and asked Thomas if he thinks these are reasonable criteria to be used in the future.

"The court has applied the test with some degree of difficulty," Thomas said. "I have no personal disagreement with the test, but I say that and recognize how difficult it has been for the court" to apply it because the issue is complex.

In its next term, the high court is expected to consider replacing the long-standing test with a more lenient "coercion" test. The Baptist Joint Committee has joined a coalition asking that the principle of neutrality embodied in the *Lemon* test be maintained; the Southern Baptist Christian Life Commission has asked the court to adopt a version of the

coercion standard.

Thomas added, "I think the wall of separation is an appropriate metaphor. I think we all believe that we would like to keep government out of our religions and want to keep separation between our religious lives and the government."

Thomas told Simon he had not yet ruled on any church-state related case.

Sen. John Danforth, R-Mo., the nominee's most ardent Senate advocate, said Thomas "believes in separation of church and state. He believes in both the free exercise clause and the establishment clause. He has no agenda in that regard whatsoever."

Simon said he thought Thomas' answers in the church-state area were "satisfactory" but not "rock solid."

"If I were to make a choice only on that issue," Simon added, "I would not find his answers unacceptable."

The first day of the hearings set the tone with introductory statements by committee members, senators presenting Thomas and the nominee himself.

In opening statements, some senators praised Thomas' public record and service, emphasizing the Senate previously has confirmed him four times. Others maintained that his record—specifically his speeches and published articles—have raised serious questions about his ability to defend individual freedoms.

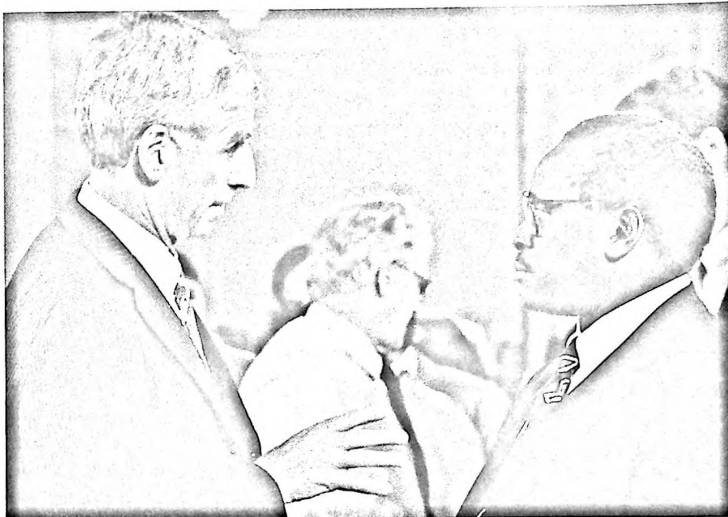
Sen. Strom Thurmond, R-S.C., said Thomas has participated in more than 140 decisions, and his opinions have been written "within the mainstream of judicial thinking."

"An examination of the professional record of Judge Thomas provides no valid reason to believe he would seek to diminish the rights of any American citizen," Thurmond said.

Sen. Patrick Leahy, D-Vt., said Thomas' nomination comes at a pivotal time in Supreme Court history when many fear it is becoming a "monolithic right-wing court" that will favor the power of the state over individual rights. Leahy told Thomas some of his views strike him as those of a "combative, hard-line ideologue," and he is tired of dancing around the abortion issue with court nominees.

Committee members agreed in their praise of Thomas' ability to overcome obstacles. A native of Pin Point, Ga., Thomas overcame poverty, segregation and discrimination to become a Supreme Court nominee.

Sen. Howard Metzenbaum, D-Ohio, said the smart political move would be to confirm Thomas because of his triumph over adversity. However, he said, "The question for this committee is not: Where does Judge Thomas come from? Rather the question for the committee is this: Where would a Justice Thomas take the Supreme Court?



*Thomas confers with Sen. John Danforth during break.*

"I am deeply concerned about the answer to that question."

As a former employer of Thomas, Danforth introduced him as one who would make an extraordinary justice. He assured the committee Thomas is his own man and "will never become a sure vote for any group of justices on the court."

During questioning, Thomas repeatedly declined to give his opinion about a woman's constitutional right to an abortion.

"I do not think that at this time that I could maintain my impartiality as a member of the judiciary and comment on that specific case (*Roe v. Wade*, the landmark case legalizing abortion)."

Metzenbaum and Leahy repeatedly asked Thomas to state his abortion views but to no avail.

Expressing a view on abortion would "undermine my ability to be impartial," Thomas said but he assured senators, "I have no agenda" or "ideology to take to the court."

Noting that Thomas was in law school when *Roe* was decided, Leahy asked Thomas if he ever debated the case or stated whether it was properly decided. He did not recall ever commenting about the correctness of the ruling.

Trying to disarm Thomas' reason for remaining silent on abortion, Leahy asked Thomas if Justice Scalia's voiced opposition to *Roe* "disqualifies" him if the issue comes before the court. Thomas said each justice must decide what he or she believes places that impartiality in jeopardy.

Much of the hearing focused on Thomas' views about natural law. Natu-

ral law is a theory that people have inherent rights bestowed from a higher order than government.

Biden questioned Thomas extensively on his view of natural law, asserting "not a single legal scholar in America" fails to understand the significance of how Thomas would apply natural law in constitutional adjudication.

Thomas said natural law does not have a role in constitutional adjudication and his only interest in it was as political theory. That repeated assertion on the first day of hearings drew ire from critics who claimed he had undergone a "confirmation conversion."

Sen. Alan Simpson, R-Wyo., said the assessment that Thomas had sprinted from his record was untrue and represented an act of desperation by his critics.

"I have been consistent on this issue of natural law," Thomas said. He said his interest in natural law was in the context of what the Founders' views of it were when they drafted the Constitution. But it is the Constitution that provides direction in adjudication, he reiterated.

Metzenbaum expressed concern that Thomas made a "complete repudiation" of his past record. For example, Metzenbaum pointed to a 1988 article in which Thomas wrote, "The higher-law background of the American Constitution ... provides the only firm basis for a just, wise, and constitutional decision."

Sen. Charles Grassley, R-Iowa, asked Thomas about his views on judicial restraint and judicial activism. Thomas denounced judicial activism, noting the judiciary is the least democratic branch

of the government and "we have to restrain ourselves so we do not see ourselves as super legislators."

On Thomas' last day of testimony, several Democratic senators expressed concern about his evasiveness or "vanishing views" throughout proceedings.

Speeches and writings that Thomas generated while in the executive branch were a source of controversy during the hearings. Prior to being appointed to the court of appeals, Thomas served as chairman of the U.S. Equal Employment Opportunity Commission and as assistant secretary for civil rights for the Department of Education in the Reagan administration. During that time, he made several speeches and wrote articles taking staunch stands on issues such as abortion, natural law and civil rights. Senators repeatedly asked Thomas to explain those views.

Thomas asked members of the committee to recognize the different roles of the executive and judicial branches. He noted that making speeches with categorical assertions is acceptable behavior for a policy maker but not a judge. He said he has not taken public stands since he became a sitting judge.

Metzenbaum said the differences in

roles is not sufficient explanation for his past statements. Metzenbaum said Thomas' supporters have pointed to his background as vital to the kind of justice Thomas would be. Metzenbaum said he found it hard to count his childhood background as more relevant than Thomas' public service and tenure at the EEOC.

"Frankly, Judge Thomas, I have difficulty with that," Metzenbaum said. "Your tenure at EEOC is the major portion of your record. That is what qualified you for the court of appeals, and quite frankly, your tenure on the appellate court has been so brief that it gives us little indication of what kind of justice you would be on the high court."

"By your own admission you spoke out on a number of issues during your chairmanship at the EEOC," he continued. "Judge, I start from the assumption that public officials mean what they say. I do not think you are going around the country articulating views and advocating policy positions that you did not believe in."

Metzenbaum also said it is difficult "to accept the notion that the moment you put on that judge's robe, all the views and positions which you held prior to

going on the bench just magically disappear."

Republican senator Orrin Hatch tried to distance Thomas from his speeches when he off-handedly commented to Thomas that "I'm sure that some of those speeches were written by ardent and well-intentioned staff."

Sen. Edward Kennedy, D-Mass., said he still has "serious concerns" about Thomas' nomination.

Kennedy said Thomas praised civil rights leaders in his opening statement during the confirmation hearings, but in five past speeches, he condemned those same leaders. For example, Kennedy quoted a 1985 Thomas speech as denouncing "a civil rights community wallowing in self delusion and pulling the public with it."

Kennedy asked Thomas what he meant by that statement.

Thomas said he has made many other speeches in which he extensively praised the civil rights community.

"The difficulty that we had during the '80s was an important difficulty and that was this," Thomas said. "That there was, to my way of thinking, a need to begin to debate anew some old problems

Continued on Page 14

## Who is Clarence Thomas?

**W**ill the real Clarence Thomas please stand up?

Some members of the Senate Judiciary Committee seemed determined to find an answer to that question as they tried to reconcile the Supreme Court nominee's public record with his testimony during confirmation hearings Sept. 10-16.

Thomas espoused positions in public speeches and published articles that some critics say he sprinted from in his testimony.

For example, Thomas wrote in 1988 that the natural law background of the Constitution "provides the only firm basis" for constitutional adjudication. But during the hearings, Thomas repeatedly said natural law does not play such a role.

On the third day of hearings, some senators' frustration in determining the "real Clarence Thomas" was apparent. Committee Chairman Joseph Biden Jr., D-Del., called one of Thomas' responses "tortuous logic" while noting another was "the most unartful dodge" he had heard.

On the fourth day, the questioning was less intense, but a few Democratic senators still believed they did not have a true picture of Thomas.

Sen. Howell Heflin, D-Ala., called



Clarence Thomas

Thomas an "enigma" and asked him about his earlier days when Thomas joined in student protests. Thomas joked that his minor in college was protesting, but he was not embarrassed for feeling passionately about injustice. He has grown and matured since those years, he added.

Heflin told Thomas he has surprised some people during the hearings, leading them to believe Thomas was "a closet liberal." Heflin asked what the real Clarence Thomas is like and what would he be like on the court.

Thomas said the extensive media exposure prior to the hearings painted a skewed picture of him. He told the committee he was the same man who used to protest only he is older, wiser.

Sen. Paul Simon, D-Ill., still was not satisfied that he knew how to reconcile the two Clarence Thomases. Simon said one Clarence Thomas has written some extremely conservative—even insensitive—things, such as "government cannot be compassionate." The other Thomas testifying before the committee seems to have a heart, Simon said. He asked Thomas how the committee could put them together.

"That is all a part of me," Thomas responded. For example, he said he used to wonder why his grandfather could love him and at the same time be a hard man. He said he learned his grandfather was hard because he loved him.

Sen. John Danforth, R-Mo., said, "I think he has given the Judiciary Committee a very good view of Clarence Thomas, the person, and Clarence Thomas, the judge." □

## VIEWS OF THE WALL

J. Brent Walker  
Associate General Counsel



The Senate Judiciary Committee has just finished reviewing President George Bush's second nominee for the Supreme Court. Although the confirmation of David Souter last year gave the conservatives on the court a working majority on most issues, the confirmation proceedings of Clarence Thomas are still vitally important. If he serves until the age at which his predecessor retired, Judge Thomas' tenure on the court will have spanned 10 presidential terms! Thus, Judge Thomas, if confirmed, will powerfully influence the country's jurisprudence decades into the 21st century.

Judge Thomas has a mixed and scant record on religious liberty and church-state separation. As a judge he decided no church-state cases. As Director of EEOC, Thomas signed a policy advisory requiring religious institutions to give equal benefits to employees who do not adhere to the institution's religious tenets and another ruling that companies who use "new age" motivational programs cannot force employees to attend if it violates their religious beliefs. As a public speaker, Judge Thomas told the Heritage Foundation in 1985, "My mother says that when they took God out of the schools, the schools went to hell. She may be right." Finally, as a husband, Judge Thomas might be less tolerant of minority religion, some have speculated, because of Mrs. Thomas' involvement in the Cult Awareness Network—a clearinghouse and advocacy group fighting cults.

It was against this backdrop of a spotty record on church-state relations that Judge Thomas was called upon by the committee to give his views.

With respect to the no establishment clause, Sen. Paul Simon asked Judge Thomas whether he agreed with the *Lemon* test that requires government to be neutral toward religion. Judge Thomas responded that he had no "personal disagreement" with the test but understood it had been difficult for the court to apply. He also endorsed the wall of separation as an "appropriate metaphor" and opined that it was good to "keep government out of our religions and ... separation between our religious lives and the government."

This is important testimony. The court will soon hear *Lee v. Weisman*. The administration is asking the court to adopt, in place of the *Lemon* test, a so-called "coercion" test allowing considerably more governmental involvement in and promotion of religion. If we

take Judge Thomas at his word, his description of the Jeffersonian wall as an "appropriate metaphor" suggests that he might not side with the four justices who have argued for some species of the coercion test (Rehnquist, Kennedy, Scalia and White) but would tend to vote with the more separationist wing of the court and possibly adopt Justice Sandra Day O'Connor's "endorsement" test.

A note of caution, however. Not everyone who says he believes in church-state separation really means it. Even Jerry Falwell and other members of the religious right have given lip-service to church-state separation, but they take a one-sided view of this doctrine. They believe government should not hamper religion but argue it is appropriate for government to aid religion. Judge Thomas' testimony here was too incomplete to know for certain whether he understands that true separation cuts both ways.

On the free exercise clause, Sen. Strom Thurmond asked Judge Thomas what he thought about *Employment Division v. Smith* (the so-called peyote decision that did away with the compelling state interest doctrine in free exercise cases). Judge Thomas acknowledged that the majority opinion by Justice Scalia was an "important departure from prior approaches," but he would not say he disagreed with the decision. Judge Thomas later told Chairman Joseph Biden that he did not want to take an "absolutist" position but said that the proper approach would be the one that "maximizes [free exercise] protection."

Here, too, Judge Thomas' responses appear to go in the right direction. If he sticks by what he said, there is some hope that he will not join the statist, conservative wing on the court that routinely defers to the political branches of government at the expense of individual liberties. But, amid charges of "vanishing views," "confirmation conversion" and "unartful dodging"—and in light of evasive answers on civil rights, abortion and employment opportunity—no one can be sure where Judge Thomas will wind up on any specific issue.

Judge Thomas' tendency to embrace natural law is also a confusing factor. Natural law is that school of jurisprudence that recognizes fixed principles of right and wrong that lie behind and transcend government's attempt to express moral precepts in constitutions and statutes. Some think these principles emanate from religious sources, others from

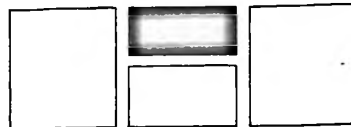
secular moral truths. Although natural law thinking can lead to abuses (e.g., defense of slavery, exclusion of women from the legal profession, upholding economic rights over social legislation), it can provide a bulwark for liberty (e.g., religious liberty is a God-given right). One would hope that Judge Thomas' affinity for natural law would help him resist the tendency of the present court to read the constitutional text narrowly and inhospitably. For example, if one believes that religious liberty results not from an act of toleration by the state, but as a gift from God, he would be hard pressed to join the majority in the *Smith* case. This is natural law working at its best.

But Judge Thomas waffled even on his natural law testimony. Instead of embracing natural law to the extent it preserves individual freedom and rejecting it to the extent that it is abused for a contrary purpose, Judge Thomas dissociated himself from it altogether as a guide for constitutional decision-making. Instead, he testified that natural law was important only as a political theory that lies behind our constitutional wisdom. In summary, Thomas' natural law testimony sheds little light on how he will decide cases including church-state issues.

Finally, there is some thinking that, because of Judge Thomas' Afro-American heritage, humble origins and experience with discrimination, he will bring some measure of counter-majoritarian thinking to the court and that, because of his youth, he is likely to grow and develop in office. There may be some merit to these contentions. Again, it is difficult to tell. It's a long way from Pin Point, Ga., to the lofty heights of the Supreme Court bench. And, even if Judge Thomas matures into a full-fledged civil libertarian, we will only be even. After all, it is Thurgood Marshall—a staunch defender of the Bill of Rights—whom he is replacing.

At the writing of this column the hearings have just been completed, and although the Senate has not yet voted, many observers think that Judge Thomas will become Justice Thomas. While his answers on church-state relations tended to be right, one would have hoped for a less tentative endorsement of governmental neutrality and a more forceful commitment to free exercise. Only time will tell whether his inchoate answers ripen into good judicial decisions. □





Sen. Ernest Hollings (left) addresses briefing, and James Dunn welcomes Rep. Bill Goodling (right).

## U.S. education woes explored

American education is in trouble.

Speakers at a Religious Leaders Briefing on Education held Sept. 12 in Washington generally agreed with that gloomy assessment but disagreed about why that's true and how to remedy it.

A Bush administration official defended the role of private schools in American education and praised the "choice" provisions in the administration's America 2000 education reform package.

The choice proposals would encourage states and local school districts to provide vouchers for parents to send children to private and parochial schools as well as public schools. The plan also calls for national competency testing, the creation of 535 New Generation schools and efforts to combat adult illiteracy.

"The administration is seeking to launch a popular movement based on dissatisfaction with the status quo," said Michelle Easton, acting executive assistant, Office of Private Education at the Department of Education.

The administration wants to broaden the definition of public schools to include any school open to the public and held accountable to the public, including both public and private schools.

She challenged criticisms that private schools are "for rich kids," are country clubs for elite students and promote racial isolation.

Asked how private schools receiving tax dollars would be held accountable, Easton said she hopes governmental oversight would be in the areas of health and safety and assurances that the students are learning and achieving. She prefers that government not become involved in areas such as admission standards, religious values or hiring standards.

A contrasting assessment was provided by a House of Representatives education specialist who told the participants the choice plan is a gimmick that will not improve education.

John F. Jennings, general counsel for education of the House Education and Labor Committee, said the debate about choice is a "diversionary debate. It is not a debate about essentials."

"Choice is not about education. Choice is about politics," Jennings said. "It's an effort to get Catholic ethnics and Southern fundamentalists into the Republican Party."

Another blast at choice was leveled by Sen. Ernest Hollings, D-S.C., who said

the primary needs of public schools is additional funding. He called for strengthening such programs as Head Start, Title I (remedial education), and Women's, Infants and Children (WIC).

"These are working programs," he said. "We're wasting money by not putting money into early (childhood) programs. That's what we need in education, not choice. That's nonsense."

Hollings said the duty of government "is to leave private schools alone."

He told the religious leaders he was headed to mark up an appropriations measure and he assured them restrictions would be attached to every dollar appropriated.

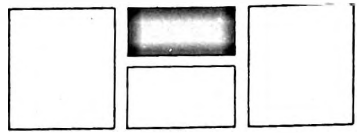
"If you want regulations in private schools, call on me" for funds, Hollings said.

The ranking Republican member of the House Education and Labor Committee, Rep. Bill Goodling of Pennsylvania, offered a more cautious assessment of the administration's proposal.

Goodling, a former school administrator, said he favors a plan that would let states choose from among elements of the Bush proposal.

"I don't care if you spend billions and billions, if you don't find a way to get





the family unit back together to encourage excellence in their children, nothing is going to change," he said.

He warned choice proponents to make certain they know what they are getting when they seek tax dollars for private schools.

"I would be very cautious," he said. "I wouldn't jump on a bandwagon because some federal dollars are involved.

"I see some real pitfalls. If I were operating a private school I would guard against losing my rights to operate it as I saw fit. You cannot do that with federal money."

The briefing, attended by about 40 religious leaders, was sponsored by the Baptist Joint Committee on Public Affairs, the Washington office of the Episcopal Church, the Lutheran Office for Governmental Affairs of the Evangelical Lutheran Church in America, the Washington office of the National Council of Churches, the Public Affairs Office of the Seventh-day Adventist Church and the Religious Action Center of the Union of American Hebrew Congregations. □

## Proposed regulations pose church-state threat

WASHINGTON

Proposed regulations implementing a child care program raise serious church-state questions, according to the Baptist Joint Committee.

The BJC recently filed comments on the proposed rule for the Aid to Families with Dependent Children At-Risk Child Care Program.

The proposed rule to implement the program was published to allow at least 30 days for public comment. After the comments are processed, the final rule will be published.

The program would help provide child care for low-income families at risk of becoming eligible for Aid to Families with Dependent Children.

While the program would help low-income families, the proposed regulations to implement it "do not contain any safeguards to require or even encourage compliance with the establishment clause of the First Amendment," the BJC comments say.

A broad provision of the rule would allow a state to grant money directly to a church day-care center without any restriction on sectarian activities, the comments say.

The BJC comments suggest the final rule include a provision that churches

receiving direct aid may provide "no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence" in providing child care.

"If aid to parochial schools is bad, aid to parochial preschools is worse," said Oliver S. Thomas, BJC general counsel. "Government has no business subsidizing religious indoctrination, and without the restrictions we have proposed, this program does precisely that."

The BJC also filed comments on the proposed rule for the Aliens in Religious Occupations provisions of the Immigration Act of 1990. The rule gives procedures for admission to the United States of non-immigrant or temporary religious workers. Religious workers may stay in the states for up to five years under the law.

The BJC raised concerns that the rule would accommodate hierarchical churches but not those with congregational polity, such as Baptists.

The BJC noted that to comply with the rule's definition a religious denomination must have a "recognized creed and form of worship, a formal code of doctrine and discipline."

Baptists, along with many other denominations, pride themselves on being 'non-creedal.' That is to say, we do not have specific creeds that set forth our tenets of belief; rather, we look to the Bible generally to set forth our doctrinal position," the comments say.

The BJC called for an expansive definition: "Religious denomination means a religious group or community of believers having some form or forms of ecclesiastical government, worship and religious practice."

In another matter, the U.S. Department of Justice recently responded to comments filed by the BJC in March on the proposed rule for the Americans with Disabilities Act. The 1990 act provides persons with disabilities protections in several areas, including public accommodations. Churches, however, are exempt from having to meet these obligations, such as installing elevators for handicapped persons.

Although the act exempts churches, the proposed regulations were subject to the misinterpretation that the act applies to any religious entity that makes its facilities available to the Boy Scouts, Alcoholics Anonymous or other groups open to the general public.

The Justice Department conceded the religious entity exemption should be interpreted broadly. □

## Buffalo students win squabble over Bible club

WASHINGTON

A group of high school students has won a legal dispute with the Buffalo, N.Y., School District over whether the students can conduct after-school Bible club meetings in a classroom.

Justice Leo J. Fallon of the Supreme Court of Erie County, N.Y., has approved settlement of a dispute between the school district and three McKinley High School students arising from the school's refusal to allow the students to use school premises for Bible club meetings.

Under the settlement, which was reached in May and signed Sept. 4 by Justice Fallon, the school district will not appeal a permanent injunction requiring it to allow the students to meet and will pay \$125,000 of the \$400,000 in legal fees sought by the students. The settlement calls for the students to release all claims for damages against the school board.

The long-running legal dispute began in November 1987 when the students sought permission to meet after school for religious discussion, Bible study and prayer. In denying the request, McKinley High School Principal Crystal Boling cited an advisory letter from the district's legal counsel noting that the district's rejection of a similar request nearly a decade earlier had been vindicated in court.

In March 1988, attorneys for the students asked the school board to reconsider the decision. The request noted developments in the law during the past decade, particularly the passage of the Equal Access Act of 1984, a measure that bars public secondary schools that allow voluntary groups of students to meet before and after school from discriminating "on the basis of the religious, political, philosophical or other content" of their speech.

When it reconsidered the students' application for a Bible club in May 1988, the board voted 6-3 to "receive and file" the request, effectively denying the club access to school premises. Board officials said they had received contradictory and inadequate guidance from district legal counsel and the state education department on the matter.

In October 1988, the students again submitted an application for a Bible club and the school board filed suit seeking a declaratory judgment to determine the legal rights and obligations of both parties. □

# Conservative court?

## Religious right misjudged justices

In the early 1970s, when the Christian right was only a few voices crying in the wilderness, religious conservatives dreamed of a day when conservatives would control the Supreme Court. That day has finally arrived. With the elevation of William Rehnquist to chief justice and four (soon to be five) appointments by Presidents Reagan and Bush, those on the right now dominate the court.

The conservatives on the Supreme Court have significantly advanced the religious conservative agenda during the past five years. *Roe v. Wade* has been seriously undermined and is poised to topple. The court refused to accord constitutional protection to homosexual rights. Government sponsorship of religious activities has been repeatedly approved by the court, and last term it even granted prayer a cautious re-entry into public schools.

But many religious conservatives failed to notice less congenial developments during these years. The court held that the "free exercise" clause did not exempt an orthodox Jewish military officer from regulations that prevented him from wearing a yarmulke with his uniform; the majority worried that permitting the yarmulke might require the military to allow cowboy hats as well. In a subsequent case, it found that the free exercise clause did not prevent the government from building a logging road near a sacred Native American worship site, even as it acknowledged that the road would have a devastating impact on the tribe's religious practices.

In another case, the court determined that the free exercise clause did not exempt a church's sale of Bibles from a state general sales tax because churches were not specifically targeted by the tax. The court applied the *coup de grace* in 1990 by announcing (in the so-called "peyote decision") that the free exercise clause does not protect religious organizations and individuals from the effects of any law of general application, no matter how great its impact and burden on religious exercise and no matter how trivial the government's reason for applying the benefit to believers.

The repeal of free exercise rights by

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*Religious conservatives naively believed that because their political agenda substantially overlapped that of secular conservatives, the secularists also shared the believers' conviction that religion is sufficiently valuable to merit protection against government intrusions.*

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the new "conservative" Supreme Court shows how irrelevant partisan labels have become to religious freedom. Politicians are largely divided by varying commitments to "statism" and "libertarianism." A statist usually supports government regulation; a libertarian generally opposes it. Political conservatives (and especially religious conservatives) tend to be libertarian on business matters and statist on moral issues. Political liberals tend to be the opposite. On religious freedom, however, there is no such pattern; free exercise statists and libertarians are scattered across the political spectrum.

The mistake of religious conservatives has been their uncritical assumption that secular conservatives are consistently libertarian when it comes to religious free exercise. Events have proven otherwise. The conservative bloc on the Supreme Court is statist with respect to religious freedom, meaning that it rarely stands on the side of believers against government. Indeed, believers should expect little from a court that confuses a yarmulke with a cowboy hat, that deems the destruction of a religious culture an acceptable cost of road-building and that fails to see the coercion in government taxation of religious activities.

Religious freedom in the United States now exists at the sufferance of Congress and the state legislatures, for the free exercise clause no longer affords protection to those who are prevented from practicing their religion by general government action. Should Congress decide to draft Quakers into the military, the free exercise clause will not prevent resisters from going to jail. Should Congress or the states determine to

eliminate religious exemptions in anti-discrimination laws, the free exercise clause will not protect religions whose theology prohibits them from ordaining women or homosexuals to the priesthood. Should Congress or the states decide to tax churches, the free exercise clause will not protect those who refuse to pay. The government is now free to deal with all religions in the coercive way it once dealt with Mormons in its crusade to eliminate bigamy. And, like the Mormons, those targeted by government who wish to survive will ultimately have to do its bidding.

Recently the Religious Freedom Restoration Act of 1991 was introduced in the House with the aim of restoring constitutional protection of religious free exercise. Ironies abound in this effort. For the first time in recent memory, religious conservatives find themselves on the same side of an issue as the American Civil Liberties Union. If enacted, the act would restore the protective doctrine of free exercise exemptions first articulated by the Great Satan of conservative politics, the Warren Court. This doctrine is the very one abandoned by the current court majority whose emergence religious conservatives had greeted with such celebration. Religious conservatives naively believed that because their political agenda substantially overlapped that of secular conservatives, the secularists also shared the believers' conviction that religion is sufficiently valuable to merit protection against government intrusions. They were mistaken. Religious conservatives also failed to appreciate the corollary point, that liberals often value religion even though they oppose the religious conservative agenda, a point highlighted by the recent resignation of Justice Thurgood Marshall. Religious conservatives were glad to see him go, yet he was a solid vote for the free exercise of religion.

Religious conservatives show no sign of having learned their lesson. Within days after President Bush nominated Judge Clarence Thomas to be Marshall's successor, religious conservatives pronounced themselves satisfied with his record. Typically, they failed to scrutinize Judge Thomas' free exercise views.

Religious conservatives are now reaping the harvest sown by their alliance with secular conservatives. □

Frederick Mark Gedicks is a professor of law at Brigham Young University School of Law, Provo, Utah. This article appeared in the July 18 edition of *The Christian Science Monitor* and is reprinted with permission.

## Quoting

Hugh Wamble  
Kansas City, Mo.

Some of you are aware that I have spent a considerable portion of my life contending for the concept of liberty of conscience. Conscience is that place where God makes contact with you. And conscience is that place where you are able to interact with God and to become your own person. There are people all about you who want you to be their person. Conscience has never been safe in the hands of authoritarians—whether they be popes, prelates, priests, princes, preachers or politicians—who believe they have a signal mandate from God to determine what each person is to believe and what he is to do with respect to religion.

Remember that God alone is sovereign of the conscience. And it is in that conscience that God will give you a shining light. Guard it. Let nothing dim it. Follow it when you see it. Nothing will please me greater as I view you from the palisades of heaven than to see you faithfully following the conscience which God has shaped in you. Your conscience is the most unique gift that God has ever bestowed upon you, and you are the sole guardian of it. Others will try to buy it, they will try to compromise it, they will try to control it. But you are the sole guardian and custodian of it. Protect it at all costs. May God bless you at that.

May I pray with you.

Our heavenly Father, we thank you for your investment in the life of each of us lighting every soul that comes into the world. Help us to exercise our conscience properly and in the process to insist upon the respect of everybody else's conscience. Keep us from trying to do for others what we know would be wrong if others did for us—by compromising and controlling our conscience.

And as we follow that shining light, oh God, may we too come through the hard places and arrive at the celestial city where we shall enjoy that intimate, eternal contact with you made possible by the amazing grace that you have so freely bestowed through Jesus Christ our Lord, in whose name I pray. Amen.

(Hugh Wamble, professor of church history at Midwestern Baptist Theological Seminary and devoted friend of religious liberty, was killed Sept. 22 in a traffic accident. He offered these remarks and prayer during an April 18 seminary chapel service after being diagnosed with cancer.) □

# Cox questions jailing of pastor in Mexico

(EDITOR'S NOTE: Baptist theologian Harvey Cox, Victor S. Thomas Professor of Divinity at Harvard Divinity School, wrote the following letter to Mexican president Carlos Salinas de Gortari. To date, Mexican officials have acknowledged receipt of the letter but have not responded to its contents.)

August 20, 1991

Dear Mr. President,

I write about a matter of considerable concern that I hope has already been called to your attention but may not have been. I also presume to write because you yourself are a graduate of this university, because I met you very briefly during one of your recent visits here, and because I am confident that this is a matter to which you will want to give attention. The fact that Harvard has recently entered into a historic agreement with Mexico that will result in more exchanges also encourages me to write.

On July 22, 1991, the Reverend Eloi Mendez, a Baptist minister living in the village of Calihuala in Oaxaca state, was arrested and imprisoned along with three lay leaders of his congregation by local law enforcement authorities. According to my information the only charge against the Reverend Mendez was that he had declined courteously but firmly, as a matter of religious conscience, to contribute a small amount of money to the local Roman Catholic patron saint's festival. A few days later after considerable intervention he and his friends were released, but the fact of his incarceration has understandably raised serious questions in my mind about your nation's commitment to genuine democracy and human rights.

I have known the Reverend Mendez for more than fifteen years, have visited his congregation in Calihuala and know him to be a man of integrity and honor. The local authorities may have thought their inexcusable action might go unnoticed by the outside world, but probably did not realize that the Reverend Mendez's son, the Reverend Moises Mendez, holds the degree of master of theological studies from this institution and—after further study in Geneva and Jerusalem—is now an internationally respected ecumenical religious leader. Moises actually lived in our home here in Cambridge while he was a student, and he now serves as the dean of the Baptist Theological Seminary of Mexico. One wonders, had this illegal and unconscionable action been taken

against a person without such a well-known family member, if he might still be languishing in prison.

This ugly incident raises a host of larger questions. When I visited your beautiful and vibrant country, as I do nearly every year, last June, I kept hearing troubling rumors: about a possible change in the Mexican constitution that would grant special status to the Roman Catholic Church, about the growing number of violent incidents directed against evangelical Christians, and about a new rapprochement between PARI and the Catholic hierarchy. I hope these rumors, which have certainly been reported to you, are unfounded. It would be unfortunate and contradictory if the Republic of Mexico, which has seemed recently to be headed in a more pluralistic and democratic direction, would allow this kind of reversion to occur. Such a reversal would not only do a grave disservice to millions of loyal Mexicans—Protestants, Jews, Pentecostals and those belonging to no religion—but would gravely disquiet those of us who, though not ourselves Mexicans, love your country and your people and had looked to your leadership with hope.

Members of the Mendez family have assured me that they have nothing but warm respect and affection for their Catholic neighbors in Calihuala. They frequently work together cheerfully in matters of common concern to the village. As a visitor to Calihuala I can assure you that the problem there is not religious division but poverty and injustice. The Reverend Mendez's decision not to contribute to the saint's festival was in no sense an anti-Catholic, to say nothing of an anti-Calihuala, one. He loves Calihuala and serves its people—of all faiths—unstintingly. But like the early Christians who refused to place the pinch of incense on Caesar's altar, he is a man of unshakable conviction who will not violate his own faith. I am sure that you, like me, even if you cannot agree with his choice, agree that he should be legally protected in making it.

I trust you understand that I write this letter in a friendly and constructive spirit, certain that if you are fully aware of the facts and ramifications of this case you will take the necessary steps. I look forward to hearing from you.

Respectfully,  
Harvey Cox



# Freedom fuels Soviet changes

By Greg Warner

Associated Baptist Press

A taste of freedom was enough to overcome a mountain of fear in the Soviet Union, says Soviet expert Olin Robison.

The recent coup attempt by hard-line Soviet communists failed because grassroots Soviets, after enduring decades of totalitarian rule, found freedom to their liking, say Robison and other experts.

"The principal thing that has happened is that a society governed by fear and repression for generations is finally coming into the sunshine," said Robison, a Baptist layman and former U.S. State Department official. "The people are saying, 'We're not going to live this way anymore.'"

"In the last five years, the people had lost their fear of the system," added Bill O'Brien of Samford University in Birmingham, Ala. "That became the emotional and moral currency they could draw on."

The reforms of Soviet President Mikhail Gorbachev had "created the climate of freedom," said O'Brien, director of the Global Center at Samford's Beeson Divinity School. As a result, O'Brien said, when Russian President Boris Yeltsin issued his call for Muscovites to go into the streets to resist the coup, "it did not go unheeded."

Robison also was impressed by the resistance mounted by Soviet citizens. "Don't underestimate the risk they put themselves under," he cautioned. "Historically, when they did that, they got shot."

Robison is former president and now a professor at Middlebury (Vt.) College. A member of First Baptist Church of Washington, D.C., he served as special assistant to the undersecretary of state during the Lyndon Johnson administration.

The fact that Soviets would stare down their powerful military with no weapons sends "a strong signal" about how they value their freedom, O'Brien said.

"The way the coup was turned back will almost certainly strengthen that determination and make it stronger," Robison said. "It almost has to."

Will the victory of freedom for the Soviets bring a spiritual harvest as well? Many observers think so.

Veda Rae Lozuk, a Southern Baptist

missionary in Moscow, says the Soviets are ripe for renewal.

"I wouldn't be surprised to see a spiritual movement sweep over this country, because people are so hungry and so thirsty for the word of God and they've been denied the hearing of it for such a very long time," Lozuk said.

According to Lozuk, freedom has so taken root in the Soviet Union in recent years that there is no turning back.

Robison was more cautious about predicting the future of Soviet religion after the failed coup. "I don't think it's possible to say with any precision what it will mean for religious communities," he said. "But all the things that have happened in the past week suggest it's going to be a society with much greater pluralism."

"I do have the sense that Baptists are flourishing in the Soviet Union," he added. And the events of the past week offer Baptists "the promise of uninhibited growth."

Both Robison and FMB vice president Isam Ballenger agreed the greatest promise for spiritual advancement is in the Baltic republics and the Ukraine. Less religious freedom might await in the Asian republics, where Islam has a strong hold.

"If the republics come to have authority over church relations, then there could be several developments, some of them good and some of them bad," said Ballenger. "It could be disadvantageous (for Christians) in the Islamic republics."

In those parts of the Soviet Union where the Russian Orthodox Church is dominant, there will be other tests of the new found freedoms, Robison said. "It's going to mean the Russian Orthodox hierarchy is going to have to be more tolerant of other religious groups than they have been historically."

Is communism dead in the Soviet Union? On this question, too, many are cautious.

"It's too early to say," O'Brien noted. "I wouldn't want to say it's the last gasp for communism."

But he likened the events of the past week to "the sound you get when you are sucking on a straw and you come to the end of your chocolate soda. It may be the dying gasp (for communism), but there might be enough bubbles down there to make some noise."

O'Brien said the upheaval in the Soviet Union can teach American Christians something about the urgency of sharing the gospel and the character of Christians overseas. □

## Soviet nuclear threat still real, Stassen says

LOUISVILLE, Ky.

The disintegration of communist domination in the Soviet Union is not necessarily good news for the cause of world peace, says seminary professor and peace advocate Glen Stassen.

"It depends on how we respond to it," said Stassen, professor of Christian ethics at Southern Baptist Theological Seminary here.

Although the failed coup by communist hard liners demonstrates the power of the Soviet people to determine their national destiny, it does little to reduce the risk posed by the production and use of nuclear weapons, said Stassen, a former nuclear physicist and advocate of a nuclear freeze.

He cited three reasons:

- The threat of an exchange of nuclear weapons between the United States and the Soviet Union still exists, Stassen said, even though such an exchange would likely be by mistake.

- "The threat of nuclear weapons never was that the Soviet government would make a nuclear war; they would be devastated if they did," explained Stassen, who used his training as a nuclear researcher to help develop the U.S. government's early-warning radar system "to tell us when the Russians were coming."

- "The threat comes from false radar warnings, plus the perception that we are developing the accuracy to destroy each other's weapons."

- Posing the second threat, Stassen continued, is the weakening of control from the central Soviet government. "Will several republics get nuclear weapons now?" he asked.

That concern was on the minds of both President George Bush and British Prime Minister John Major a week after the coup. Both said they needed assurances about who will now control the Soviets' vast nuclear capabilities.



## NEWS-SCAN

Russian President Boris Yeltsin sought similar assurances by asking for veto power over any decision to launch Soviet nuclear weapons, which during the three-day coup were apparently in the hands of the coup leaders.

• A third threat, Stassen said, is the proliferation of nuclear weapons into other nations. With the reduced role of the two superpowers in international affairs, the likelihood that smaller countries will develop and perhaps use nuclear weapons increases, according to some experts.

"These three threats are not going away because of what is happening in the Soviet Union," Stassen warned. "They are increasing."

Still, he said, the overthrow of communism in the Soviet Union offers great hope as well.

"It gives us encouragement about the power of the people. The (Soviet) people have done so much to make this happen, more than people realize."

Now that the Soviet people have discovered the power they possess, Stassen said, it may invigorate the Soviet peace movement, which focuses on banning new nuclear weapons testing.

A halt to testing new weapons worldwide is the key to reducing the nuclear threat, Stassen said. "The point of testing is to see whether new types of bombs work." If the test is successful, he added, "it commits you to a fuel chain" that leads inevitably to production of the weapon.

Although Soviet President Mikhail Gorbachev stopped the tests several years ago, they were set to resume after the U.S. government declined to stop its own nuclear tests.

"It was because of our actions that they wanted to continue testing," Stassen said. "It really just leaves it up to us."

Although the threat of nuclear weapons causes many people to fear for the future, Stassen said it should call Christians to action.

"The question is not 'What is going to happen and when?' The question is 'What are we doing in the meantime?' We need to turn speculation into self-examination." □

### Arab Baptist pastor denied entry into Israel

WASHINGTON

Arab Baptist pastor Alex Awad again has been denied a permanent visa and

work permit to serve a Palestinian church in the West Bank by the Israeli government.

Awad, an ordained Southern Baptist minister, has worked for more than two years to obtain a visa so he can return to his homeland and serve as pastor of East Jerusalem Baptist Church. He also wanted to teach at Bethlehem Bible College.

Israeli officials did not give a reason for the latest rejection.

At the request of the Southern Baptist Foreign Mission Board, the Baptist Joint Committee has been working nearly two years to help Awad secure his visa.

"We are crestfallen at the news," said J. Brent Walker, BJC associate general counsel. "There was simply no good reason for the Israeli government to turn him down. Alex had no hidden political agenda. He just wanted to pastor a local church in East Jerusalem."

"It's hard to imagine a more egregious violation of religious liberty," he continued, "than to keep a congregation from calling a pastor whom it believes God has ordained to be its leader."

Awad said, "Part of my sadness is that their rejection does not serve anybody—not even the Israeli government. It will not promote peace and justice in the world; it's an act of discrimination."

Awad, 45, was born in Jerusalem and spent more than 10 years in the United States, becoming an American citizen. In 1979, he returned to Israel to become dean of students at Bethlehem Bible College and worked among Palestinian Christians in Jerusalem until 1987.

In 1987, the Israeli authorities refused to renew work visas for Awad and his wife, Brenda, saying that they had allowed lapses in their visas. So, they returned to the United States.

Awad said they did not purposefully violate visa regulations but were victims of government policy that made it difficult to maintain current visas.

In 1988, the East Jerusalem Baptist Church called him as pastor. He traveled there on a temporary tourist visa to iron out details; the Israeli government would not renew his visa and requested he return to the United States and reapply.

Since then, he formally has applied twice.

Awad said he is calling on the Israeli government to reconsider its decision. His ministry in Israel would have been undergirded by the General Board of Global Ministries of the United Methodist Church. □

Baptists worldwide have baptized more than 1 million new members and established about 7,000 new churches during the past year, according to Tony Cupit. Cupit is director of evangelism for the Baptist World Alliance. The nearly 150 BWA-member communions also collected more than \$12 million for various relief and aid projects through their own organizations and contributed nearly \$500,000 to Baptist World Aid, the BWA's relief arm. Another \$2 million was raised for Baptist Response—Europe, the relief program to aid Baptists in the emerging democracies of Eastern Europe. ... **Albania began opening doors to the gospel message** after some 500 years, according to the Association of International Missions Services. Western Christians recently made a public debut, bringing the gospel to thousands of worshippers by means of a series of concerts presented by Jon Stenkoski's Celebrant Singers, a member group of the Virginia Beach-based AIMS. In addition to the concert, tens of thousands of Albanian-language Scriptures were distributed to crowds. The group of international Christians also dispersed throughout the Eastern Bloc country that previously has been closed to the gospel because of staunch Communist oppression and Islamic influences. A reported 200-300 Albanians in Lezhe, a city north of the capital, accepted Christ as their savior. ... **The Baptist World Alliance** recently sent a communique to U.S. Secretary of State James Baker, alerting officials to the plight of Haitian workers forcibly repatriated from the Dominican Republic. BWA General Secretary Denton Lotz termed the action of Dominican President Joaquin Balaguer "an inhumane attack" upon the Haitians, who have worked in Dominican sugar fields since 1920. The BWA communique was prompted by a report from Eveque Lopez Dautruche, president of the Protestant Federation of Haiti. ... **The World Council of Churches** is facing serious financial constraints and was scheduled to present a restructuring proposal to its Central Committee in September. □

Compiled from staff and news service reports, including Religious News Service, American Baptist News Service, Associated Baptist Press and European Baptist Press.

and to begin to look at them with fresh ideas.

"What you see in those speeches ... is frustration that that debate never took place ..." Thomas continued. "Rather than ultimately sitting down in the beginning to try to work out the problems, we were spending our time yelling across the table at each other."

Kennedy said, "You've taken many strong positions, but again and again you've asked this committee to ignore the record you've compiled over a decade. ... You ask us to believe that an intelligent and outspoken person, like yourself, has never discussed *Roe v. Wade* with another human being. ... You've trashed the leaders of the civil rights movement in many speeches but now you emphasize your debt to them."

"The vanishing views of Judge Thomas have become a major issue in these hearings," Kennedy said.

On the abortion issue, Metzenbaum said Thomas' past record also conflicts with his current testimony. For example, Metzenbaum said Thomas previously criticized a key constitutional argument supporting a woman's right to choose. But before the committee, Thomas said he has no opinion on abortion, Metzenbaum said.

"To the millions of American women who are wondering where you stand on that critical issue, your answer is, 'Trust me. My mind is open. I don't have a position or even an opinion on the issue of abortion.'"

"Judge Thomas, that's just incredulous," Metzenbaum said.

While some Democratic senators voiced concern about Thomas' testimony, Republican members seemed satisfied, generally yielding the floor to Democratic colleagues who still had questions on the fifth day of hearings. □

—Pam Parry

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This is one of the 366 facts from Baptist history that you will find in the 1992 Baptist Heritage Calendar.

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## REFLECTIONS

James M. Dunn  
Executive Director



**D**id you know that on Jan. 1, 1802, John Leland presented 1,440 pounds of cheese to President Thomas Jefferson?

Or that on Feb. 11, 1884, the Baptist witness in Estonia began with the baptism of nine believers?

Or that on April 11, 1862, Baptist Charles Evans Hughes, chief justice of the U.S. Supreme Court, was born in Glen Falls, N.Y.?

Or do you care? Trivial pursuit?

The Baptist Heritage Calendar has such a fact for every day in 1992.

Some knowledge of specific facts of history, some sense of the movement of history, some attempt to discern the lessons of history are essential.

Baptists have fallen upon hard times, partly at least, because we lack a clear identity. That gap is easily explained and often excused. We've grown so fast. We're so diverse. We are not creedal. There's no such thing as "the Baptist church." All true.

Then, there are those who are embarrassed to claim the label. With the antics of some of the best-known Baptists, who can blame them? Some in high-minded, but ill-considered open-mindedness, are ashamed of any denominational tag. Others genuinely are dedicated to the obliteration of all distinctions or differences between believers and would, if they could, be nameless.

Understanding, accepting and improving upon the contributions of our forebears seems to be a worthy endeavor. There is merit in flat-footedly coming to terms with ourselves, warts and all.

One in any faith group should seemingly want to know at least three things: Where did we come from?, What are we made of? and What are we good for?

(I know those phrases all end in prepositions. One is not supposed to do that. One wag has come up with a sentence in defense of terminal prepositions that uses seven of them. Asking about a jail sentence for mismanagement of funds, one could inquire, "How long is that guy you signed the mortgage you couldn't get out from under over to in for?" I couldn't resist that parenthetical diversion.)

We do need to know about our history. To that end the Baptist Joint Committee has published the Baptist Heritage Calendar. It is not *simply* a promotional device.

The whole business of Christianity is rooted in the firm belief that God invaded history uniquely in the person of Jesus Christ. The very idea of the incarnation, by which somehow the creator of the universe was peculiarly infleshed in the carpenter from Nazareth, is too much for many moderns.

Yet, the idea that "God was in Christ reconciling the world unto himself" is at the heart of the gospel. As English lay theologian Dorothy Sayers said, "God showed us in the incarnation that he could take his own medicine, a dose of humanity." She went on to say, God demonstrated to us by taking on flesh in Jesus that he, God, "could play the game by his own rules."

Christians, by our very name, all identify with the One who came to this earth on a specific date, in a certain place, in a physical body and walked, talked, ate, laughed and cried as we do. That sort of specificity argues that we should care about history.

One Father Devine of radio fame used to plead for practical manifestations of noble spiritual inclinations by insisting that sentiment and good intentions are not enough until one "tangibilitates." Believers understand the need to make tangible their faith; after all, "faith without works is dead." Throughout the whole story of the church, God has worked through believers. Human hands have done God's work. Human voices have spread God's word. There's something important about knowing that story.

History has an important spiritual dimension. Since hope is rooted in memory, if one does not know what God has done in the past, the future is, indeed, hopeless. Who does not need periodic reminders of the ways in which God has used ordinary mortals in days gone by?

And so, the Baptist Heritage Calendar will connect us all with what has gone before, expose us to Baptists we have never known or have forgotten, give us a better time line or sense of history, challenge us with courageous role models and help us in the process of understanding who we are.

The Baptist Heritage Calendar is not *simply* promotional, but it is promotional. You are needed to help get it out to every Baptist in the land. Information for ordering is on Page 14.

One pastor told us that he plans to see that every church member has one and then to give them a test once a month on Baptist history.

A church in Washington, D.C., is buying enough to give one to every family visited by or visiting the church to let them know who Baptists really are.

Some Texas college students are using the calendars to raise money for sending fellow students on mission projects next summer.

A youth group that takes a trip each summer is selling calendars to pay for its trip.

A seminary church history professor plans to require every student in his classes to have a calendar to fit daily details into the big picture.

One lady has solved all her Christmas shopping problems for those for whom she must get "something but not much." Calendars make great stuffers for Baptist stockings.

So get in touch with your past every day during 1992. Order a few hundred Baptist Heritage Calendars today! □



# REVIEWS



## Original Intent Chief Justice Rehnquist and the Course of American Church/State Relations

By Derek Davis, Prometheus Books:  
Buffalo, New York, 1991, 202 pages

Derek Davis has achieved an unqualified success in his attempt to write a book on church/state relationships in America for the layperson. *Original Intent* is concise, methodical and avoids technical verbiage without oversimplifying. This is a book for the non-specialist who wants to move beyond the rhetorical catch phrases surrounding the religion clauses.

The title, *Original Intent: Chief Justice Rehnquist and the Course of American Church/State Relations*, is somewhat ironic. One may get the idea that Rehnquist has the only correct understanding of the original intent of the framers of the U.S. Constitution. But it is precisely this mistaken idea that Davis combats. He does so by emphasizing that any interpretation of original intent lacks absolute certainty. Davis demonstrates that this is particularly true of the First Amendment religion clauses by making a very strong original intent argument that is in opposition to Rehnquist's interpretation.

Davis accomplishes this feat with a systematic examination of Rehnquist, a skillful analysis of original intent and an exaggerated sense of fairness.

The first two chapters give an overview of Rehnquist and the development of his judicial philosophy. Both critics and admirers agree that Rehnquist's intellectual abilities are extraordinary. However, Davis clearly delineates the presuppositions that prejudice the chief justice's interpretations. These presuppositions include strict constructionism, judicial deference and an advocacy of states' rights.

Rehnquist is a strict constructionist who argues for a legalistic approach in which judges restrict themselves to enforcing only those clearly stated rights of the Constitution. He is also a deferential judge, as opposed to an activist,

maintaining that the court should defer to the other branches of government whenever possible. And perhaps most significantly, Rehnquist is "a strong proponent of state sovereignty and the limitation of congressional power in regard to states' rights."

Some have argued that Rehnquist's presuppositions are more than just guiding principles of interpretation. Davis quotes Harvard law professor David L. Shapiro who contends that Rehnquist retains an unyielding ideology. In later chapters, Davis analyzes the adverse affects this has had on church/state matters.

The next three chapters trace the recent and renewed emphasis upon original intent from the framers up through the use of original intent in Supreme Court history. These chapters serve as an excellent introduction to the religion clauses and the historical cases involving their interpretation. However, the most significant contribution of this section of the book is Davis' analysis of how original intent fails to provide absolute certainty in the interpretation of the First Amendment.

After the discussion on original intent, Davis returns to an analysis of Rehnquist, but this time in relation to the religion clauses. Rehnquist consistently opposed the standards of church-state separation implemented by the Burger Court, often writing a minority opinion. But as Davis illustrates, the conservative shift of the court now means that Rehnquist is leading the majority of the court in allowing government to endorse certain religious practices in America.

Davis goes beyond the call of duty in his quest to evaluate Rehnquist fairly. In fact, the only notable weakness of *Original Intent* is that Davis exhibits no moral indignation at the damage that Rehnquist's views have inflicted upon religious liberty and church/state separation. What he does provide is an excellent portrayal of the weaknesses of Rehnquist's position in light of the history and maturation of the religion clauses. Consequently, *Original Intent* is a valuable resource for those who wish to understand the new and tragic direction of the Supreme Court. □



Bill Moyers

## Moyers' special marks 20 years in public TV

NEW YORK Veteran journalist Bill Moyers celebrates 20 years in public broadcasting this fall and will mark the occasion with a Public Broadcasting System special that recalls some of the people, places and ideas that he has covered during the past two decades.

"Moyers/20 Years of Listening to America," a 90-minute special, was scheduled to premiere at 9 p.m. Oct. 4 as part of PBS' Showcase Week.

The special features excerpts from "Bill Moyers' Journal" (1972-81), "Creativity" (1982), "In Search of the Constitution" (1987), "God and Politics" (1987), "A World of Ideas" (1988, 1990), "The Power of Myth with Joseph Campbell" (1988), "The Power of the Word" (1989) and "From D-Day to the Rhine" (1990).

Moyers' programs have won every major broadcasting award and received over 20 Emmys.

A native of Texas and a Baptist, Moyers has spoken at biennial Religious Liberty Conferences sponsored by the Baptist Joint Committee. □

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