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NEWS
MAKERS

Melissa Rogers, a former associate in a D.C. law firm and part-time student at George Mason University, is resident counsel at the Baptist Joint Committee. Rogers is a graduate of the University of Pennsylvania School of Law in Philadelphia and Baylor University in Waco, Texas. Previously, she was teacher of government and economics at Holton-Arms School in Bethesda, Md.

Rep. Benjamin Cardin, D-Md., introduced March 8 a bill that is designed to simplify the Internal Revenue Code as it applies to retirement plans sponsored by religious organizations. The bill (H.R. 3970) would provide a separate section of rules for church retirement plans to eliminate the complexity of the current guidelines. The bill would apply to churches and church ministry organizations, but not to church-related hospitals and universities.

Marion Barry, District of Columbia councilman and former mayor, has introduced a bill that would allow student-led, non-sectarian, non-proselytizing prayer in D.C. schools. Barry wants students to be able to have daily devotions and to pray at graduation ceremonies, according to *The Washington Post*.

Steven K. Green, legal director for Americans United for Separation of Church and State, filed a brief in a case that tests the constitutionality of voucher programs at parochial schools in Puerto Rico, a U.S. territory. "As a general rule, the Supreme Court has struck down programs that use public monies to support religiously-based education, especially when those monies have been used for religious instruction," Green wrote in the brief. The case is *Asociacion de Maestros de Puerto Rico v. Torres*. Δ

Religion and media

First Amendment institutions don't trust each other

Although religion and the press stand under the same umbrella of constitutional protection, neither seems to understand or trust the other, according to a recent study.

The nine-month study, commissioned by The Freedom Forum First Amendment Center at Vanderbilt University, showed that clergy and journalists distrust, sometimes even fear, one another. The study drew from nearly 1,000 clergy and journalists, as well as more than 50 interviews and analysis of previous research.

"The First Amendment guarantees all Americans the right to pursue Truth and truth," the report said. "For that reason, if no other, religion and the press have a responsibility to bridge the gap that is widening between them.

"Faith groups who engage in media-bashing or who neglect effective communications with journalists risk diminishing their impact on the general public. They do a disservice to the nation by opting out of the broader discourse of moral issues. News-gathering organizations which discount the subtle but powerful influence of religion on the American psyche and on international events damage their own credibility with a public that instinctively feels the strong undertow of spirituality at work in the world."

The study indicated that religionists believe they are inaccurately portrayed or ignored by the media, while journalists said that media bashing is a convenient excuse because clergy don't like

societal changes reflected in stories.

The study report, titled "Bridging the Gap: Religion and the News Media," indicated that the distrust stems from the fact that religious figures fear being misunderstood and mis-

represented. Journalists also are afraid of making inadvertent mistakes that will incur religious wrath, the study said.

"The resulting apprehensions inhibit the free flow of information and only add to misun-

**First Amendment
U.S. Constitution**

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom ... of the press."

derstanding," the study says.

Other findings include:

- Clergy said that news coverage of religion is biased, negative and sensationalistic. Journalists disagreed, saying that mistakes occur because of unfamiliarity with religion.
- The average newsroom has more ignorance than bias toward religion.
- Journalists are not largely irreligious despite a 1980 study to the contrary. Seventy-two percent of newspaper editors nationwide said religion is personally significant in their lives.

The report indicated that church-state separation has been used by reporters as an excuse to avoid religion.

The report recommended that journalists take religion more seriously and urged clergy to learn what journalists consider newsworthy, try to communicate events that fit that definition and provide media easy access.

The report was written by John Dart of the *Los Angeles Times* and Jimmy Allen, a former Baptist Joint Committee board member. Δ

Lawmakers cite religious persecution in China

China's vicious campaign of religious persecution must not go unchecked by the United States, two U.S. congressmen said during a March 9 hearing.

Rep. Chris Smith, R-N.J., reported about religious persecution in China to a House foreign affairs subcommittee holding its second in a series of hearings on religious freedom worldwide.

In January, Smith led a delegation to China where he met with Chinese officials and religious leaders. Smith pointed to President Clinton's executive order that extended Most Favored Nation trade status to China on the condition that it make "significant progress" in human rights. Instead, China has "made substantial regression," Smith said.

As a member state of the United Nations, China "pays lip service to it (human rights) — but its actions show the complete disregard the government has not only toward its people but toward the entire international community as well," Smith said.

A representative of The Puebla Institute, a human rights group, reported that more than 100 Chinese Christians have been persecuted for religious reasons.

Panel Chairman Tom Lantos, D-Calif., said that "it is imperative that we send a clear signal to the Chinese leadership that religious persecution is not acceptable under any circumstances."

Canada's Parliament drops Christ's name from prayer

The name of Jesus Christ has been dropped from the opening prayer of Canada's House of Commons by the unanimous consent of members of Parliament.

Three references to Christ were deleted from the Commons prayers, as were some archaic references to the British Empire and the Royal Family. Instead, the new prayer approved by Parliament, which is read daily before the Commons opens its doors to the public, seeks the blessings of Almighty God. It includes prayers for Queen Elizabeth II and Canada's governor-general.

The changes were recommended by a senior House committee after some Parliament members complained that the old version did not reflect the country's multi-faith reality.

BJC joins national effort to end youth violence

The Baptist Joint Committee has joined CBS and FOX television networks and a broad range of national organizations in an effort to focus public attention on the issue of youth violence and its prevention.

The coalition, which consists of major educational, religious, police, business, sports and civil rights organizations, plans to sponsor a national week of activities focused on youth violence. The week is scheduled April 25 through May 1.

Among the highlights will be a new one-hour television program, "Kids Killing Kids," to be broadcast at 8 p.m. Tuesday, April 26, by CBS, FOX, PBS and TNT.

Other religious groups represented include the National Conference of Catholic Bishops, Evangelicals for Social Action, Union of American Hebrew Congregations and the National Council of Churches.

"When Jesus likened the little children to the kingdom of heaven, he placed an inexorable responsibility on all believers. We must be good stewards of our responsibility for youth, protect their innocence and opportunity to live a healthy and wholesome life and engage through churches and schools all our energies to prevent youth violence."

— James M. Dunn

New law in Bulgaria targets religious sects

A new law passed by Bulgaria's parliament targets religious sects.

The law, passed in late February, will require groups such as the Mormons, Jehovah's Witnesses and followers of Sun Myung Moon to re-register with the government within the next three months.

The measure apparently may not affect Baptists and other evangelicals, who already have been victims of a month-long campaign of hostility and

propaganda. Some churches also have had problems renting public meeting rooms and constructing buildings. Southern Baptist mission workers have had trouble getting residency permits to remain in the country.

Baptist leaders publicly have denounced the law even though Baptists and other church bodies affiliated with the Evangelical Alliance in Bulgaria already are registered with the government and seemingly may not be affected.

"Everybody knows that nobody from these groups will receive a new registration."

— Boshidar Igoff

General Secretary of Bulgarian Baptists

Texas Baptist church wins property tax dispute

First Baptist Church of San Antonio, Texas, has won its legal battle to keep off Bexar County's tax rolls two parking lots it leases to a real estate firm.

The church prevailed March 7 when the U.S. Supreme Court, without comment, left standing a lower court's ruling that exempting the two lots from property tax did not violate the federal or Texas constitutions.

The church leases two lots to Valero Realty Co. for more than \$100,000 per year, according to court records. Valero has use of the lots, valued at more than \$2 million, from 7:30 a.m. to 5 p.m. Monday through Friday. The church has use of the lots after 5 p.m. on weekdays, as well as Sundays and occasional holidays.

Bexar County officials had asked the high court to reverse a Texas appeals court's ruling that exempting the two commercially leased lots did not violate the First Amendment's ban against establishment of religion.

In upholding the state law's exemption of religious property, the Texas court applied the *Lemon* test used by the Supreme Court to assure governmental neutrality toward religion.

"This is yet another good example of how the much-maligned Lemon test can significantly accommodate religion — almost to the verge of an Establishment Clause violation. It need not spell hostility to religion."

—J. Brent Walker

Lemon 101— simple neutrality

Q: Can a church be held liable for what it says in a letter of reference for a former minister who seeks new employment?

A: Yes, so be careful. A church undertaking to comment about a former minister's job performance should speak honestly and completely. A failure to disclose, particularly unlawful behavior (e.g. sexual battery, child abuse, etc.), could expose the church to liability if the acts are repeated. On the other hand, disclosure of derogatory information can open the door to a defamation suit (if untrue) or invasion of privacy action (sometimes even if true) by the former minister. A church should request a written authorization or release from the former minister before disclosing sensitive information. Laws vary from state to state, so it's always wise to check with a local lawyer about how best to avoid liability (JBW)



JAMES M. DUNN
Executive Director

thought and the historical tracks for the substance of *Lemon* could be seen over many years.

This way of thinking about church-state relations did not just pop up full grown in 1971.

It was conservative Chief Justice Warren Burger who appointed himself to write the decision containing the *Lemon* test. He was concurred with by all the other members of the Court, including Rehnquist. The decision was handed down on the last day of the 1970-71 term. It is still being debated.

In layman's language the *Lemon* guidelines are the Court's measure of what constitutes constitutionality in church-state cases.

Simply put, the *Lemon* test is a three-pronged device for determining if a law is valid in the light of the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The three prongs:

- a law must have a secular legislative purpose;
- its principle or primary effect must neither advance nor inhibit religion;
- it must not foster an excessive entanglement of state with religion.

Now, what's wrong with that standard?

First, who does not want a secular purpose for legislation? Pat Robertson? Some Ayatollah? Mother Teresa?

Most Americans understand in their innards, even if they cannot lecture a poli-sci class, that legislation should have a neutral purpose. No law should have a sectarian taint. The reasons for a law should not be religious. If they are,

The so-called *Lemon* test just sort of grew like Topsy out of Supreme Court church-state cases. This rule of thumb reached maturity in the 1971

Lemon v. Kurtzman decision. The principles involved, the direction of

whose religion? "Secular" here means neutral, not Godless.

Then, who wants a law that either promotes or restrains religion?

We would never cease to battle (as they haven't in Northern Ireland or Bosnia) if laws favored one religion or batch of religions over others. One eye on history should be enough to convince anyone that we do not need a government bias in religious affairs.

Elemental fairness supports the notion of "neither advance nor inhibit." Besides, who can claim any tax generated funds for their own faith, thereby excluding and inhibiting all other religions and varieties of non-religion?

We have just seen the Religious Freedom Restoration Act signed into law, Nov. 16, 1993. It passed the United States Congress with only three negative votes out of the 535 members of the House and Senate. The whole point of this landmark legislation is to correct a Supreme Court that was not giving the Free Exercise Clause of the First Amendment the strict scrutiny that the American people demand.

No siree! We do not want any law that inhibits religion.

Finally, excessive entanglement of government with religion is an obvious and unmitigated evil. From Constantine to voucher scheme, when government meddles in religion it always has the touch of mud.

The state cannot, should not, is not expected to be spiritually sensitive, doctrinally correct, appropriately persuasive, compassionately even-handed and properly protective and forgiving of both saints and sinners. The church aspires to be all this and more simply to be the "church."

The monitoring, the watchcare, the reporting, the inspections, the conformity, the pressures, the conflict of interests, the trivialization, the secularization, the intermingling of funds, the loss of freedom are all consequences of entanglement.

But what is "excessive"? That is a judgment call and that's why we have judges. No, I am not brokenhearted for the poor overworked judges. Deciding what is "excessive entanglement" is exactly what we expect them to do.

Let's keep using the *Lemon* test. It makes sense. Δ

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BOOK REVIEW

Religious Liberty in the 1990s The Religion Clauses Under the Rehnquist Court: A Consultation

Edited by Richard T. Foltin, *The American Jewish Committee*, 1994, 102 pp.



The greatest threat to our civil liberties today is the United States Supreme Court. One church-state expert offered this bleak assessment at a September 1992 consultation convened to discuss the Rehnquist court's treatment of the First Amendment religion clauses. While the summary of this conference's proceedings, *Religious Liberty in the 1990s, The Religion Clauses Under the Rehnquist Court*, is sobering, it provides valuable insight into the Supreme Court's decision-making.

Those attending the consultation focused on three major themes: recent changes in the Supreme Court's interpretation of the religion clauses, the impact of such changes on church-state

relations and strategies to address these developments. Although participants offered differing opinions on some issues, there was little disagreement that the Rehnquist court has been largely dominated by its right wing, which has a poor record on protecting religious freedom. Several conference participants, however, raised the possibility that a more moderate wing may be emerging on the court, and some of the most interesting portions of the book attempt to identify the contours of this relatively moderate perspective.

Recognizing that the Supreme Court may not offer great solace to religious freedom advocates in the near future, conference participants urged appeals to forums other than the Supreme Court for protection of religious freedom. One important result of this strategy was the November 1993 enactment of the Religious Freedom Restoration Act. RFRA revives a legal standard requiring government to show a compelling reason to justify restricting a religious practice. Other strategies include exploring the reach of the reli-

gion clauses of state constitutions and raising public consciousness regarding current trends toward limiting religious liberty.

In addition to the introduction and summary of the proceedings, the book has free-standing articles on both the Establishment and Free Exercise clauses of the First Amendment, as well as on religion in public facilities and in the workplace. The book contains a helpful introduction providing background on significant church-state cases and describing opinions rendered by the Supreme Court subsequent to the conference. Because the book records proceedings in which many speakers address related issues, it is repetitive at times and more disjointed than the work of one author. These minor distractions, however, do not minimize the book's value as a useful source of information on the current condition and future direction of church-state law in the United States. Δ

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