



# REPORT from the CAPITAL

Volume 49, Number 17

September 6, 1994

## NEWS MAKERS

Charles G. Adams, president of the Progressive National Baptist Convention, and T. J. Jemison, president of the National Baptist Convention U.S.A., recently joined more than 40 African-American religious leaders in issuing support for President Clinton's crime bill. "We believe there is no more important responsibility of society than to raise children to become upstanding adults," the leaders said. "Parents and families must shoulder the burden of this duty, but all of society — including government — must pitch in." Adams and Jemison are Baptist Joint Committee board members.

J. Brent Walker, general counsel of Baptist Joint Committee, has been appointed as an adjunct professor of law at Georgetown University Law Center. Walker and Rabbi David Saperstein, counsel of the Union of American Hebrew Congregations, will teach a church-state law seminar in the spring semester.

U.S. District Judge Henry Wingate temporarily stopped enforcement of a Mississippi school prayer law until he can decide if it is constitutional. The law permits student-initiated prayers in public schools and voluntary non-sectarian, non-proselytizing benedictions and invocations. "As it reads now, any person, including school administrators, teachers or members of the clergy, seemingly would be permitted under the statute to deliver invocations and benedictions at a wide range of school-related functions," Wingate wrote.

Richard V. Pierard, professor of history at Indiana State University in Terre Haute, was the recipient of the school's 1994 Research/Creativity Award. He is the author of numerous books on politics and religion. **A**

## Coalition urges courts in N.Y. to uphold RFRA

Sixty-six religious and civil liberties groups that worked together to pass a federal law protecting religious liberty are now asking courts to uphold the law's constitutionality.

The Coalition for the Free Exercise of Religion is urging New York courts to reject claims by state officials that Congress exceeded its authority when it passed the Religious Freedom Restoration Act in 1993. New York is challenging RFRA — which provides heightened protection for religious practice — in defending six lawsuits filed by prisoners who allege violations of their religious rights.

The remarkably diverse coalition worked more than three years to enact RFRA after the U.S. Supreme Court ruled in 1990 that government did not have to justify laws that incidentally hurt religion. The measure, signed into law by President Clinton after winning near unanimous support in Congress, restored the requirement that government must show a compelling reason before it can restrict religious practice.

The broad-based coalition represents Christians, Jews, Muslims, Native Americans and Sikhs and reflects a wide range of theological and political views.

The religious liberty coalition takes no position on the specific free exercise claims put forth by the prisoners in the New York disputes, but insists that Congress exercised legitimate power when it approved the religious liberty measure.

By enacting RFRA, Congress did not

create "a right out of whole cloth" but enforced "a right with firm roots in constitutional text and history," the coalition's brief argues.

The Constitution "establishes a floor for our civil liberties — it doesn't erect a ceiling," said Brent Walker, general counsel of the Baptist Joint Committee and one of several coalition attorneys who worked with Marc Stern of the American Jewish Congress in preparing the brief. "Congress quite properly can extend more protection than the Constitution is interpreted to provide."

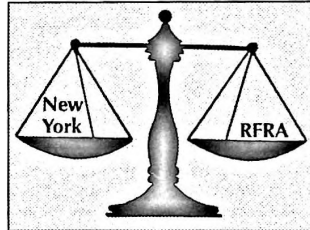
Walker emphasized that Congress did not override a Supreme Court decision in enacting RFRA.

"Congress was only providing a statutory right where the Supreme Court refused to recognize a constitutional right," he said. "The same thing happened with laws providing voting rights and equal access for student religious groups."

Oliver Thomas, special counsel to the National Council of Churches, said the coalition's legal support team "will vigorously advocate for RFRA in the courts, just as we did in Congress."

In a further effort to secure favorable treatment of RFRA, Thomas, former general counsel at the BJC, and Walker wrote governors and state attorneys general throughout the country on behalf of the coalition.

"Generally, the response has been favorable," Walker said. "Other than New York, those who responded have no immediate plans to challenge the constitutionality of RFRA." **A**



Baptist Joint Committee, 630 ...  
Washington, D.C. 20003

## Church of England votes to maintain state ties

The Church of England's top legislative body has rejected proposals separating church from state, another blow at attempts to disestablish Anglicanism as England's official religion.

By a vote of 273 to 110, the church's General Synod defeated a motion to lift direct state control over the appointment of diocesan bishops and over church legislation.

The synod also rejected amendments that would have established a commission to review the constitutional relationship between the Church of England and the British government.

George Carey, the archbishop of Canterbury and top bishop in the church, firmly opposed the effort, urging the synod not to embark on "years of constitutional navel-gazing." Δ

## Moment-of-silence law said to be constitutional

A Georgia moment-of-silence law at the center of a school teacher's suspension appears to be constitutional, two church-state attorneys said.

The Georgia law that took effect this summer requires all public schools to begin the day with a period of "quiet reflection" of up to 60 seconds. The law specifically disclaims any religious purpose and instead spells out its intention to provide "an opportunity for a moment of silent reflection on the anticipated activities of the day."

Brian Bown, an American government teacher at South Gwinnett High School in Snellville, was suspended after refusing to comply with the law.

Some critics of the measure say it is an attempt to circumvent the U.S. Supreme Court's rulings against school-sponsored prayer.

But two church-state attorneys — Brent Walker of the Baptist Joint Committee and Steve McFarland of the Christian Legal Society's Center for Law and Freedom — say the law is written in a plainly constitutional way.

"A moment of silence law that does not suggest that students pray is constitutional," Walker said. "The Georgia law appears on its face to pass muster."

Georgia lawmakers "bent over backward to disclaim any intent to promote

prayer," McFarland said.

However, Walker and McFarland said the law could be implemented in an unconstitutional manner.

"If a teacher suggests to the class that the time is to be used for prayer, that would violate the Establishment Clause," Walker said.

McFarland agreed, but said if that occurs, the individual district involved should be sued and "straightened out."

Among those watching how Georgia's law is implemented is the American Civil Liberties Union. Georgia ACLU officials reportedly have received numerous complaints about the law, but Robert Peck, the national ACLU's legislative counsel, said the organization has not yet determined whether it will enter the Bown case as a friend of the court.

"If there is a pattern or practice of teachers indicating this is a time to pray, it clearly becomes unconstitutional as applied," Peck said. Δ

## Congress votes to remove religion from EEOC rules

Congress voted to restrict implementation of the Equal Employment Opportunity Commission's proposed guidelines on religious harassment in the workplace.

The guidelines were drafted to help interpret what constitutes workplace harassment based on race, color, religion, sex or national origin.

U.S. religious bodies found the guidelines open to misinterpretation but disagreed about whether EEOC should drop religion from the guidelines or clarify them to ensure legitimate religious expression is not stifled.

The EEOC restrictions were attached to an appropriations bill for the Departments of Commerce, Justice, State, the Judiciary and related agencies.

They restrict the use of funds to implement the guidelines and require that religion be removed as a category.

They further mandate that any new regulations be clear that symbols or expressions of religious belief are not restricted and require EEOC to hold public hearings and gather public comment before issuing any new regulations on religious harassment.

*"The fund cut off is rather meaningless, because it operates only if the*

*originally proposed guidelines are not changed. No doubt they will be.*

*"The second provision is misguided in that it seeks to remove religion from the proposed guidelines, but it fortunately leaves the door open for the EEOC to fashion separate religious harassment guidance.*

*"Properly crafted guidelines will promote religious liberty in the workplace, not impede it."*

— J. Brent Walker

## Dean of religion writers, George Cornell, dies

George W. Cornell, who covered religion for The Associated Press for 43 years, died Aug. 10 in New York. He was 74.

He had heart problems for the past few years but continued writing. A native of Weatherford, Okla., Cornell joined the AP staff in 1947. He was among the first to have religion columns run on a regular basis by a news wire service. He won numerous awards for excellence in the field.

*"The crusty Cornell was in every sense of the word a character, but far more important than that he had character. He was a man of utter credibility, total reliability and profound honesty."*

— James M. Dunn

## Interfaith baccalaureate held in Boise, Idaho

Religious freedom was the emphasis at an interfaith baccalaureate service recently held in Boise, Idaho.

More than 20 religious groups are represented in the Religious Freedom Committee of Idaho that sponsored the event, attended by seniors from five public high schools. The Rev. D. Gene Crewse, pastor of Mountain View Baptist Church in Boise, was the co-founder and first president of the committee. Crewse also was program chairman.

The program, held at Cloverdale Seventh-day Adventist Church in Boise, focused on the theme, "The Light of Religious Freedom." The program also included passages from the Buddhist faith, the Koran and Chinese proverbs.

# Listening for trouble

**Q:** Has the passage of the Religious Freedom Restoration Act of 1993 really made that much of a difference?

**A:** Yes. In the three years preceding the act's passage some 60 religious liberty decisions were rendered by the courts around the country. Most every one of them was resolved in favor of the government and against the religious claimant. However, in the nine months since RFRA became law, more than 20 cases interpreting its provisions have been reported. About half of them have rendered results favorable to the religious claimant. That is a pretty good batting average. Even under RFRA, we will not win every case. But, the free exercise of religion now at least has a fighting chance. And that's good news for all Americans. (JBW)



**DANIEL WEISS JR.**  
Legal Intern

In law school, as elsewhere in life, the truth can sneak up on you. I look back to my struggles with the complex method of legal citation, which attempts to aid persons in their search through the tangled and shadowy records of legal

thought. Every detail counted, and all the work had to be "Blue Book," meaning consistent with a particular authority on citation, or the slashing red pen would be applied to your work. As a beginner I didn't know the Blue Book from the Yellow Pages (although I now realize the latter makes for better reading). When my paper was returned to me bleeding red ink, I sought the sage advice of my contracts professor. She offered the following: "The Devil's boots don't creak." Hmm ... valuable stuff.

But she has a point. The details count, and if we choose to ignore them, we often will be unable to hear trouble approaching. This is good advice for churches, too. The charitable immunity doctrine used to provide charities (and churches) with protection from civil suits. All states have now reduced its availability in one form or another, often limiting it to charitable hospitals where it first began. The trend continues toward treating charities and churches no differently than other organizations when it comes to questions of civil liability.

Unfortunately, because many churches are unaware that their protection under charitable immunity is not what it once was, they fail to take steps to protect themselves. One of the simplest ways to hedge against liability is for the church to incorporate.

Incorporation limits recovery of damages to the assets of the church. This protects the parishioners from having their personal assets used to

pay for the wrongful acts of another.

Catastrophic injuries can occur in churches of all sizes. It is foolish to think that incorporation is only for churches larger than yours. Furthermore, most leading insurers refuse to underwrite unincorporated churches because of the enormous uncertainty in determining what or who in this joint religious venture actually composes the church.

Although many church leaders assume that their church is incorporated, this may not be the case. Often, incorporating documents must be renewed with the secretary of state. Your church should request a certificate of good standing from the secretary of state, along with a certified copy of its articles of incorporation. If both documents cannot be provided, seek the counsel of a qualified attorney who will recognize the appropriate steps to take if the church's corporate status has simply lapsed or if formal incorporation never took place.

Some church leaders have expressed theological objections to incorporation. Unfortunately, these considerations will not be much of a defense in a lawsuit. Churches opposed on theological grounds should share this fact with their members. The *Church Law and Tax Reporter* aptly notes that churches may find that once the vulnerability of personal assets is made clear few members will share this theological position.

Fifty years ago, churches could often ignore issues of liability. Churches today do not enjoy this luxury, however, and the damage awards against a church can be breathtaking. Don't allow your church members to carry the burden of insuring their church with their personal assets. Incorporation is available as a protection in almost every state, and most major companies will not insure without it. I just wish legal citation was this easy. Δ

*Daniel Weiss Jr., a summer intern at the Baptist Joint Committee, is beginning his second year at Pepperdine University School of Law in Malibu, Calif.*

## REPORT from the CAPITAL

### Single Subscription:

- One year \$10.00
- Two years \$18.00

### Student rate

- One Year \$ 6.50
- Two years \$12.00

### Bulk rate (one year)

- 100 copies \$250.00
- 50 copies \$175.00
- 25 copies \$125.00

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

### Baptist Joint Committee

200 Maryland Ave., N.E.

Washington, D.C. 20002

202-544-4226



**WAYNE T.  
BLYTHE**

I have a friend with whom I frequently disagree. (Actually, I have several friends that meet that description.) He sends his children to a private, Christian school. I have no argument with that. In fact, my son attends such a school. My

friend and I disagree on how to pay for such education. He desires a voucher system whereby the burden of private tuition is partially shifted from him to the government. I disagree with this approach even though it could be in the short term financially advantageous for my family. This man grew up Catholic. As an adult converted to a rather fundamental version of Protestantism, he now is rabidly anti-Catholic. There is tremendous irony in that if he is grant-

ed his wish (for vouchers to support private education), his tax money also will go to sustain religious instruction that he takes every opportunity to refute and undermine.

Baptists at their best, along with Presbyterians, Jews, Seventh-day Adventists, Unitarians, Quakers and others, have insisted that church and state, while not necessarily enemies of each other, operate with different authorities and that one should have no control over the other. I do not need to rehash how some modern Baptists are deserting this cherished principle. But we do need to know that our heritage will not permit us to do so. How our mothers and fathers in the faith would shudder to know some of their descendants are trying to prop up religion with government assistance whether from vouchers or from state-supported prayers in public schools. Unfortunately, much confusion exists at local school levels concerning prayer and the Supreme Court. In truth, prayer per se should not and has not been banned in public schools except by misinformed

administrators; only prayer that requires government endorsement or approval has been prohibited by the court. Some wag has observed that as long as the curriculum requires algebra, students will pray in school. Dr. George W. McDaniel was pastor of Richmond's First Baptist Church. In 1926, he told the Virginia Senate:

"Religion is purely voluntary. God does not compel anyone to hear or believe. What God does not do, man dare not attempt. Religion is a thing between the soul and God. It is of such a personal, spiritual, sacred nature, that government must not touch it. It is so vital and vigorous that it does not lean upon the prop of the state.

"Attempts to have the state advance religion are, in the last analysis, a confession of the weakness of religion. ... Christianity prospers most when freest." Δ

*Excerpts from a sermon given by the Rev. Wayne T. Blythe on June 12 at Freemason Street Baptist Church in Norfolk, Va.*

**REPORT from the CAPITAL**

James M. Dunn  
*Executive Director*  
Larry Chesser  
*Editor*  
Pam Parry  
*Associate Editor*  
J. Brent Walker  
*Book Reviews*

REPORT (ISSN-0346-0661) is published 24 times each year by the Baptist Joint Committee.

*Established in 1936*

**Baptist Joint Committee on Public Affairs**  
200 Maryland Avenue, N.E., Washington, D.C. 20002  
202-544-4226

**Supporting bodies:** Alliance of Baptists • American Baptist Churches in the U.S.A. • Baptist General Conference • Cooperative Baptist Fellowship • National Baptist Convention of America • National Baptist Convention U.S.A. Inc. • National Missionary Baptist Convention • North American Baptist Conference • Progressive National Baptist Convention Inc. • Religious Liberty Council • Seventh Day Baptist General Conference • Southern Baptist state conventions and churches.

Baptist Joint Committee  
200 Maryland Avenue, N.E.  
Washington, D.C. 20002

Non-profit Org.  
U.S. Postage  
PAID  
Riverdale, MD  
Permit No. 5061

06100                      MAYL7J      K 0C0  
DR. LYNN E. MAY JR.  
HISTORICAL COMMISSION  
127 NINTH AVE., N  
NASHVILLE, TN                      37234