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# REPORT from the CAPITAL

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## NEWSMAKERS

Pat Robertson said that people who have fought to keep religion out of public schools are figuratively guilty of rape, according to a news report. Robertson was the keynote speaker at a forum at the College of William and Mary. He said Supreme Court justices, legal scholars and civil liberties groups that exclude religion from public schools have raped the entire society, particularly the U.S. Constitution.

Bill Moyers, "NBC Nightly News" commentator, said in a Feb. 23 broadcast that a "political posse" has captured the nation's largest Protestant denomination. Moyers, a Southern Baptist, offered his analysis one day after two Southern Baptist leaders announced their opposition to the nomination of Henry Foster as surgeon general. At a Nashville, Tenn., press conference Jim Henry, SBC president, and Richard Land, executive director of the Christian Life Commission, cited the denomination's opposition to abortion as the reason they oppose the nomination. In his commentary, Moyers underscored the priesthood of the believer. "No one can speak for all Baptists. But in the last decade, the Southern Baptist Convention was captured by a political posse allied with the Republican Party. ... Suddenly, the 39 legal abortions performed by Henry Foster, which he says he did reluctantly, are a theological sin and a political opportunity."

Melissa Rogers, Baptist Joint Committee associate general counsel, was sworn in March 1 as a member of the U.S. Supreme Court bar.

Eileen Barker, a British sociology of religion professor, recently pled for religious tolerance before the Russian State Duma. She refuted the notion that religious movements have access to special irreversible "methods of mind control." Δ

## Supreme Court hears dispute over funding religious journal



The nation's high court is expected to decide by summer whether it will for the first time permit direct government subsidies for religious activities.

The Supreme Court heard arguments March 1 in a dispute over the University of Virginia's policy of denying student activity funds for religious organizations and activities.

Ronald Rosenberger and other students challenged the policy in 1991 after the university refused their request for \$5,862 to print *Wide Awake*, a Christian publication. Lower courts sided with the university.

Michael McConnell, a University of Chicago Law School professor and Rosenberger's attorney, told the justices that the case is about equal access and that the university discriminates against religious speakers.

Representing the school, University of Virginia Law School professor John Jeffries insisted the case is not about religion, but about setting priorities in distributing limited funds.

"In our country, religious speakers and people with religious points of view have the same free speech rights as anyone else," McConnell told reporters after the arguments.

"When the government gives money to some, but not to others, that is a denial of free speech rights," he said.

Jeffries insisted that *Wide Awake* Publications was "turned down because it is a religious activity, not because of its religious views."

The publication was "start-to-finish proselytizing particular religious beliefs," he said. "We have no problem with that activity. We simply don't want to pay for it."

Jeffries emphasized that all groups,

including proselytizing religious groups, are given free access to campus classrooms, computers and facilities.

"We do everything we can for *Wide Awake* and all other groups except pay for their activities," he told reporters.

During arguments, Justice Antonin Scalia asked whether it was a "major step" from providing a room to providing money to rent a room. "Is that the step off the cliff?"

Jeffries responded that "access to a budget is a major step."

He told reporters later that the "difference is very great." Because of the surplus of classroom space after hours, all student groups can be accommodated, he said. But when a student group requests money, "every dollar you give one group is a dollar you cannot give another group, and it becomes essential to set priorities and make judgments."

Justice Ruth Bader Ginsburg asked McConnell if the court previously had permitted a direct cash contribution in support of religion.

McConnell said the closest such case was a 1986 ruling that upheld a blind student's decision to use a vocational assistance grant to pursue a theological education.

McConnell later told reporters that the First Amendment bars government from giving "preference to one particular church or to religion in general as against non-religion, but it does not require the government to discriminate against religion."

U.S. religious groups have sided with both parties in the dispute.

The Christian Legal Society, in a brief on behalf of itself, the National Association of Evangelicals, the Southern Baptist Christian Life Commission, the Family Research Council and the Home School Legal Defense Associa-

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## AU denounces 'religious test' for surgeon general

President Bill Clinton should resist efforts by religious right groups to apply a "religious test" to Surgeon General-nominee Henry W. Foster Jr., according to Americans United for Separation of Church and State.

In a Feb. 17 letter to Clinton, AU Executive Director Barry W. Lynn said the Christian Coalition, the Family Research Council, Concerned Women for America and other religious right groups have opposed Foster's nomination solely because he holds pro-choice views on abortion, even though he is otherwise qualified for the position.

"These groups are clearly trying to impose a narrow, theological litmus test on the nominee," Lynn wrote. "Americans United believes that the only tests that should be applied to Dr. Foster are his qualifications and competence. On both counts, he has met the necessary criteria."

Lynn wrote that the religious right's strident opposition springs from its view that human life begins at conception.

"If these organizations succeed in applying this religious test to Dr. Foster, we can expect them to attempt to force it on other aspirants for public office, all to the detriment of responsible political debate."

Lynn added that the religious right is making Foster's nomination a "test of their newfound power." Δ

## Justice bars hanging of portrait of Jesus

Justice John Paul Stevens has refused to allow a Michigan high school to rehang a portrait of Jesus that has been displayed there for three decades, according to a news report.

A lower court judge previously ruled that displaying the portrait violated the Establishment Clause and ordered the picture removed by March 1. School officials tried to delay the order, asking Stevens to delay the effect of the ruling until the full Supreme Court could consider an appeal that has been filed.

Stevens rejected the appeal.

Eric Pensinger, a high school senior, brought the suit, claiming that the por-

trait hanging in a prominent location in the school communicates that the institution endorses Christianity.

The case is *Bloomington Public Schools v. Washegesic*. Δ

## Pakistani Christians spared death sentence by judges

Two judges dismissed blasphemy charges Feb. 23 against Pakistani Christians Rehmat Masih and his 14-year-old nephew, Salamat Masih. The pair had been sentenced to death by hanging for allegedly blaspheming Islam's Prophet Muhammad.

The sentence, announced Feb. 9 after a three-day trial in Lahore, Pakistan, touched off an international furor. Human rights groups organized protests that overwhelmed the Pakistani embassy in Washington, D.C., with phone calls.

After the dismissal, Muslim militants in Pakistan flooded streets outside the courthouse, vowing to kill the defendants, lawyers and judges in the case. Police in riot gear armed with automatic weapons took up positions on rooftops to protect those inside.

The judges ruled there was no evidence against the boy and his uncle.

The two were accused of writing derogatory statements about Muhammad on a wall and throwing pieces of paper with insulting words written on them into a mosque.

A third Christian defendant in the case, Manor Masih, was murdered outside the courtroom in April. Δ

## Denial of British money to Islamic school sparks ire

Britain's 1.5 million-member Islamic community is upset over a decision by the Department of Education to deny government money to a Muslim school in Bradford in north-central England.

At issue is Britain's "voluntary aided status," which is granted to more than 2,000 Catholic schools, a like number of Anglican schools, plus some Methodist and Jewish institutions. The government pays the bulk of the costs for those religious schools. The Muslim school did not meet health and safety standards, according to an British officials. But British Muslims maintain religious discrimination was the motive. Δ

## COURT

Continued from Page 1

tion, argued that the university's policy discriminates against religious speech.

"The First Amendment forbids, rather than requires discrimination against citizens because of their religious views," Steven T. McFarland, director of the CLS Center for Law and Religious Freedom, told reporters. "Nobody has a right to have their views published with public funds, but when government chooses to subsidize private speech in the public square, it cannot disqualify those with a religious perspective."

The Baptist Joint Committee, joined by the National Council of Churches of Christ, three Jewish organizations and others, filed a brief arguing that the students were seeking equal advancement, not merely equal access.

"We applaud the fact that (the students) take their religion seriously enough to publish a magazine advocating their beliefs," BJC General Counsel J. Brent Walker told reporters. "But we strongly oppose the claim that the state has the duty to pay for it. In fact, we think the Constitution forbids it."

Oliver S. Thomas, special counsel for religious and civil liberties for the NCC, told reporters it would be a "big step off the cliff" if the court permits direct subsidies to religion.

"I say that because if the government is required to subsidize religious speech and activities, it unsettles not only this particular decision but a whole line of cases saying that we give grants and subsidies to certain secular activities that we don't give to religion," Thomas said. Δ

## RESOURCE LINK

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# Look for close decision

Other views about issues raised in *Rosenberger*:

"[A]ny use of public funds to promote religious doctrine violates the Establishment Clause." (*Bowen v. Kendrick*, 1988, Justice Sandra Day O'Connor, concurring)

"[Government] aid may be thought to have a primary effect of advancing religion ... when it funds a specifically religious activity." (*Hunt v. McNair*, 1973)

"[Government aid] tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way." (Thomas Jefferson, "A Bill for Establishing Religious Freedom in Virginia")

—JBW



**J. BRENT WALKER**  
General Counsel

The Supreme Court heard arguments March 1 in the most important church-state case on its docket this term — *Rosenberger v. University of Virginia*. The case was surrounded by a lot more fanfare

than usually accompanies Supreme Court arguments. The public lines to get in were long. Even some who queued up before 6 a.m. were turned away. The lawyers' section was packed, with high Justice Department officials, including the solicitor general, there to watch.

Attorneys who argued the case are among the bar's best and brightest. Both are law school professors and constitutional experts. Michael McConnell, who teaches at the University of Chicago, represented the students. He is a leading critic of the court's historic insistence on the separation of church and state, particularly when it comes to funding religious activities. John Jeffries Jr., representing the school, is a University of Virginia law professor and the author of the definitive biography of Justice Lewis Powell, for whom Professor Jeffries clerked in the 1970s.

The court was "hot." The justices obviously had read the briefs and thought about the case. Every justice peppered the attorneys with questions — except for Clarence Thomas, who was typically taciturn. Ronald Rosenberger, the student who brought the case, sat one row away from university officials in the public gallery. The presence of James Gilmore, the attorney general for Virginia, added even more drama to an already highly charged environment. His predecessor had formally defended the university in this case, but after being elected in 1993, Gilmore withdrew his support

for the university and actually filed a brief on behalf of the students!

The argument went rather as predicted. Professor McConnell argued that in order for the university to be neutral toward religion, it must fund religious activities the same as other student group activities, not simply allow them equal access to university facilities. Professor Jeffries, as was foreshadowed by his brief, made clear the distinction between "access" — which all students are granted — and state funding, which the university, at its discretion, could refuse to give. In a bold (if not potentially foolhardy) move, Professor Jeffries did not strongly argue the Establishment Clause as a justification for the refusal to fund the religious publication.

The Establishment Clause issue is critical. It was the linchpin for the Fourth Circuit Court of Appeals' ruling. And, if the university loses its argument that it has the right to make content-based distinctions in funding student groups with limited governmental resources, then the Establishment Clause is its only remaining line of defense.

These events conspire to elevate the importance of the Baptist Joint Committee's brief that was devoted exclusively to the Establishment Clause issue. Many of the justices obviously were concerned about the issue and said so. Since the university itself did not make the argument strenuously, the court may rely on our brief to outline that fundamental argument.

Our position is essentially this: We vigorously support the right of students to speak and publish a religious message, and we applaud them for taking their religion seriously enough to publish a magazine advocating their beliefs. But we strongly oppose the claim that the state has the duty to pay for it. To the contrary, the Establishment Clause forbids it. Equal access, "yes"; equal advancement, "no."

We probably won't know until early this summer how what promises to be a closely divided court will rule on this issue. Mr. Jefferson's "Wall" could stand or fall on this decision. Δ

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## BOOK REVIEW

### Disciples & Democracy Religious Conservatives and the Future of American Politics

Michael Cromartie, editor. Eerdmans  
Publishing Co., Grand Rapids, 132 pp.



In December 1993, the Ethics and Public Policy Center in Washington, D.C., brought together a group of scholars, activists and journalists to review the impact of the religious right on the Clinton-Bush campaign and the right's future prospects. Among those in the diverse group, Ralph Reed of the Christian Coalition, wrote the lead article; other participants included public media stalwarts E.J. Dionne Jr. of the *Washington Post* and Fred Barnes (TV's all-knowing, non-stop talker — I blame John McLaughlin); and voices from the religious arena, including the center's head George Weigel, Southern Baptist Richard Land, Furman University professor James Guth and sundry responders to the book's three major chapters.

Irving Kristol, in his brief forward

"Taking Religious Conservatives Seriously," states as the "three pillars of modern conservatism" religion, nationalism and economic growth. These three pillars leave only transportation and the media for eventual dominance. The strident attack on public television, whose actual purpose is being papered over by pretending to save a fistful of budget dollars, should remind Baptists that some 18th and 19th century conservatives took great steps to silence their forebears. Economics, as well as religion and state interests, were cited to justify persecution. What is it about history that makes it repeat itself?

The book — it's a rehash. If you read your daily papers the book's chief value comes from the commentary of the objective voices who stand apart from the pros and cons and perhaps the vote breakdown in Bush vs. Clinton. Richard John Neuhaus' "naked public square" thesis is trotted out when fresh ideas come hard, and now, too, the requisite bow to Stephen Carter's *The Culture of Disbelief*. If you are looking for support for historic Baptist interests,

forget it. Land finds more comfort among Roman Catholics and "Evangelical Protestants."

In his "Talking the Talk" chapter, Wiegel asks: "How do we talk the talk in such a way the moral judgments born of Christian religious conviction can be heard and considered by all Americans — or at least by those willing to concede that moral judgment plays a crucial role in the public-policy process?" His initial question is pertinent given the nation's religious diversity and the First Amendment. But the qualifier is a red herring. Weigel can plead for civility, but he is not above taking a cheap shot that belies his piety when he separates talk and walk. In Endnote 5, he calls the Baptist Joint Committee a "fellow-traveling smaller fry" of the ACLU. A minor irritation — who reads endnotes? Those who read for new insights and often come away disappointed. Δ

Victor Tupitza is former director of denominational relations and editor of Report from the Capital at the BJC.

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