



Volume 51, No. 11

May 28, 1996

# REPORT FROM THE CAPITAL

## NewsMakers

◆ Anne N. Gaylor and other members of the Freedom from Religion Foundation lost their bid to challenge use of the motto "In God We Trust" on U.S. coins and currency. The U.S. Supreme Court declined May 20 to review lower court decisions dismissing their complaint.

◆ U.S. Supreme Court Justice John Paul Stevens wrote the lead opinion as the nation's high court struck down Rhode Island's ban on liquor-price advertising. All nine justices agreed the ban violated the First Amendment's free speech guarantees but used four separate opinions to state different reasons for invalidating it.

◆ Scott Falmlen, the executive director of Florida's Democratic Party, said that like drinking and driving, "government and religion shouldn't mix." Falmlen, a Baptist, told participants at a gathering sponsored by the Baptist Center for Ethics that school-prayer proposals similar to one passed recently by Florida legislators are a "feel-good answer," but will not solve the social problems.

◆ Alexy II, patriarch of the Russian Orthodox Church, has appealed to church members to make "the right choice" in next month's presidential elections. He did not endorse a candidate, but recalled persecution under Communist rule. Δ

## Bill would fund vouchers, faith-based social programs

104th Congress



House Republicans have introduced legislation that would provide funds for private and parochial school tuition payments, vouchers for "faith-based" drug counseling programs and various tax incentives to address the concerns of low-income communities.

Sponsors said the House leadership has vowed to bring the American Community Renewal Act to the House floor by mid-July. The bill's primary sponsors are Reps. James Talent of Missouri and J.C. Watts of Oklahoma.

Former Housing and Urban Development Secretary Jack Kemp attended a press conference May 14, along with some additional co-sponsors of the bill.

"You cannot live in America today and turn your back on the cities," Kemp said. "If this nation turns its back on our cities, we will reap the whirlwind."

Sponsors acknowledged the voucher proposals may be a major sticking point. House and Senate lawmakers recently clashed over a voucher proposal in the funding bill for the District of Columbia. The provision was removed after voucher opponents in the Senate blocked several attempts to vote on the bill.

The Talent-Watts bill would allow communities to apply for designation as a "renewal community." Participating communities would have to administer a voucher program that would provide public money for some children to attend private and parochial schools.

The vouchers would equal 66 percent of the per capita cost of educating chil-

dren in public schools or the normal tuition charged by the private school, whichever amount is smaller.

Talent said that the government would not be able to regulate private schools more than it already does.

The bill also would provide funds for drug counseling and rehabilitation programs that have religious content. Watts said communities in the program "should have the option to use a private organization, a public organization or a private faith-based organization."

Talent said the government "can't produce faith and shouldn't proselytize it and all that. But it can accommodate the people who are moving faith back into the center stage of these communities."

A Baptist church-state attorney, warned, however, that the bill goes beyond accommodating religion. It would permit participating churches to require aid recipients "to actively participate in religious practice, worship, and instruction and to follow rules of behavior" that are religion-based, said J. Brent Walker, general counsel for the Baptist Joint Committee.

Walker said the legislation was an attempt to funnel tax dollars to sectarian activities. "This is both unconstitutional and bad policy. Cloaking this bold initiative in the jargon of neo-conservative social engineering doesn't change a thing," he said.

Walker said the federal government would force a state to provide funds for religious purposes under the bill, often in violation of state constitutions. "For all the loose talk about preserving states' rights and devolution, this bill does just the opposite," he said. Δ

## 1936-1996

Six Decades  
of Securing  
Religious Liberty



From its beginning, the Baptist Joint Committee sought enlarged participation in its mission. During the tenure of Executive Director J.M. Dawson (1946-1953), the Baptist General Conference and the North American Baptist Conference joined the four initial denominations — the Northern Baptist Convention, the National Baptist Convention of America, the National Baptist Convention U.S.A. Inc. and the Southern Baptist Convention. Under Emanuel Carlson's leadership (1954-1971) three more Baptist groups joined — the Baptist Federation of Canada, the Seventh Day Baptist General Conference and the Progressive National Baptist Convention Inc. With James M. Dunn (1981 to present) as executive director, the agency's membership has both grown and evolved. New supporting bodies include the Alliance of Baptists, the Cooperative Baptist Fellowship, the National Missionary Baptist Convention, the Religious Liberty Council and several Southern Baptist state conventions. Δ

## Justices split over hearing religious symbol dispute

Over the objection of its three most conservative members, the U.S. Supreme Court declined May 13 to review a lower court ruling that an Oklahoma city's use of a Latin cross in its official seal violates the separation of church and state.

Four of the court's nine justices must vote to hear a case before it is accepted.

Left standing was a federal appeals court ruling that the city of Edmond's "use of an unmistakably religious image" in one quadrant of its municipal seal violates the First Amendment's ban against governmental endorsement of religion.

Other quadrants of the circular seal depicted a steam engine and oil derrick, a landmark university building and a covered wagon with the year "1889."

The appeals court reversed a federal district court's finding that Edmond's use of the religious symbol was permissible because it was intended to be a historical depiction of the city, not an endorsement of a particular religion.

Such religious symbols "transcend mere commemoration, and effectively endorse or promote the Christian faith," the appeals court said.

Edmond's seal was challenged by a group of city residents.

Chief Justice William Rehnquist, joined by Justices Antonin Scalia and Clarence Thomas, dissented.

The dissenters said the high court should have accepted the case to resolve a split among federal courts over government use of religious symbols and to determine whether the residents had sufficient "standing" to challenge the seal. Δ

## High court strikes down gay rights restriction

Colorado cannot ban laws that protect homosexuals from discrimination, the U.S. Supreme Court ruled May 20.

In a 6-3 decision, the high court said the constitutional amendment approved by Colorado voters in 1992 violates the federal Constitution's guarantee of equal protection under the law.

"A State cannot deem a class of persons a stranger to its laws," Justice Anthony Kennedy wrote for the majority. He was joined by Justices John Paul Stevens, Sandra Day O'Connor, David Souter, Ruth Bader Ginsburg and Stephen

Breyer.

Joined by Chief Justice William Rehnquist and Justice Clarence Thomas, Justice Antonin Scalia criticized the majority's ruling as "an act, not of judicial judgment, but of political will."

Colorado voters approved Amendment 2 after several cities had enacted laws banning discrimination against homosexuals in such areas as housing, employment, education, public accommodations and health services.

Amendment 2, approved with a 53 percent vote, barred state or local laws that ban discrimination on the basis of "homosexual, lesbian or bisexual orientation, conduct, practices or relationships."

Colorado argued that the measure did no more than deny homosexuals "special rights," a position the court majority called "implausible."

"We find nothing special in the protections Amendment 2 withholds," Kennedy wrote. "These protections are taken for granted by most people either because they already have them or do not need them."

The amendment, Kennedy wrote, targets homosexuals for adverse treatment.

It "imposes a special disability on those persons alone," the court said. "Homosexuals are forbidden from the safeguards that others enjoy and may seek without constraint."

Scalia disagreed, saying the majority opinion "has no foundation in American constitutional law, and barely pretends to. The people of Colorado have adopted an entirely reasonable provision which does not even disfavor homosexuals in any substantive sense, but merely denies them preferential treatment."

The Colorado amendment, Kennedy concluded, "classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do."

Laws such as the Colorado amendment, Kennedy wrote, "raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected."

Citing a past court decision, Kennedy said a "bare ... desire to harm a politically unpopular group cannot constitute a legitimate governmental interest."

Scalia criticized the court majority for placing "the prestige of this institution behind the proposition that opposition to homosexuality is as reprehensible as racial or religious bias." Δ

# Church-State Intersection

**J. Brent Walker**

General Counsel



Religious liberty disputes arise in strange places and under improbable circumstances. They don't just come up in the public schools or on the courthouse steps, but from time to time occur in prisons and jailhouses. This shouldn't be too surprising. Prisoners are especially vulnerable to the violation of conscience and, at the same time, have a great need for religion.

A recent incident in Eugene, Ore., illustrates this point. Conan Wayne Hale, a Catholic, was arrested on burglary charges. While in jail, he asked to see a priest. Father Tim Mockaitis met with Hale and administered the Sacrament of Reconciliation — commonly known as "confession." The priestly act occurred in a room at the jail that Hale and the priest thought was private.

Unknown to them, District Attorney Doug Harclerod had bugged the room and recorded the confession. He threatened to use the recording in the burglary prosecution as well as in an investigation of three homicides.

The prosecutor initially said he did nothing wrong. Although he admitted that the law exempts clergy from testifying in court about confidential communications, he claimed that Oregon law allows surreptitious taping of conversations in jail.

The priest-penitent or clergy-communicant privilege has been around for centuries. It serves the salutary purposes of encouraging pastoral care and, just as importantly, prevents government (the courts) from meddling in the sacrosanct precinct of religious ministrations. This is a good policy and should be preserved at all cost. It would be completely destroyed if it could be circumvented by bugging the confession and using the tape instead of the testimony of clergy.

Those who cherish religious liberty and church-state separation were out-

raged by this flagrant violation of the sanctity of the confessional. The Archdiocese of Portland demanded that the tape be destroyed! An ethics complaint was filed with the state bar association alleging that the district attorney acted way outside the lines in this case. William Donohue, president of the Catholic League for Religious and Civil Rights, said:

The pursuit of justice in a democracy is never absolute ... Other noble ends, such as respect for the rights of the accused and respect for religious freedom, often limit the reach of the state. ... [T]he Sacrament of Reconciliation, an integral exercise of religious freedom in Roman Catholicism, cannot be sacrificed to satisfy the ambitions of overly zealous prosecutors.

The district attorney eventually relented. On May 22, Harclerod apologized. He announced he had been wrong and that he had turned the tape and transcript over to the court. He went on to say he hoped the tape would be destroyed and called for legislation to ban recording of privileged discussions. At a news conference he said, "It is important that our citizens have confidence in our justice system. ... I believe that taping a clergy-penitent conversation in jail shakes that confidence and must be corrected."

I say, Amen. While Baptists generally do not regard confession as a sacrament, we certainly appreciate the absolute inviolability of confessional conversations between clergy and church members. Although it is important to bring those who commit crime to justice and to account for their misdeeds, it is more important to allow them to confess, repent and change their ways. I applaud the district attorney for making the right decision — though belatedly and under duress. Δ

## Quoting

*When freedom fails,  
Good men rot in filthy  
jails.  
And those who cry  
appease, appease  
Are hung by those they  
tried to please.*

"War" may be an apt word for what is taking place regarding the role of religion in American life and the right relationship of church and state. Certainly "struggle" rings true. There is much ignorance, abounding apathy and cynicism enough. Why would we expect otherwise?

God's people have never been overwhelmed by advocates of soul freedom. It has always been an uphill pull. Sometimes, for a brief span, we have had unlikely allies who understood. Like Thomas Jefferson: "The God who gave us life gave us liberty at the same time." Or, that other line of his, also engraved in the Jefferson Memorial, right around the top where it should be, "I have sworn on the altar of God eternal hostility to every form of tyranny over the mind of man." Maybe the personal part of facing church-state issues is to respond with Jeffersonian holy hostility to civil religionists, appeasers and theocrats. Or, at least to muster up a little courage.

— James M. Dunn  
BJC Executive Director  
Excerpts from remarks  
at Baptist Center for Ethics  
Conference on Leadership  
Through the Culture Wars  
May 21, 1996



## Baptist Joint Committee

### 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/churches

### REPORT FROM THE CAPITAL

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REPORT (ISSN-0346-0661) is published 24 times each year by the Baptist Joint Committee. Single subscriptions, \$10 per year. Bulk subscriptions available.



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# Book Review

## Unsecular Media: Making News of Religion in America

Mark Silk, *University of Illinois Press, Chicago, 1995, 151 pp.*



How many times have you heard someone assert that the media is biased against religion? Ignoring political correctness, Mark Silk refutes that blanket assertion. Through a historical analysis, he shows that when the media sets out to represent religion, it does so from a religious, rather than a secular, view. He does not, however, shy away from warranted criticism.

Silk says the "public square, or at least the public bulletin board, has not been denuded of religion. To the contrary. Not only is American journalism reasonably attentive to matters of faith, but it also approaches these in what can only be described as a proreligious posture." He traces the history of religious coverage from a 1721 newspaper to the beginnings of groups like Religion News Service. Clergy, he says, have used the media to boost their own images but have also blasted it for reporting church corruption.

Religion coverage reflects the accepted views of today's moral issues, says Silk, who uses the Greek term *topoi* to label commonly held perspectives. Widely shared *topoi* are hardly noticed. It is when people disagree with *topoi* that charges of media bias are raised.

Those who cover religion operate with *topoi*, ideas of "what religion is and is not, of what it ought and ought not be." These derive, to varying degrees, from religious sources and represent religion-based values that most Americans share. The *topoi* discussed are good works, tolerance,

hypocrisy, false prophecy, inclusion, supernatural belief and declension.

The media is drawn to recognize all faiths as legitimate and cannot afford to draw the circle of acceptable religion too small, Silk says. He warns that the media must show diversity and refrain from overplaying the views of the religious majority. He suggests that existing *topoi* need to be expanded.

Silk says the American news media has championed charity for the poor more than evangelism. The *topos* "religion ought to devote itself to helping the poor" has become a universal truth and is derived not from a secular view, but from the Western religious tradition. The secularist would argue that religion should concern itself with belief and devotion and leave social welfare to the state, "but in media accounts of religion, the social gospel is alive and well," Silk writes.

The *topos* of tolerance is a powerful message in the Western religious tradition, Silk writes. For example, the media saw the 1960 debate over John F. Kennedy's Catholic loyalties as one of religious liberty. "Opposing a candidate because of his faith seemed un-American, the moral equivalent of violating the Constitution's ban on religious tests for office," he writes.

Silk notes that atheists see "religion embedded in the culture where most of us just don't notice it all. They are not just seeing things."

*Unsecular Media* provides worthwhile insights about the dynamics that shape the media's coverage of religion. For those interested in the topic, particularly those tempted to complain of media bias, it is important reading.

— Kenny Byrd

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