Baptist Joint Committee
PROCLAIM LIBERTY

REPORT FROM THE CAPITAL

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NewsMakers

◆ **Charles Hood**, a Southern Baptist missionary, was fatally shot in front of his home in Bogota, Columbia. Formerly from Missouri, Hood was appointed a missionary in 1987. He worked as a general evangelist in Bogota, a city of 4.2 million people, and was involved in theological education by extension.

◆ **Wayne and Sue Willis** have reached a settlement in their lawsuit against the Pike County (Ala.) school board. The Jewish couple's lawsuit charged that their children were teased, mocked and forced to pray by Christian students and teachers. The couple alleged that their four children faced harassment while attending classes in the county where they were the only Jewish students. They said one child was forced to bow his head during a Christian prayer and another was told to write a paper on "Why Jesus Loves Me."

◆ **Lawrence Uzzell**, a leading expert on religious freedom in Russia, says the situation there deteriorated relatively little during the first six months that a law allowing officials to restrict religious minorities has been in effect. "Overall ... religious freedom in Russia has not seen a sharp, systematic turn for the worse since September — so far," said Uzzell, the Keston Institute's Moscow representative. Δ

Congress OKs D.C. vouchers; veto expected from president

For the first time in history, a bill providing tax dollars to help pay tuition at private and parochial schools has passed both houses of Congress and now heads to the desk of the president where a veto is expected.

On a 214 to 206 vote April 30, the U.S. House of Representatives approved a bill providing "opportunity scholarships" to 2,000 low-income students in the District of Columbia. The money — up to $3,200 — could be used to pay tuition and transportation costs for public, private and parochial schools.

"Public money belongs in public schools."

— Del. Eleanor Holmes Norton D-D.C.

The Senate approved the voucher measure in a separate bill last year after stripping it from the D.C. funding bill.

Supporters say vouchers would give children a chance to escape from D.C. public schools that are performing poorly. They also say that the initiative, a measure high on the agenda of Christian conservatives, would create competition and drive public schools to improve.

Opponents, including church-state separation advocates and others, say the plan is unconstitutional and that it hurts public education. Residents of D.C. who oppose the bill say the measure will only help a few, leaving 76,000 students behind in public schools with fewer resources.

House Majority Leader Dick Armey, R-Texas, said the vote was a victory for D.C. children. "They have the opportunity to escape from the sometimes violent school system that has been failing to educate these children," he said.

Del. Eleanor Holmes Norton, D-D.C., said that supporters of the measure were willing to impose vouchers on D.C. children but would not support it in their own districts. Indeed, the House voted down a national voucher plan late last year. She said the D.C. vouchers would not provide enough money to pay for the high tuition fees at most private and parochial schools.

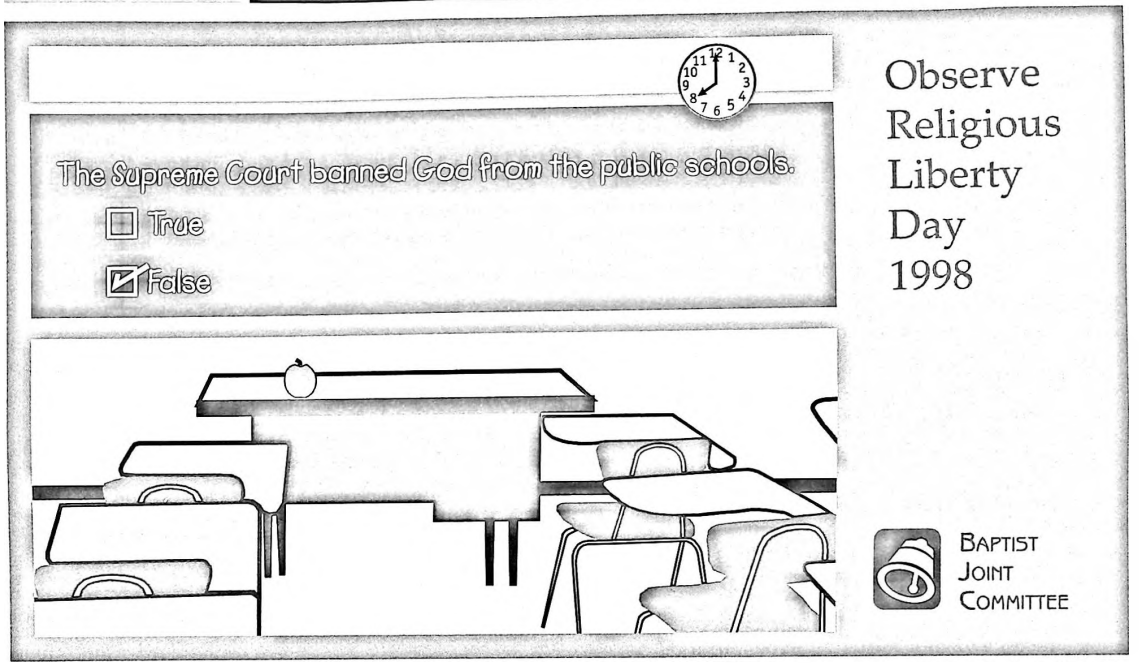
Norton said voucher programs in Ohio and Cleveland have been ruled unconstitutional in lower courts.

"Christ said render unto Caesar the things which are Caesar's and unto God the things which are God's," Norton said. "Public money belongs in public schools."

At a press conference held by voucher opponents, Secretary of Education Richard Riley said that "those of us who believe in religious freedom believe in a public school system where all religions can come and be a part."

J. Brent Walker, general counsel for the Baptist Joint Committee, said "Congress for the first time has voted to spend taxpayer dollars to finance the teaching of religion to children."

Walker added, "This bill would open the door for regulation of church schools and effectively strap them with bureaucratic regulations that the majority in Congress says it detests." Δ



TAKE ALARM!

By Robert S. Alley

Just this past March we celebrated the 50th anniversary of *McCollum v. Board of Education*, the Supreme Court decision that first pronounced unconstitutional, "the use of the state's compulsory public school machinery" to disseminate "religious doctrines." The progeny of *McCollum* include *Engel v. Vitale* (1962) outlawing state-sponsored prayer in the public schools, *Abington Township v. Schempp* (1963) extending *Engel* by proscribing all class exercises that are exclusively religious, and *Lee v. Weisman* (1992) forbidding school-sponsored prayer at graduation.

Thirty years after *Engel*, U.S. Solicitor General Kenneth Starr presented the government's argument that the graduation prayers in *Weisman* were not coercive. He was asked by one of the justices whether he would urge the Court to reconsider *Engel*. Starr said no, because the government opposes coercion. Convinced he could win his coercion argument, Starr abandoned a 30-year struggle, centered in the Congress, to amend the Constitution with the intent to overturn *Engel* and *Schempp*. Starr argued that the Weisman children were not coerced to go to graduation and therefore it was proper for the public school officials in Providence, R.I., to select a member of the clergy to deliver an invocation and benediction. Starr's argument failed to convince a majority of the justices.

Stunned by that 1992 defeat, advocates of organized prayer in the public schools unveiled a new tactic based upon the concept of "student-initiated prayer." Such a policy, if implemented in public schools, would permit a majority of students the luxury of tyrannizing their fellow students concerning any matter of religious conscience. To date there have been at least four lower court decisions focused upon this device. Three of them rejected the student-organized graduation prayer option; one approved. The matter has not been heard on its merits by the Supreme Court.

Meanwhile the issue of classroom prayer has resurfaced in the Congress in Representative Ernest Istook's proposed constitutional amendment, HJR 78. Ever vigilant to turn back the clock to 17th century Puritan New England and Anglican Virginia, the progeny of those who argued for a constitutional amendment to overturn *Engel* and *Schempp* have fashioned what they argue is a new approach. It is "new" only to the extent that it is more insidious. It employs different language to achieve the identical goal of eviscerating *Engel* and *Schempp*.

Istook wants to affirm that "the people's right to pray ... on public property, including schools, shall not be infringed." This mischievous language could intrude worship into secular settings such as public school classrooms, creating potential litigation against government officials at all levels. It could easily be construed as allowing a student majority, by the mere mention of prayer, to

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Graduation season offers lessons in toleration, mutual respect

J. Brent Walker
General Counsel

Well, it's graduation time again. Are there ways to pray in connection with graduation that are both constitutional and biblical? Most definitely! Should we have public prayer at school-sponsored commencement exercises? Absolutely not!

In the Sermon on the Mount, Jesus warned against practicing our piety before others. He told us not to pray on the street corner, but to go into our room and shut the door and pray to our Father who is in secret (Matthew 6:1, 5-6). Certainly there is a place for corporate prayer. Jesus prayed that way too. But it should always take place when people have voluntarily assembled to worship God, not to watch students graduate from school.

Happily, a majority on the Supreme Court agrees with this biblical principle. In *Lee v. Weisman*, 112 S. Ct. 2649 (1992), the court ruled that school-sponsored graduation prayer is unconstitutional. Justice Kennedy reasoned that "[t]he Constitution forbids the State to extract religious conformity from a student as the price of attending her own high school graduation." *Id.* at 2660. He went on to observe that "what to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy." *Id.* at 2658.

Think about it. It makes good sense. To disallow public prayer at a graduation ceremony doesn't keep a single person from praying. Every person in the auditorium or stadium can pray silently, incessantly, fervently for the well-being and good fortune of the graduating class each in his or her own way. But, when public prayer is allowed from the podium as a part of the school-sponsored ceremony, the state crosses the line of neutrality toward religion and violates both the First Amendment's Establishment Clause and the consciences of those who do not wish to pray.

But several things can be done that are faithful to the constitution and allow genuine acts of prayer:

(1) Silent prayer by the students, the faculty, parents and others in attendance any time during the ceremony.

(2) True moments of silence are legal as long as prayer is not suggested as an activity during that moment.

(3) A student who gives a speech, such as the valedictorian or the salutatorian, may include religious themes in his or her speech and even pray. The speech, at most, should be reviewed only for germaneness. To the extent a school official exercises prior restraint or undertakes a detailed review of the contents, state-sponsorship and endorsement return.

(4) The best way to proceed is through a privately-sponsored, voluntarily-attended baccalaureate service where students and others can assemble and pray, sing hymns, listen to a sermon and worship without limit. In some circumstances a baccalaureate service may even be held on campus where the school has opened its doors for other community-based groups to meet. See *Lamb's Chapel v. Center Moriches Free School District*, 113 S. Ct. 2141 (1993).

As we approach public school graduations this year, we should make every effort to avoid politicizing the sacred act of prayer. Let's use this season as an opportunity to teach our students a lesson about the First Amendment and mutual respect for our religious differences, not to show them how to run roughshod over the rights of others. Δ

Quoting

In a country where we have the right to pray on our own (including in school), is it worth intimidating a single child of minority faith for the "right" of the majority to have government-sponsored group generic prayer?

If so, then politicians should submit their proposed prayers' language to us before elections, so we can know what kind of religion we are voting for.

— Frank Rich
New York Times *Columnist*
Dallas Morning News
Jan. 10, 1998

REPORT FROM THE CAPITAL

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Book Reviews

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silence the teacher and the minority of students intent upon the task of education. The majority could effectively take charge of a classroom for organized prayer. Adults would encourage children to violate the conscience of their classmates by putting prayer to a vote. The minority would have no recourse other than to absent themselves, a discriminatory procedure that was at the heart of the Court arguments in *Engel* and *Schempp*. In an effort to use prayer as a weapon, Istook proponents simply ignore the fact that nothing in those decisions denies or restricts the right of a student to pray silently in school or in the students' free time, orally, at lunch or recess. The right to acknowledge deity is fully protected by the First Amendment. To suggest otherwise is disingenuous. Finally, the Equal Access Act allows student religious groups to employ public school facilities for religious clubs so long as all other student clubs have the similar privilege.

Istook's language is filled with devious suggestions calculated to undermine religious liberty and separation of church and state. It prohibits "any official religion." This is a retreat from clearly affirmed principles of separation and is, as well, contrary to the framers' clear design. It invites the creation of an unofficial alternative religion, school by school. Assuring "the people's right to pray" is unwise and insulting to the principles so "clearly" enunciated by founders such as James Madison and Thomas Jefferson. Are we to assume that Mr. Istook can phrase religious freedom guarantees more effectively than those champions in the 18th century?

In James Madison's words, this "is not the worst I have to tell you." The Istook proposal would permit government to finance religion. Elected officials could legally be required to provide public funding (vouchers) to religious schools, matching on a dollar-for-dollar basis the support provided for the public schools.

In the spring of 1998 the prospect of passage of HJR 78 appears slight. Wise and thoughtful opponents in the Congress may be able to muster enough votes to deny the two-thirds majority required for approval. But this is not encouraging. It will return! Since 1962 the Congress has entertained literally hundreds of proposals to amend the First Amendment to "correct" the Supreme Court. Over those 36 years thousands of hours have been devoted to hearings, debates and writings in Congress. Why so many in this nation's Christian community are so bitterly resentful of a First Amendment that has, by the assessment of almost all scholars, produced the most religious population on the globe is never made clear. Around the world moribund state-supported religions abound. Bitter warring religious factions claim our attention daily. In early 17th century England Baptists championed the separation ideal as best for the church and best for the state. Nearly two centuries later their American counterparts knew that Madison was correct when he warned, "It is proper to take alarm at the first experiment on our liberties." The Istook measure warrants the highest degree of such alarm. Δ

Robert S. Alley is professor of humanities, emeritus, University of Richmond. He is the author of School Prayer: The Court, the Congress, and the First Amendment *and other works.*

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