

Nashville, Tennessee



# REPORT FROM THE CAPITAL

Volume 53, No. 17

September 1, 1998

## NewsMakers

◆ Testifying at a U.S. Civil Rights Commission field hearing on religion in the public schools, **Theo Vander Wel**, an attorney affiliated with the Rutherford Institute, said students in the state of Washington are discriminated against because of their religion. But **Ellen Johnson**, president of American Atheists, presented a different point of view at the Seattle hearing. She said there is protection for the rights of religious individuals in public schools, but there is nothing to "provide for or protect" atheist students.

◆ The Rev. **Moon Kyu-hyon**, a South Korean Roman Catholic priest, may face arrest for engaging in political activities during a visit to North Korea. The rare visit was allowed on the condition that the priest attend only religious functions, but North Korean officials said Moon, an advocate of Korean unification, attended a series of political functions.

◆ **Cornelis Suijk** is holding five missing pages of "The Diary of Anne Frank," the classic World War II reflections of a Dutch Jewish teen. Suijk promised the father of Anne Frank that the papers would not be released until after the deaths of the Frank family. Suijk is preventing their publication until he is assured all of the proceeds will go to support his Holocaust awareness group. Δ

## Education poll shows Americans split on aid to religious schools

Americans remain divided over the issue of using government funds to aid private and parochial schools, according to a survey released Aug. 25.

Public support for aid to private education varied depending on how survey questions were framed. Only 44 percent of survey respondents favored allowing students to attend a private school at "public expense," but 51 percent favored a choice among any public, private or church-related school "if the government pays all or part of the tuition."

The survey was conducted by Phi Delta Kappa, a professional education group, and the Gallup Organization.

Sponsors said the survey shows that "the public is deeply divided over the issue of funds going directly to private or church-related schools. ... Tax credits for parents who send their children to private or church-related schools are supported by the public, but that support is greater if the credit covers only part of the tuition. Moreover, funding for private or church-related schools is conditioned on the willingness of those schools to be accountable in the same way the public schools are accountable."

Respondents were more supportive of a "voucher system" that paid part of the tuition for attendance at a private or church-related school than for one that

paid it all. By 52 percent to 41 percent, respondents favored a voucher plan that paid part of tuition at private and parochial schools. But only 48 percent favored a voucher plan that paid full tuition expenses while 46 percent opposed it.

Survey respondents overwhelmingly supported government regulation of religious schools that accept government funds. Seventy-five percent responded "yes," when asked whether private or parochial schools that accept government aid should be

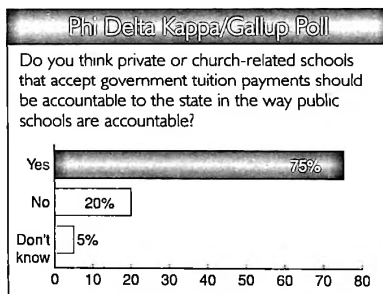
accountable to the state education regulations.

"The findings appear to guarantee that the issue of public funding for church-related schools will be a battleground for the foreseeable future," said the survey's introduction.

James M. Dunn, executive director of the Baptist Joint Committee, said the poll "indicates what happens when you mix misleading words with a demand for instant answers. Bad public policy proposals result from top-of-the-head responses."

He said it was surprising that more people supported the government paying some of the tuition rather than all the tuition at private and parochial schools.

"That sounds like welfare for the well-off to me," Dunn said. The BJC opposes the use of tax dollars to support religious schools. Δ



## Maine tuition policy ruled constitutional

A U.S. district court judge ruled constitutional a Maine policy that prohibits tuition subsidies to students attending religious schools in areas where no public schools exist.

The American Center for Law and Justice, a legal organization founded by broadcaster Pat Robertson, sued the state last November on behalf of three families who sent their children to a Catholic high school because there is no public secondary school in the town of Minot.

State law requires that tuition be paid for high-school-age residents in such towns so they can attend other public high schools or private schools, but sectarian school are excluded from the policy.

"The plaintiffs certainly are free to send their children to a sectarian school. That is a right protected by the Constitution," wrote U.S. District Judge D. Brock Hornby in his Aug. 11 ruling.

"The law is clear, however, that they do not have the right to require taxpayers to subsidize that choice," he continued. "That is true in a district that builds and operates its own high school. ... it is also true in a district that has no public high school."

Vincent McCarthy, northeast regional counsel for the ACLJ in New Milford, Conn., said he plans to appeal on behalf of the plaintiffs.

"We believe the decision is wrong," said McCarthy. "It upholds the discrimination of funding of private schools by Maine. Under the present system, Maine pays money for parents to send their children to private nonsectarian schools but not to private sectarian schools."

The Rev. Barry Lynn, executive director of Americans United for Separation of Church and State, was pleased with the ruling. "This decision sends a strong message that taxpayers should never be forced to support private religious education," said Lynn, whose group provided legal help to the state of Maine.

## Court strikes down law aiding religious schools

A U.S. appeals court in New Orleans has struck down a 32-year-old federal law permitting public school systems to lend computers and other equipment to church-run private schools.

In the same ruling, however, the 5th U.S. Circuit Court of Appeals said taxes may be used to pay special education

teachers who work at church-run schools and also to pay bus drivers who transport students to those schools.

The suit was filed 13 years ago by two parents in the New Orleans suburb of Jefferson Parish.

The 70-page decision, written by Judge John M. Duhe, was handed down Aug. 18. It declared unconstitutional portions of a federal education law known as Chapter II and a similar state law.

The federal law, rewritten in 1994 as the "Innovative Education Program Strategies" section, sets up block grants to help buy instructional and educational materials for public and private schools. Computers, movie projectors, library books and televisions are administered by a public agency or contractor and lent to public and private schools.

The appeals court found that part of the law unconstitutional.

Another part of the law paid for teachers of special education students in both religious and public schools. The court found that practice constitutional, basing its ruling on a 1997 U.S. Supreme Court decision that said the program is constitutional because it has a secular purpose — educating all special needs students — and because it does not advance religion.

Lee Boothby, an attorney representing the parents who filed the original suit, predicted the case would end up before the Supreme Court. He said each side is likely to appeal the issue it lost on.

## Pakistan returns 10 state schools to Presbyterians

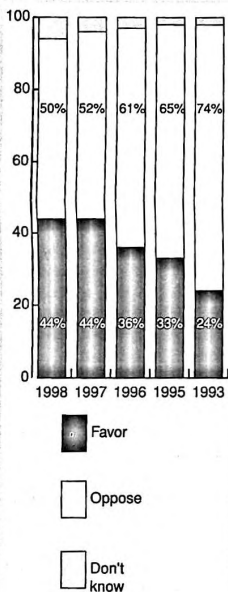
The government of Pakistan has announced it will return to the Presbyterian Church (U.S.A.) the management of 10 schools taken from the denomination in 1972 when the Muslim-dominated country nationalized education.

U.S. church officials said the Presbyterian Church of Pakistan is celebrating the coming return of the schools but noted that it is a celebration tempered by the reality that both the buildings and quality of education have deteriorated because of 26 years of underfunding and neglect.

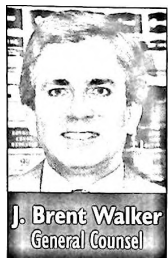
Pakistani church leaders and American missionaries have tried for years to regain possession of the schools. The movement gained momentum in 1987 when the Supreme Court of Pakistan ruled that the land and buildings belonged to the church, though the government was allowed to continue to manage the schools, according to Presbyterian News Service. Δ

### PDK/Gallup Poll

Do you favor or oppose allowing students and parents to choose a private school to attend at public expense?



## Lewis F. Powell Jr. kept low profile but made big impact on court



**L**ast week Lewis F. Powell Jr., retired justice of the Supreme Court, died at the age of 90. He was one of those low-profile justices that members of the general public most likely would not recognize on the street. If asked to name the nine justices of his

day, most probably would have left him out. But he made an indelible mark on the court and American constitutional law.

Justice Powell was special in several ways. He was one of the few post-World War II nominees to come from private practice rather than from the bench, government or academia. He was also older than most justices when he ascended the bench. When nominated in 1972 to replace Hugo Black, Powell already had completed a 40-year career as a prominent attorney (including a stint as president of the ABA) and, at 64, was close to the age when many retire. He was a lifelong Democrat who was nominated by a Republican president, Richard Nixon. He was uncharacteristically humble and self-effacing. Because of his advanced age and lack of judicial experience, he had serious misgivings about going on the court. In fact, he turned Nixon down when first asked to serve.

Justice Powell will be remembered primarily as a swing voter — a majority maker and breaker — much the same role that Justice Sandra Day O'Connor plays today. He occupied the pragmatic, sensible center of the court during his 15 years of service. Regardless of whether one agreed with how he voted, one could be assured that it was a principled decision in which he sought to interpret and apply the law with care and integrity.

This centrist voting pattern can be seen in his church-state jurisprudence. For example, Justice Powell wrote the majority opinion in *Committee for Public Education and Religious Liberty vs. Nyquist* (1973). In this seminal Establishment Clause case, the court declared unconsti-

tutional a New York law that provided financial assistance to parochial elementary and secondary schools, including direct aid, tuition reimbursement and tuition tax credits. But he wrote a landmark opinion, in *Widmar vs. Vincent* (1981), recognizing college students' right to use state university facilities to meet for religious worship and discussion and opined that such use did not violate the Establishment Clause. This decision set the tone for passage of the Equal Access Act of 1984 in which Congress extended the same rights to students in secondary schools. In sum, Justice Powell delicately and faithfully applied the *Lemon* test in Establishment Clause cases in a way that resulted in benevolent governmental neutrality, rather than hostility, to religion.

Justice Powell's free exercise jurisprudence was less laudable. Although he properly appreciated the need to keep government from advancing religion, Justice Powell was less assiduous in requiring government to accommodate the exercise of religion. For example, he joined a plurality opinion, along with Chief Justice Burger and then-Justice Rehnquist in *Bowen vs. Roy* (1986), denying a native American's religiously based objection to using a Social Security number. This decision foreshadowed the decimation of the Free Exercise Clause four years later in *Employment Division vs. Smith* (1990), when the plurality became a Court majority. Moreover, Justice Powell voted with the majority in *Goldman vs. Weinberger* (1986), which upheld the right of the Air Force to forbid an Orthodox Jewish rabbi to wear his yarmulke when in uniform.

But, on balance, Justice Powell's tenure on the court was a positive one. We will continue to long for intelligent, practical and common sense jurists like Justice Powell who decide cases based on an honest interpretation of the Constitution as an organic document protecting the freedom of all Americans. This Virginia gentleman stood squarely in the tradition of earlier Virginians — Jefferson, Madison and Mason — who crafted the Constitution he so faithfully sought to interpret. Δ

## Quoting

**T**here can be no question that these [tuition reimbursement] grants could not, consistently with the Establishment Clause, be given directly to sectarian schools. ...The controlling question ... is whether the fact that the grants are delivered to parents rather than schools is of such significance as to compel a contrary result. ...

By reimbursing parents for a portion of their tuition bill, the State seeks to relieve their financial burdens sufficiently to assure that they continue to have the option to send their children to religion-oriented schools. ... [T]he effect of the aid is unmistakably to provide desired financial support for nonpublic, sectarian institutions.

— Justice Lewis F. Powell Jr.

Majority Opinion  
*Committee for Public Education  
and Religious Liberty vs. Nyquist*  
1973

## 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

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

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

Neither Congress, nor any other civil power, can make a person pray or stop him/her from it. No man or group of men can expel God from a person's heart as Nelson Mandela, John Bunyan, Roger Williams and others of history and Scripture testified from jail. Imperial religion, which attempts to force people to pray and worship a certain way, will not solve the problems of America or those facing the world.

A faith system of worth does not need a majority vote of Congress or of the Supreme Court to prove its value. The mission of the church, the synagogue, the mosque is to encourage the hearts and spirits, to lift up the needy, voluntarily giving love to others. The power of love is what the world needs, not the love of power.

Most faith systems recognize and teach some form of self discipline and inward guidance in matters of spirit and truth. It has been stated that "Society cannot long endure without restraints, the more there are from within the fewer there need be from without."

When the institutions of religion and government function freely in their separate spheres, both benefit and prosper. The former offer inward strength, guidance and encouraging self-discipline; the latter protect the individual freedoms of all citizens in their outward relations.

Mr. Jefferson's principle of separation of church and state has been and is a win-win concept for both government and religion. This is one of the great driving forces of democracy. This aloofness and tension keeps both government and organized religion from oppressing an indi-



Nathanael Habel

vidual for his faith or lack of it.

When the forces of one get so excessive and extreme the people wake up and say, "No further," as in the case of the defeated Istook proposal to change the First Amendment. When government moves oppressively, the people respond at the ballot box and through the media.

Strangely, one of the most strident voices to bash Mr. Jefferson and Mr. Madison's principle has been Pat Robertson, a Virginian. Through his Christian Coalition he advances a particular theology, promotes school prayer, tax money for private school vouchers and offers up voter guides so people will vote for his candidates.

The power bases of the religious right have promised to continue the battle to win America to their views. In the free market place of ideas in America this is their right and that of every citizen. But there are signs that there are Republicans, Democrats and many independent voters who are not ready for America to change from a democracy to a theocracy.

What would Pat Robertson say and do if a different kind of religion from his own pressured Congress and voters to act on some special largess such as the tax breaks his enterprises get in the name of religion? Most likely, he would stop bashing church-state separation and return to its defense as his senator father did so eloquently. Δ

*Nathanael B. Habel is a retired Virginia Baptist pastor and educator who lives in Lynchburg, Va., where he is a member of Rivermont Avenue Baptist Church.*



200 Mai  
Washing  
202-544  
Fax: 20/  
Comput  
Internet

\*\*\*\*\*AUTO\*\*\*ALL FOR AADC  
SOUTHERN BAPTIST HIST LIBRARY & ARCHIVES  
BILL SUMNERS  
901 COMMERCE ST STE 400  
NASHVILLE TN 37203-3628



World Wide Web site:  
[www.bjcpa.org](http://www.bjcpa.org)

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