



Nashville, Tennessee

REPORT FROM THE CAPITAL

Volume 54, No. 18

September 14, 1999

NewsMakers

◆ **Jenny Chasteen** of Greenville, S.C., **Denise Edwards** of Waco, Texas, and **Mary Elizabeth Hill** of Durham, N.C., are serving fall semester internships at the Baptist Joint Committee. Chasteen, a native of Cynthia, Ky., recently graduated from Georgetown (Ky.) College with a degree in political science. Edwards, who earned a bachelor's degree from Baylor University in Waco, Texas, in 1996, is pursuing a master's degree in public policy administration at Baylor. Hill recently graduated from the University of North Carolina at Chapel Hill with a degree in English and political science.

◆ **Rabbi David Saperstein**, director of the Religious Action Center of Reform Judaism and chair of the U.S. Commission on International Religious Freedom, welcomed a U.S. State Department report on global religious freedom. "This nation's 'First Freedom' must assume its rightful place as a serious consideration in American foreign policy, and this Report is an important step in that direction," he said.

◆ **Etowah County (Ala.) Circuit Judge Roy Moore** was cleared of state Ethics Commission charges that he improperly profited from a fund set up to help him defend a legal challenge to his courtroom display of the Ten Commandments. Δ

Religious liberty law's validity addressed at Senate hearing

Influenced by the U.S. Supreme Court's partial invalidation of a 1993 religious liberty law, Senate backers of new religious freedom legislation want to make sure they get it right this time.

At a Sept. 9 hearing, the Senate Judiciary Committee heard four legal experts' views on how Congress can strengthen religious liberty protections without overplaying its hand.

The panel is considering legislation such as the Religious Liberty Protection Act, which comfortably cleared the U.S. House of Representatives in July.

RLPA was proposed after the high court ruled in 1997 that Congress lacked the authority to impose upon states the sweeping protections of the Religious Freedom Restoration Act of 1993. RFRA is still being enforced at the federal level.

RLPA, a more narrowly focused bill than RFRA, would again make it harder for states and local governments to substantially burden religious practice, but only in activities that affect interstate commerce, in federally funded programs and in land-use matters.

Judiciary Committee Chairman Orrin Hatch, R-Utah, said it would be preferable for the Supreme Court to return to its former posture of providing strong protections for religious liberty.

"Until it does," Hatch said, "this Congress must do what it can to protect religious freedom in cooperation with the Court."

Hatch said the Senate must ensure that

any bill it passes rests on solid constitutional footing. "It would be utterly futile to pass a measure that aggressively protects religious exercise but is thereafter invalidated by the courts as unconstitutional," he said.

Sen. Patrick Leahy, D-Vt., said the

Senate should craft a bill that does not undermine states' ability to protect children and civil rights. "We should take our time and do this right, so we do not have to do it yet again," he said.

"This Congress must do what it can to protect religious freedom in cooperation with the Court."

— Sen. Orrin Hatch
R-Utah



University of Texas as law professor Douglas Laycock told senators the challenge before Congress is to protect religious liberty in a way that is consistent with its constitutional powers and Supreme Court rulings.

He told lawmakers RLPA is constitutional and should be enacted.

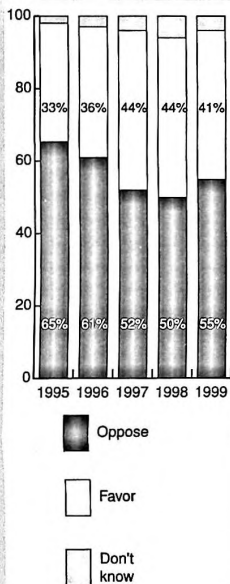
Chai Feldblum, professor of law at Georgetown University Law Center, urged senators to write a law that reaches the bulk of religious liberty problems while remaining in "the deep end" of Congress' constitutional powers. A more measured approach, she said, may not reach as many problems as the House-passed RLPA, but the Supreme Court would more likely sustain it.

University of Nevada at Las Vegas law professor Jay Bybee, an opponent of the 1993 law, called RLPA "a more temperate, modest response by Congress."

Gene Schaerr, a Washington, D.C. attorney, said RLPA is constitutional and called it "a wise and prudent use of federal power." Δ

PDK/Gallup Poll

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



Position opening announced

The Baptist Joint Committee is seeking an executive secretary to assist the executive director in carrying out administrative responsibilities, including coordination of office operations, procedures and communications. Job requirements include a commitment to Baptist principles and agreement with the BJC's fundamental stance on church-state relations. Inquiries and resumes should be faxed (202-544-2094) or e-mailed (bjcpa@bjcpa.org).

Survey shows commitment to nation's public schools

Most Americans want to improve education by reforming the existing public-school system, not by seeking alternatives to it, according to a new survey.

Seventy-one percent of survey respondents favored reforming the existing system, while 27 percent said the nation should instead focus on an alternative system.

Phi Delta Kappa, a professional education organization, and the Gallup Organization conducted the survey.

The survey also asked respondents whether they preferred a plan to strengthen existing public schools or one that provided vouchers to pay tuition at private and church-related schools.

Seventy percent opted for strengthening public schools, while 28 percent said they would prefer vouchers for private and church schools.

"The results clearly affirm the public's belief that our national commitment to educating all our children through the public schools should be maintained," authors of the PDK/Gallup survey said.

As in past years, support for aid to private education varied depending on how the question was framed.

In the survey's "main trend question," opposition to "allowing students and parents to choose a private school to attend at public expense" grew from 50 percent in 1998 to 55 percent in 1999, while those favoring the proposal declined from 44 percent to 41 percent.

But when asked whether they favor or oppose allowing parents to send children to any public, private or church-related school with the government paying all or part of the tuition — 51 percent favored the choice and 47 percent opposed it.

Respondents favored a partial-tuition voucher plan for private schools 52 percent to 45 percent but opposed a full-tuition voucher plan 48 percent to 47 percent.

By a 77 percent to 21 percent margin, respondents said private and church-related schools that accept government tuition payments "should be accountable to the state in the way public schools are accountable."

By an almost equal margin, 74 percent to 21 percent, respondents said nonpublic schools that receive public funding should be "required to accept students from a wider range of backgrounds and academic ability than is now generally the case."

Asked what "one thing" they would

change to improve public schools in their communities, 12 percent of respondents cited discipline, control and tighter rules. Ten percent called for more teachers and smaller class sizes, 7 percent called for better-qualified teachers and 5 percent cited funding. Cited by 4 percent of respondents were security and putting prayer and God back in schools. Δ

Judge allows resumption of Cleveland voucher plan

A federal judge has delayed his ruling halting Cleveland's school-voucher program after an outcry from parents left scrambling to find schools for their children.

The reversal, filed three days after the original injunction, allows most of the nearly 4,000 students to return to private and parochial schools with tax dollars. But U.S. District Judge Solomon Oliver reiterated his Aug. 24 opinion that the program, which provides parents with tax dollars for tuition at private and parochial schools, has the primary effect of advancing religion.

He said he still believes that opponents of the voucher program have a "very substantial chance" of winning their argument that the U.S. Constitution's Establishment Clause bars such aid to religious schools.

However, he said the timing of the initial injunction, which was issued the day before schools were scheduled to open, "caused disruption to the children previously enrolled in the program beyond that normally associated with a student's transferring from one school to another."

The temporary reversal allows only students who were enrolled in the voucher program last year to return to private and parochial schools. New enrollees, a small portion of the voucher students, are barred from participating in the program. And Oliver said the stay would last only until the end of the school semester unless he rules the program unconstitutional before that time.

The Cleveland program provides 3,801 students up to \$2,500 each to attend private or parochial schools. In his Aug. 24 injunction, Oliver noted that participating schools are overwhelmingly sectarian. "This means that parents cannot make an educational choice without regard to whether the school is parochial or not," he said. "Therefore the Cleveland Program has the primary effect of advancing religion." Δ

What if America's church-state wall fell?



Charles
Levendosky

As the controversy over funding religious schools with tax dollars heats up, some citizens are claiming that the concept of "separation of church and state" is only a myth. While it is true that the phrase does not literally appear in

the U.S. Constitution or the Bill of Rights, the principle of the wall of separation is imbedded in the two religious clauses of the First Amendment and Article VI of the Constitution.

The First Amendment states, in part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; ..." The Establishment Clause means that government cannot support or endorse one or all religions. It also means that government must be neutral in regard to religion.

The Free Exercise Clause means that the government should not interfere with religious worship unless it has a compelling reason to do so for public safety or because of societal mandates or laws. The Free Exercise Clause does not protect human sacrifices, incest or polygamy as a part of religious worship.

Article VI of the Constitution states, in part, that "no religious test shall ever be required as a qualification to any office or public trust under the United States." This clause is a further barrier to mixing church and state. It doesn't matter what a person's religious beliefs are, that person can run for office. A person's religious beliefs cannot be used to disqualify that person from sitting on a jury.

The Founders were well aware they were creating a secular state. There is no mention of God or a Supreme Being in the Constitution or in the Bill of Rights.

The separation of powers is also a principle that isn't literally named in the Constitution, but is implied by the very structure of the Constitution. The document spells out the powers of Congress, of the president, and of the courts. The phrase "fair trial" cannot be found in the Constitution or the Bill of Rights, but it is

implied in those documents.

But let us suppose for argument's sake that the principle of separation of church and state does not exist. What would be the ramifications?

Law professor Douglas Laycock of the University of Texas at Austin, who is an expert in church-state law, said flatly that such a supposition is a mistake, that it gives support for the recent rhetoric that dismisses the principle of the separation of church and state. That principle, he said, is imbedded in the religious clauses of the First Amendment. "Separation of church and state" is merely the slogan for what those clauses mean. Laycock put it this way: "Without separation you can't get to free exercise. The government would be free to meddle and eliminate free exercise for everybody."

Edwin Gaustad, professor emeritus of history at the University of California at Riverside, was emphatic about what would happen if the principle of separation of church and state were ignored: "The most horrifying but most obvious example is religious warfare — because that was true of England in the 17th century, of the continent in the 16th century. Any time you put the power of the state, which is to say the power of the sword, behind conformity and religion, you're calling for religious persecution, you're calling for religious martyrdom, you're calling for religious warfare. All you have to do is look at the history of the Western world to find example after example after example. From our relaxed point of view in 1999, we say, 'Oh that could never happen.' But the fact is it happened over and over again."

Those who argue that the wall of separation between church and state has made us a godless nation ignore the reality. Our country has a growing religious diversity, thousands of vital and active religious groups, and a religious liberty on a scale never known before in the history of humankind. We should be grateful to Madison and Jefferson for the wall of separation that protects us all. Δ

Charles Levendosky is editorial page editor of the *Casper (Wyo.) Star-Tribune*.

Quoting

The First Amendment requires that America be a secular state, uncommitted in matters of religious beliefs and ultimate concerns. God and Caesar are neither to be identified with one another, nor to be made equal with one another. The secular state is rooted in the inalienable right of conscience and the theological principle of voluntarism in religion. The "free exercise" of religion does, in fact, require a secular government. Hence the church may not use political means for the accomplishment of religious ends.

The secular state ought not to be regarded as a barrier but as a benefit to religion. Certainly, the phenomenal growth and marked vitality of religion in America — Catholic, Protestant, and Jewish — clearly attest to the fact that religion has not suffered from the American tradition of the secular state and the free church.

— James E. Wood Jr.

in *Nationhood and the Kingdom*
1977

Wood served as the third executive director of the Baptist Joint Committee, heading the agency from 1952-1980.

Baptist Joint Committee Supporting Bodies

- ◆ Alliance of Baptists
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- ◆ Baptist General Conference
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- ◆ National Baptist Convention of America
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- ◆ 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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News service honors Dunn with religious liberty award

Recognizing a career of advocacy for religious liberty and the separation of church and state, the independent news service Associated Baptist Press presented James M. Dunn with its sixth Religious Freedom Award Sept. 2.

Dunn, 67, recently stepped down as executive director of the Baptist Joint Committee to join the faculty of the new Wake Forest University Divinity School in Winston-Salem, N.C., and to serve as president of the BJC Foundation.

ABP directors have given the award each year since 1994 to an individual whose achievements advance the principles and practice of religious freedom.

"This is a journalistic organization giving an award for religious freedom, but we think that makes sense," said Greg Warner, executive editor of ABP.

Also on the program, broadcast journalist Bill Moyers introduced Dunn and offered his reflections on his longtime friend's career.

At a ceremony at the Freedom Forum's Media Studies Center in New York City, Dunn accepted a numbered print of a Maxwell Mays landscape of colonial Providence, R.I., site of the first Baptist church in America, and a plaque recognizing his selection.

"I have had the good fortune to be in the right place at the right time," Dunn said. "Time for the Baptist word came due and it was simply my job to say it, and to say it when not many others were."

Dunn credited a long list of mentors and friends including Moyers, whom he termed "the prophetic voice of the last quarter of the 20th century."

"So when Bill, my friend, indicates that he thinks the stuff I'm doing is OK, that

gives me more than a smattering of confidence," he added.

Moyers described Dunn as "one of my closest friends; a brother."

Moyers began by praising Dunn's wife of 41 years. "Patience is Marilyn's pen name in the story she and James have co-authored," Moyers said, adding that those close to the couple "know the story would have been different without Marilyn."

He also observed, "The story would have been different if James had learned a long time ago to keep his mouth shut," alluding to Dunn's knack for quotable wit-ticisms that at times have landed him in controversy.

"You can't understand James unless you understand he's not just a Baptist, he's a Texas Baptist," Moyers said.

"Having been raised a Baptist, he comes from a long line of troublemakers," Moyers said, citing a "dissident spirit" that characterized "non-conformist" groups throughout church history.

"Among the non-conformists were Baptists," he said. "Baptists were not very popular, and the last thing you would want was for your daughter to marry one."

In the final analysis, however, Moyers said it may be that Baptists' greatest contribution to American life is their insistence on religious freedom for all. If that is so, he continued, "Baptists like James Dunn put us and kept us on the right side of history."

"People ask me what kind of Baptist I am, and I say a James Dunn Baptist," Moyers said.

Moyers said it is fitting that a news organization like ABP should honor a religious-liberty champion like Dunn.

"If religious liberty rises from the ground of a free conscience, so does a free press," he said. "People will make the right decision if they are informed and free." Δ

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