

Report from the Capital

NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

Religious groups question new FBI monitoring

Attorney General John Ashcroft has announced that he will relax decades-old restrictions that limit the FBI from monitoring religious and political groups that are not specifically suspected of planning or committing a crime.

The Justice Department says the change is needed in the United States' war on terrorism. Some civil liberties and religious groups, however, say it amounts to "religious profiling" of Muslims, a term borrowed from Ashcroft's own political battles last year.

During Ashcroft's confirmation hearings, some members of the Senate Judiciary Committee questioned his nomination because of strong ties to the religious right. Ashcroft supporters protested loudly, comparing such blanket suspicion of conservative evangelicals to racial "profiling" in law enforcement.

Now the argument has come full circle, with critics charging Ashcroft of enabling the same practice against law-abiding American Muslims.

The debate began Dec. 2, during an appearance by Ashcroft on ABC's "This Week" news program. Ashcroft said he was considering relaxing Justice Department restrictions that prevented FBI agents from monitoring religious and political groups without first having suspicion that they were committing or planning a crime.

"We will respect the rights of political freedom and religious freedom," Ashcroft said in the interview. But he



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—John Ashcroft
Attorney General

also said potential terrorists cannot "gather over themselves some robe of clericism ... and claim immunity from being observed."

Ashcroft's Justice Department said little more about whether the rules would in fact be rescinded until May 30, when Ashcroft announced he would relax the policies.

The restrictions were put in place after revelations that the FBI had monitored Martin Luther King Jr. and other civil rights leaders during the 1960s under the guise of "national security."

A Senate select committee investigating the practice termed it "a sophisticated vigilante program aimed squarely at preventing the exercise of First Amendment rights," and recommended the FBI policies that Ashcroft has now eased.

Muslim and Arab leaders blasted Ashcroft's relaxation of the FBI rules.

"Mosques, along with other religious institutions, are open to all Americans and have nothing to hide, but that openness should not be abused by using tactics of deception to spy on a religious minority

engaged in lawful activities," said Jason Erb, governmental affairs director for the Council on American-Islamic relations.

"We cannot win the war on terrorism by turning the clock back to the days when the FBI infiltrated groups and harassed individuals engaged in constitutionally protected political dissent," he continued.

The American-Arab Anti-Discrimination Committee also criticized the new policy.

"American history demonstrates that minority communities, political dissidents, and critics of government policy can be vulnerable to politicized and unrestrained law-enforcement," says a statement published on the group's website. "ADC holds that law-enforcement agencies should investigate and try to prevent crimes, but should not investigate Americans based on their lawful and legitimate political and religious activities."

Rep. John Conyers, D-Mich., a member of the House Judiciary Committee, decried Ashcroft's action as "a war on freedom, not a war on terror."

Other organizations critical of Ashcroft include the American Civil Liberties Union and Americans United for Separation of Church and State.

Ashcroft defended the rule changes, saying the old restrictions impeded the FBI's ability to investigate potential terrorists. As an example, he pointed out that any U.S. citi-

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NewsMakers

◆ **Jayne Bristow** of Williamsburg, Va., **Andrew Canady** of Gray's Creek, N.C., and **Casey O'Dell** of Cedar Hill, Texas, are serving summer internships at the Baptist Joint Committee. Bristow is a student at Mary Washington College in Fredericksburg, Va., majoring in political science. Canady attends Wake Forest University in Winston-Salem, N.C., majoring in history and religion. O'Dell is working toward a master of divinity degree at Truett Seminary and a master of international journalism degree at Baylor University in Waco, Texas.

◆ Sens. **John Kerry**, D-Mass., and **Rick Santorum**, R-Pa., have introduced the Workplace Religious Freedom Act of 2002 in the Senate. The bill would amend the Civil Rights Act of 1964 to increase protections for employees who need religious accommodation in the workplace.

◆ **Levi Zook**, an Amish man from Cambria County, Pa., is one of 21 horse-drawn buggy drivers who are trying in criminal court to overturn citations for refusing to mount the state's slow-moving-vehicles symbol on their buggies. Zook said the mandatory orange triangles are an investment of faith in symbols, not in God, the *Pittsburgh Post-Gazette* reported. △

EEOC files lawsuit against Tampa-based company

The Equal Employment Opportunity Commission (EEOC) has filed a lawsuit against a Tampa company on behalf of a woman who claims she was fired because of her strong Christian beliefs.

Frances Wagner, 51, began work in 1996 as a technical support telephone operator for the Tampa-based Sykes Enterprises at a message center in Sterling, Colo. A year later, when Wagner was transferred to a Sykes support call center department that specialized in solving problems for computer software games that contain violence, she objected on the grounds of her religious beliefs. Sykes fired Wagner shortly after her complaint about the transfer.

The lawsuit, filed May 15, is seeking unspecified monetary damages for Wagner, as well as a court order, which seeks to implement policies that would prevent religious discrimination at Sykes Enterprises.

"They (Sykes) tried to put her in a different position, but it turned out that Ms. Wagner had a physical condition where she could not write for long periods of time, which was a requirement of the new position. So Sykes said that they didn't have enough work for her to do and fired her," said Karen Weeks, supervisor trial attorney for the EEOC Denver office, where the lawsuit was filed.

Telephone calls to Sykes Enterprises by Religion News Service were not returned.

Weeks said, "this case is unique in the fact that this type (religious conviction) of lawsuit is directly related to the work itself. Normally, in religious belief cases, the conflict comes when the employee wants to leave work and attend some sort of religious event or ceremony." △

Clergy housing tax break might still be in danger

Despite a new law designed to save it, the tax exclusion for clergy housing allowances might still be in danger.

Denominational leaders and religious media outlets hailed the lightning-fast congressional and presidential approval of a recent bill designed to protect the income tax perk that clergy members enjoy.

The law is aimed at resolving a dispute in which judges were prepared to rule on whether the practice is constitutional. Even if that case is dismissed, however, a California law professor who belatedly became involved in the suit said he would

likely go back to court to challenge the tax break on his own.

Erwin Chemerinsky, a professor at the University of Southern California School of Law, is continuing to press the case against the clergy exemption. He is the lawyer appointed by the 9th U.S. Circuit Court of Appeals in San Francisco to address the constitutionality of a part of the tax code that allows clergy members to exclude from their gross income the portion they use to pay housing costs.

He became involved even though neither side in the original case had questioned the law's constitutionality, but only its application. In the suit, the Internal Revenue Service said that Los Angeles-area pastor Rick Warren's exemption should be limited to the fair market rental value.

In a surprising move, however, a majority of a three-judge panel of the court asked in March for briefs on the larger question of whether the tax exemption violates the Constitution. Two of the judges questioned whether the provision — which applies specifically to religious leaders — creates a government subsidy to religion or causes excessive entanglement between church and state. Both are prohibited under the First Amendment's No Establishment Clause.

The third judge issued an emphatic dissent to the decision to expand the question.

Chemerinsky's brief in the case argues that the ministerial tax exemption is clearly unconstitutional. Chemerinsky has been an outspoken critic of the practice in the past. His appointment by the judges led many legal observers to conclude that a majority of the 9th Circuit was poised to rule against the housing allowance exclusion.

The dispute got unusual attention on Capitol Hill, where both the House and Senate rushed through legislation designed to render moot the IRS' argument in the case. Bush signed the bill into law in May. Both sides in the case and the Department of Justice then asked the judges to dismiss the case.

However, Chemerinsky has notified the appeals court that he intends to file a motion opposing the motions to dismiss.

The judges have not yet ruled on the dismissal request. But even if they do dismiss the case, that may not end the constitutional question.

In a phone interview, Chemerinsky said he would "probably" file a lawsuit chal-

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Outside-the-Beltway partnerships vital for spreading BJC message

Recently I had the privilege of speaking to many of the presidents of Southern Baptist-related colleges and universities at the annual meeting of the Association of Southern Baptist Colleges and Schools in Panama City, Fla.

I told the presidents I wished the Baptist Joint Committee's mission could be made to intersect with theirs more often than they have in the past. I appealed to them to consider a partnership, albeit an informal one, with the Baptist Joint Committee. Such an association would be invaluable to the Baptist Joint Committee in helping us do our work as we help the presidents educate their students about the importance of Baptist principles in general and religious liberty in particular.

I then outlined several ways in which such partnerships could be structured. These same ideas are relevant for other present and potential Baptist Joint Committee partners, such as churches and denominational bodies.

First, help make sure that I or someone else from the BJC is invited to speak at your church or denominational meeting. We will come as often as our schedule permits. We can help you inform your members about the importance of religious liberty and update them on current church-state issues. Such visits benefit us as well. The more time we can spend outside the Beltway — listening to ideas and concerns of Baptists in the pews — the better.

Second, appoint a person on your staff to serve as a liaison with the Baptist Joint Committee. In organizations the size of most denominations and some churches, it is always helpful to have a friendly face as a contact person. We stand ready to supply you with resources that will help your educational efforts.

Third, our internship program allows us to accommodate between six and nine interns a year. Thanks so much to the Baptist General Association of Virginia, the Baptist State Convention of North

Carolina and the Baptist General Convention of Texas for regularly sending us great interns. Let me urge our churches and other denominational bodies to give us names of your bright students who may want to live for a few months on Capitol Hill and work with us. I guarantee they will benefit from it, and you will too.

Fourth, come see us when you are in Washington. On Oct. 8-10, for example, we are co-sponsoring a conference, along with the Roger Williams Fellowship and the Alliance of Baptists, at First Baptist Church Washington,

D.C. The conference will involve the issue of Baptist freedom in the post-modern culture. Pulitzer Prize-winning cartoonist Doug Marlette and Tom Halbrooks, president of Colgate Rochester Crozer Divinity School, to name only two, will be speaking.

Finally, the Baptist Joint Committee is poised to celebrate its 70th anniversary in 2006. This is the place you need to be during that significant time of observance and celebration. We will keep you posted as the plans develop.

Years ago, Doug Marlette drew a cartoon about 10 years ago that hangs on the Baptist Joint Committee's office wall. It shows Will B. Dunn standing behind the pulpit with a finger raised and blurb that says: "We Baptists Gotta Stick Together — After All Nobody Else Will Have Us." I'm not sure that it's any longer true that "no one else will have us," given the fact that Baptists have penetrated the highest levels of government, business, education and journalism. But it's certainly the case that "We Baptists Gotta Stick Together."

We appreciate you — our readers and financial supporters — for sticking with us. We plan to stick with you! Δ



J. Brent Walker

Executive Director

Cabinet secretary announces aid to faith-based groups

Health and Human Services Secretary Tommy G. Thompson announced June 5 that \$30 million will be made available to help faith-based and community organizations that provide social services.

The money comes from the Compassion Capital Fund, an aspect of a White House initiative announced soon after President Bush took office and appropriated by Congress to the federal department in January.

"Today, we are making good on President Bush's commitment to give faith- and community based organizations the same opportunities to receive federal assistance that larger private organizations have," Thompson said.

"For years, grass-roots organizations have helped thousands of Americans in need, often on shoestring budgets and with little assistance from the federal government. Under the president's leadership, that assistance is finally beginning."

Close to \$25 million will be available for use by five to 25 "intermediary organizations" to provide technical assistance to help faith-based and community groups gain funding, manage and expand their programs, and train their staffs. The assistance will be provided for free to the faith-based and community groups. Δ

BAPTIST JOINT COMMITTEE

Supporting Bodies

- ◆ Alliance of Baptists
- ◆ American Baptist Churches USA
- ◆ Baptist General Association of Virginia
- ◆ Baptist General Conference
- ◆ Baptist General Convention of Texas
- ◆ Baptist State Convention of North Carolina
- ◆ 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

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

zen can "surf" the Internet to check out religious sites. But under the old restrictions, he said, FBI agents could not, unless they had cause to believe the organizations were involved in crime.

The old rules also limited FBI agents from attending public meetings of religious or political groups, unless they were investigating a particular crime.

A Baptist religious liberty leader contacted for comment by Associated Baptist Press greeted the change with muted criticism.

"Americans must be both safe and free," said Brent Walker, executive director of the Baptist Joint Committee. "Of course, we must protect our citizens and ensure our national sovereignty. But we need to be especially careful in times of crisis and grief not to sacrifice time-honored constitutional protections for religious liberty. If we do, terrorism will have already won."

Officials from the Southern Baptist Convention's Ethics & Religious Liberty Commission declined to comment on the change in FBI rules, saying that ERLC President Richard Land was out of the country.

During Ashcroft's Senate confirmation hearings, Land accused Ashcroft's critics of "religious profiling" in their opposition.

In an attempt to soothe fears about the new rules undermining religious freedom, FBI Director Robert Mueller said June 6 that the FBI has no plan "to go into mosques." When asked about previous FBI harassment of religious groups, Mueller responded in *The Washington Post*, "I want to make absolutely certain that we don't repeat those abuses of the past."

But Robert Parham, director of the Baptist Center for Ethics in Nashville, Tenn., took little comfort in that assurance. "The line between the FBI spying on

church activities and messing in church matters is too thin to accept the word of honorable officials that no harm will result," he said. Δ

— Robert Marus
Associated Baptist Press

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lenging the tax exemption if the Warren case is dismissed.

"This tax provision gives 'ministers of the gospel' a benefit that no one else can claim," Chemerinsky said. "For the government to favor religion in that way is to violate the [First Amendment's] Establishment Clause."

Attorneys for Warren and religious groups that have filed friend-of-the-court briefs in the case argue that many churches could not afford to attract full-time clergy without the benefit. The exclusion, therefore, lifts a burden on the free exercise of religion.

Supporters of the allowance also note that other taxpayers — such as military personnel and employees required to live on premises enjoy similar housing benefits.

Phill Martin, director of education for the Dallas-based National Association of Church Business Administration, said he continues to be worried about Chemerinsky's involvement in the case.

Martin said a new lawsuit filed by the professor could be harder to defend. It "will put the IRS and him [Chemerinsky] at the table with no religious body as part of the suit," he said. Δ

— ABP and Staff Reports



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