

The OPPRESSOR

BY PAT BECARMA

A district attorney with a conscience shares his thoughts on putting children in a foster home because of their parents' religious beliefs.

Much has been written in LIBERTY about the plight of those oppressed because of their religious beliefs. How about a word from an "oppressor"?

I am a district attorney for a rural Midwestern municipality. In spring, 1981, the administration of our school district informed me that Marie Engst, age 11, and her brother Able, age 6, had been absent from school for two weeks. Contacts with the parents, Martin Luther Engst and Ruth Engst, revealed that they were keeping their children at home because they disapproved of some classes and activities their children were participating in at school.

Our state has a compulsory education law. It provides that all children between 6 and 16 must attend a school, taught by qualified teachers, at least 175 days a year. Children physically unable to attend school are exempt.

If a student is absent without excuse, the superintendent of the school notifies the parents, and if the situation is not remedied, he notifies the district attorney. The district attorney may issue a warrant for the arrest of the parents and prosecute them for violating the compulsory education law, issue a petition claiming the children are delinquent because of truancy, or issue a petition

claiming that the children are neglected because they are not being provided necessary education, since the parents neglect or refuse to provide it.

I wasn't enthralled with claiming that Martin and Ruth Engst were neglecting their children, but I am required to enforce the state's compulsory education law and child protection laws. I decided that a truancy petition was the least offensive. It was filed and a hearing date set.

On the appointed day the Engsts, with Marie and Able and a younger son, Peter, arrived in court. The children were neat, clean, and well dressed. They seemed to have an excellent relationship with their parents.

Martin was called to the stand. During his testimony, he objected to his daughter's being forced to participate in unfeminine sports, and in teaching concerning the Statue of Liberty ("I think it was to mock us that a woman can be in control and can judge what is justice"), health ("Health is a field that you must bring God in and tell us first of all that a sound body is from God and sickness is because of sin and the curse"), and evolution ("Everybody knows in their hearts that there is Creation, but they have to fight God's Word, so they make and force us to take on evolution, which is written in

your heart that there is no such thing as evolution").

When asked whether he was a member of any religious organization, Engst responded, "Well, I hold the Christian church which is indivisible, hold it to be the truth, but none that carries the name of like Methodist or Lutheran or Catholic, no."

Engst admitted that his children had not attended school for more than a month, but he told the judge that he would send his children to school the next day.

A month later we were back in court. The school had contacted me to report that Marie Engst was refusing to participate in physical education, health, and science classes.

Engst asked the Court for permission to speak. "I feel most strongly that our children, not just our children, all children throughout the United States, are being forced to deny Christ, to deny God."

The judge lectured Engst on the separation of church and state. "The religious education of your children can be taken care

Pat Becarma is a pseudonym for a prosecuting attorney in a rural Midwestern municipality. The case described in this article is still pending in court, so all persons have been provided with pseudonyms.

of by the church without interference from the government. But the two have to be kept separate. There are people who may not believe the same way that you do that shouldn't be subjected to your beliefs any more than you ought to be subjected to theirs."

"Where's our religious freedom that we're supposed to be guaranteed?" replied Martin Engst. "School interferes with our religious beliefs. God's Word is God's Word. When you kick God out of the schools, you're saying, 'God, You get out of here, and He made the world! We have a pagan government.'"

The judge concluded by telling Martin Engst that if he didn't allow his children to participate in their classes, I, as district attorney, could press for a finding of parental neglect and remove the children from their home. I didn't relish the idea.

Eleven months later we were back in court again. The children had been kept home from school again for 15 days. Prior to the absences, the children had refused to do health assignments, some science projects, and storytelling. The judge, finding the Engst children were neglected because their parents were keeping them out of school, said, "I can't permit your sense of what love is and what love should be to result in depriving these kids of going to school."

Engst, however, was adamant. "We are not objecting to our children going to school if the school would let our children participate in the things we see fit. It says it's better to obey God rather than man. They wanted the apostles to quit preaching about Christ too."

The judge told the Engsts that if the children were not in school, fully participating, they would be taken from their home and placed in foster care. With that, the judge adjourned the hearing.

Nine days later we were back in court. The Engsts, however, refused to attend this hearing. The court transferred legal custody of the Engst children to the welfare department. The sheriff placed the children in a foster home in a neighboring town. They attended school there and were returned to their parents' home for summer vacation.

As the next school year approached I hoped that the Engsts had decided to send their children to the local school and give them their religious training at home rather than losing them again to a foster home. My hopes were not fulfilled, late in September we were back in court.

Engst told the court, "This has come to a point where you either pull out of the system

or you take the sin on. What we are holding onto is the Christian doctrine justification by faith. You are justified in God's eyes by believing in His Son, Jesus. Now our school stealthily gets us and our children on works which oppose the one work that saves us: the work that Christ did for us on the cross.

"Our schools teach lies concerning evolution, and everything that the Bible says has to go down the tube, but everything that our scientists say, that gets put up on a pedestal. Our schools can't teach nothing decent. All our schoolteachers are leeches and willing tools for the devil to push these lies down our children's throats. It's a rotten system, and that's that. I have nothing good to say about our government. Unless there's repentance, the whole works is going to be destroyed just like Sodom and Gomorrah."

The judge asked, "So the long and the short of it is you want your children to receive no other education other than what you and your wife can give."

"The problem is," Engst responded, "we'd like them to have an education. But the problem is, they're not getting an education in our school system. And I tell you, I don't hold there are any acceptable parochial schools. That looks very arrogant on our part, but I cannot condone any of our churches, Catholic, Lutheran, or whatever. There's not one decent God-fearing creature in this city, this county, or this state. If there was one, they'd string him up."

"So there is no church or no school within this state with which you can live compatibly, is that right?" asked the judge.

"Not under the doctrine of justification by faith," replied Martin Engst. "They are all on works. We're all guilty of not keeping God as our one true God, but that we condone it and sanction it, and our government backs it up with all its might. Therefore, we have an ungodly government."

"You kind of put me in a box," said the judge.

"Well, I'll tell you, I didn't put you there. I can't change the Word of God," replied Engst.

"Well, Mr. Engst," the judge said, "the children, under the laws of this state, must receive an education. I appreciate your concerns and I think you might be right in certain areas. If you cannot find a school which shares your beliefs, the court would have to place them in a foster home so they could attend public school."

"Your Honor," replied Engst, "we cannot willingly give them over. We want them to be taken from us. We don't want to take the sin on. We do want our children to

have an education. And yet we don't want to have the children stripped from our home, because to me it seems quite cruel. But I know we can't eat the cake and have it too. Therefore, I would like God to run your mind and tell us what we should do. If we have your covering in God's eyes, gladly they can go. But if we don't, then it's going to be a problem."

Since the court hearing the Engst children have been in foster care and attending public school. Marie is in fifth grade, Able in first grade, and Peter is in kindergarten. Three times a week they call home and talk with their parents. (Since the Engsts refuse to insure their car on some religious grounds, they have no driver's licenses.)

This case has perplexed me since I first met Martin Luther Engst. I find his views on religion and education repugnant. The Engsts were, after all, depriving their children of an education. There was not even a lip-service attempt at education in the home. I felt sad because these innocent children were being warped by the parents' ideas.

And yet a strong bond of love exists within this family. I ask myself, Where in the Constitution does it say that a person can have freedom of religion only if he belongs to a recognized church? I can't rule out the possibility that Martin Engst is right and the rest of the world is wrong! And you can bet that if teachers were advocating the Engsts' view to their classes, I would be the first to protest and pull my children out of school. Shouldn't Martin Engst have the same privilege?

I see the Engst children from time to time at their school. I don't recall ever seeing one smile. They have been caught in a classic struggle between their parents' beliefs and the state's interest in an educated populace.

I am confused. I sometimes think Martin Engst ought to be committed. I sometimes think he is a courageous man, using passive resistance to stand up for his rights. I sometimes think his children should be put up for adoption. I sometimes think they should be returned to their family and allowed to grow up illiterate.

Soon, however, I'll have to act. Summer is coming again. Should the children be returned to their parents and go through the same trauma again next fall? Should I start the legal machinery necessary to terminate the parent-child relationship in the Engst family, and ask that the children be placed for adoption? Should we try to commit Martin and Ruth Engst as mentally ill?

I don't know. By the good Lord and the Constitution of the United States, I just don't know.

May/June, 1984

My pastor's text on a recent Sunday was "Where there is no vision, the people perish" (Proverbs 29:18). At that point he lost me. I was back in my high school assembly hall reading the same words inscribed over the podium.

"Where there is no vision, the people perish." The principal, Dr. Wetzel, hurled the challenge at both students and faculty. And it became our motivation.

That was a half century ago, but the memory and motivation remain, along with a question: Are today's students experiencing the permeating values, character development, and intellectual understanding that had their genesis in my high school? Certainly our age demands them. A Gallup poll concluded that in the United States and Europe "religious values are declining, morals also have slumped, honesty is on the wane, happiness is becoming hard to find, peace of mind is rare."

Dr. Wetzel had answers to these evils. Every day a new quotation appeared on classroom blackboards, and we discussed it. Many are still part of me:

"All that is necessary for the triumph of evil is that good men do nothing."—Edmund Burke.

"The noblest of all studies is the study of what men should be and how they should live."—Plato.

"The mind is a fire to be kindled, not a vessel to be filled."—Plutarch.

"The shortest and surest way to live with honor in the world is to be in reality what we appear to be."—Socrates.

"The child is father of the man."—William Wordsworth.

"Those who cannot remember the past are condemned to repeat it."—George Santayana.

Every day new thoughts. Through our discussion we furthered the basics of education. Reading, writing, and arithmetic were important, but they were only tools to be used, tested, and improved in furthering life's goals.

Are today's schools meeting the challenges of our age? Is the wisdom of the ages brought to bear on our problems? Have new, even more effective approaches to teaching values been developed? Or are our schools, as is said in some religious circles, failing to teach values as they did in the good old days?

Nostalgia can be deceptive. It leaves yesterday smelling of roses and lace; today, by contrast, seems characterized by funeral wreaths and stale coffee grounds. Memories of the little red schoolhouse color our perception of today's consolidated school. I would not depend on memory. I would find out for myself.

I began with a visit to my neighborhood high school and then explored others throughout the county. I was welcomed everywhere. Principals, supervisors, and teachers gave me free access to classrooms. I visited with teachers and students in cafeterias, hallways, and gymnasiums. And I learned much.

All the schools emphasized development of the whole child—character, unselfishness, thoughtfulness, the spirit of service, life purpose, and moral values, as well as educational basics. One English department, to my surprise and delight, put challenging quotations on the blackboard each day. They were not, to be sure, from the philosophers of old, but they inspired discussion and broadened thinking.

Here is one week's supply:

"No world is so perfect that it deserves to remain unchanged forever."—Dennis Gabor.

"Human life has to be dedicated to something."—Jose Ortega y Gasset.

"If the object of education is the improvement of men, then any education without values is a contradiction of terms."—Robert Hutchins.

"If one is truly alive, he believes that the world has meaning, in its whole as well as in its parts."—Paul Elmen.

"The passion of American fathers and mothers is to lift their children to higher opportunities than they themselves enjoyed."—Herbert Hoover.

"WHERE THERE IS NO VISION"

Are Public High Schools Teaching Values

Other instructional practices pleased me. When I asked one student who his English teacher was, he replied, "I have no English teacher. I have an abstract-noun specialist."

He explained: "In our literature class, whenever we strike an abstract noun our teacher's face lights up, and we must define it and explain its implications to student life, government, social contacts, and personality profiles. It's the same in class discussions."

I recounted this episode to a friend who teaches in another system. He saw nothing unusual in the abstract-noun specialist's idiosyncrasy. "A history teacher in our school," he told me, "never presents a fact in his history class without translating it, with the help of his students, into an understanding, an attitude, and, finally, an ideal."

It's true that some public school teachers eschew emphasizing values, mistakenly assuming that all values are religious in nature. But if my county's schools are typical of those across the nation, times are changing. Many teachers seem to be acknowledging the aphorism attributed to Max Lerner: "Like it or not, all education is value-drenched."



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DIPLOMATIC RELATIONS WITH THE VATICAN: A CAN OF WORMS

There are worms, and there are night crawlers. When the President established formal diplomatic relations with the Holy See on January 10, he opened a can that may prove to be the twentieth-century Pandora's box. A cursory grab no deeper than testimony given to a Senate committee on February 2 should give a feel of the troubles within.

Following, under headings that describe the issue addressed, are segments taken from papers presented. The speakers and their organizations are identified.

On page 21 are quotes from a speech given by Ambassador designate to the Holy See William A. Wilson at the University of San Diego on January 10. Had the American public had access to his views before the Senate hearings, his confirmation might have been in trouble. But speakers before the Subcommittee on European Affairs of the Foreign Relations Committee did not challenge his qualifications; rather they focused on the appalling dereliction of duty of the U.S. Congress and Senate in failing to hold hearings before the President confronted Protestant and other religious leaders with a *fait accompli*, and on constitutional, theological, and policy grounds.

The question remains, Why dip into the can of worms after formal relations with the Holy See have been established? Isn't the battle over? Yes. But we suspect that the war will go on, and that in a decade or two our children will be asking how it all happened. When and how was the First Amendment dealt a lethal blow, opening the way to renewed sectarian conflict and loss of religious freedoms in America? The excerpts on the following pages and the philosophy of William A. Wilson tell the story.

The President's regrettable action of January 10, marking as it did a significant change in American church-state relations, was not the beginning; neither was it the end. That chapter is yet to be written. We have little doubt that it will be written and read someday with anguish and regret by those who both forgot the lessons of history and little noted the words of the prophet who wrote to "shew unto his [God's] servants things which must shortly come to pass" (Revelation 1:1).

Perhaps no words can better emphasize concerns expressed before the Committee than those of British historian Lord James Bryce, who spoke in admiring terms of the unique relationship between religion and government in America:

"In examining the national government and the state governments, we have never once had occasion to advert to any ecclesiastical body or question, because with such matters government has in the United States absolutely nothing to do. Of all the differences between the Old World and the New this is perhaps the most salient. Half the wars of Europe, half the internal troubles that have vexed European states . . . have arisen from theological differences or from the rival claims of church and state. This whole vast chapter of debate and strife has remained virtually unopened in the United States. There is no Established Church. All religious bodies are absolutely equal before the law, and unrecognized by the law."—James Bryce, *The American Commonwealth*, third edition (New York: The Macmillan Co., 1895), Vol. II, p. 695.

A Wise Decision?

Senator Richard G. Lugar, Chairman, Subcommittee on European Affairs of the Foreign Relations Committee:

"I believe that the President has made a wise decision in establishing diplomatic relations with the Holy See and in nominating William Wilson to conduct those relations at an ambassadorial level."

Gaston D. Cogdell, Church of Christ:

"That the United States Senate should even contemplate opening up this 'whole vast chapter of debate and strife' as Bryce called it, is alarming. No surer way could be found to destroy the unity and cohesion of our society and nation and to polarize our people into bitterly antagonistic conflicting religiopolitical segments than to do what you gentlemen are being urged to do right now. . . .

"In time, the government's toleration of other churches may depend upon whether they behave themselves and don't become obnoxious, trouble-making bigots—meaning outspoken critics of the religiopolitical power structure. 1984 may not be the year when Orwell's baleful prophecies come to

pass, but it could well be the year when the groundwork is laid for their ultimate actualization, if you gentlemen vote, in effect, to destroy church-state separation in America."

Is Opposition Based on Bigotry?

Peter M. J. Stravinskaskas for the Catholic League for Religious and Civil Rights:

"After all the rationalizations have been stripped away, this attitude [of opposition] amounts to nothing other than conscious or unconscious prejudice against the Catholic Church. . . . It was prejudice against the Catholic Church that disfigured our statute books with a shamefully discriminatory law that prohibited the expenditure of public funds for the maintenance of an ambassador to the Vatican. It was prejudice against the Catholic Church that thwarted the efforts of President Roosevelt and President Truman to regularize our nation's diplomatic ties with the Vatican. It was prejudice against the Catholic Church that kept odious manifestations of religious bigotry in our national law for over 100 years until Congress . . . finally acted to repeal this shameful stain on our national honor."

James M. Dunn, Executive Director of the Baptist Joint Committee on Public Affairs (BJC):

"[That] opposition to full diplomatic relations with the Holy See is an expression of anti-Catholic bigotry . . . may be true in some instances, but it is untrue and unfair to paint all opponents with the same brush. The main thrust of our opposition is support for a clear separation of church and state. We would object to the appointment of an ambassador to the Archbishop of Canterbury, who heads a worldwide Anglican Church, or to the World Council of Churches with their vast network of cooperating churches. The principle is the same in all cases: both church and state function at a higher level when they are effectively separated from each other."

Dean M. Kelley, Director for Religious and Civil Liberty, National Council of Churches (NCC):

"In the early 1950s, the issue of an ambassador to the Vatican excited a lamentable flurry of anti-Catholicism. We hope that will not be the case now, but if it is, responsibility will rest with those who precipitated the issue, not with those who object for reasons of theological and constitutional principles."

James T. Draper, President, Southern Baptist Convention (SBC):

"Anyone who claims there has not been much vocal opposition to this action either isn't listening or isn't honest."

"As president of [the Southern Baptist Convention], I have traveled over a quarter of a million miles and in almost every state in this country. . . . Contrary to popular

belief, opposition to this move is geographically widespread. It is *not* limited to the Deep South. It is *not* a resurgence of anti-Catholic sentiment. It does *not* reflect any ill feeling toward Pope John Paul II. I have great admiration for the Pope and his great moral and ethical influence in the world. It is *not* a cause championed by a band of wild-eyed extremists. It is the real concern of millions of Americans deeply committed to our constitutional protections of religious liberty."

Straining Interfaith Relationships

Robert P. Dugan, Jr., Director, Office of Public Affairs, National Association of Evangelicals (NAE):

"No single act of the American government can so strain interfaith relationships as to favor one church over all others. As Supreme Court Justice Joseph Story said in his *Commentaries on the Constitution of the United States*, this kind of action leads to 'perpetual strife and perpetual jealousy on the subject of ecclesiastical ascendancy.'"

Robert L. Maddox, Jr., Executive Director, Americans United for Separation of Church and State (AU):

"This move accords to one church, and one church alone, a unique channel of communication to our government. Whereas every other religious group in the world will have to wait in line to have its views heard, the Roman Catholic Church can now stroll with impunity into the highest halls of government to promote its doctrines and ideals. The other religious communities are willing to compete in the marketplace to have their ideas put forth, but through this proposed action the Roman Catholic Church suddenly receives an unfair and inordinately preferential advantage in promoting its values and programs. That unequal access deeply offends our national sense of fair play.

"Because of this unfair advantage, such recognition will lead to political division along religious lines. In *Lemon v. Kurtzman*, 403 U.S. 602, 622-23 (1971), the Supreme Court noted: 'Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. . . . The potential divisiveness of such conflict is a threat to the normal political process. We have an expanding array of vexing issues, local and national, domestic and international, to debate and divide on. It conflicts with our

whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government. The highways of church and state relationships are not likely to be one-way streets, and the Constitution's authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion's intruding into the political arena or of political power intruding in the legitimate and free exercise of religious belief."

"This divisiveness along religious lines seriously threatens the harmonious fabric of our democratic society. We run the risk of unnecessarily awakening the ghosts of religious bigotry from a past that has long been laid to rest."

Cogdell, Church of Christ:

"If the internal peace and harmony of this nation mean nothing to you, then by all means vote for this confirmation of an ambassador to the Holy See, because ecumenism and community harmony between those who have deeply held and sharply divergent religious convictions is possible only when one religious group does not attempt to arrogate to itself supremacy and sovereignty over the rest, as is being attempted by one church with the help of certain politicians who are willing to sell this nation's birthright of freedom for a very small mess of pottage: . . . Remove that equality before the law which we all now possess, and tensions and frictions will surface which will divide this country in a hundred ways. . . .

"Please, look down the road on which you are about to take us, gentlemen: It is the road back to chaos and darkness. Do the blessings of our own experience with church-state separation and the curses of other nations' experience with a different arrangement mean nothing to us?"

John M. Swomley, Jr., Professor of Christian Ethics at St. Paul School of Theology (ACLU):

"At the moment when Protestant and other churches are proposing that the Pope's role should be chiefly that of president of an ecumenical council, the Reagan Administration, and hence the United States, would recognize the special role of the Pope and the existing religious structure and thus undercut ecumenical discussions."

Is the Appointment to a State or to a Church?

Dugan, NAE:

"In this, the year for Orwellian double-speak, the American people are being asked to believe that the Vatican is a 'nation-

state,' not unlike any other nation. But the American electorate is not so gullible that it will swallow any such rationalization, whatever its technical trappings. Americans know a red herring when they see it."

Draper, SBC:

"The *Indiana Baptist* said, Calling the Roman Catholic Church a 'state' makes as much sense as calling the Pope a Baptist. Calling a 'church' a 'state' is as much a misnomer as 'grape nuts'—neither grapes nor nuts. . . . Let the entity be called a church or a state, but not both!"

B. B. Beach, Director, Department of Public Affairs and Religious Liberty for the General Conference of Seventh-day Adventists:

"A well-known Roman Catholic historian has written: 'If there were to be an American ambassador to the Vatican, he would have to be ambassador to the Pope as Pope. This would not demand United States recognition of all the papal claims implied in the titles "Vicar of Jesus Christ, Successor to the Prince of the Apostles, Supreme Pontiff of the Universal Church," but, to speak realistically, it would mean that the United States acknowledged the fact that such claims were made, and that a reality existed to substantiate them, and that the importance of that reality, the spiritual authority of the Pope, was such that it warranted establishment of diplomatic relations.'—James J. Hennessey, S.J., 'U.S. Representative at the Vatican,' *America*, Dec. 4, 1965, p. 708."

Kelley, NCC:

"The contention that the ambassador is to be sent to the civil entity rather than to the religious is belied by the very title of the appointment, which is not to the state of Vatican City, but to the *Holy See*, which is an ecclesiastical entity; a 'see' is the seat of a *bishop*, and 'holy' is a quintessentially spiritual term.

"Theologically, we believe that it perpetuates the medieval misconception that the church of Christ (or any church) is or can properly be a temporal power. The fact that 106 nations are still involved in that diplomatic protocol surviving the Middle Ages is no reason for the United States to feel obliged to help perpetuate it; those 106 nations may not have the equivalent of the First Amendment of the U.S. Constitution."

Maddox, AU:

"Roman Catholic leadership readily admits the Holy See is a religious entity. Archbishop Cardinal, a prominent member of the Holy See's diplomatic service, says, 'The Holy See is the supreme organ of the Church universal in its contacts with other members of the international community.' The archbishop further says, in describing the various functions of the Holy See: 'Sometimes it denotes the Pope together with the central offices of the

Roman Curia, formed of the sacred congregations, the tribunals and the various other departments. Sometimes it designates the Pope in his role as visible head of the Church, possessing the apostolic primacy as successor of St. Peter. Finally, it sometimes indicates the spiritual organization of the papal government."—H. E. Cardinale, *The Holy See and the International Order*, (Gerrards Cross, England: Colin Smythe Publishers, 1976)."

Cogdell, Church of Christ:

"The Holy See is simply the administrative center and governing apparatus of the Roman Catholic Church. (1) *The Catholic Encyclopedia* says that the 'Holy See' is synonymous with the term 'Roman Church,' in diplomatic usage. . . . Archbishop Cardinale in his monumental work, (2) *The Holy See and the International Order*, says, 'The Holy See is the juridical personification of the church in the same way the state is of the nation.'—Page 115. It is, he says, 'the supreme organ of the church universal in its contacts with other members of the international community.'—Page 85.

"Bishop Van Lierde in his book, *The Holy See at Work*, says that by the design of Divine Providence, The Apostolic See is the established center of the Catholic Church.—Page 43.

"References can be cited almost *ad infinitum* proving that the Holy See is in no sense a state, but is the world's largest church operating in its governing and administrative capacity—nothing more, nothing less.

"We submit to the honorable members of the Foreign Relations Committee that the official recognition by our government of the Papacy gives credibility to, and is a long step towards, legitimizing these arrogant and despotic spiritual and temporal claims of the Pope."

We Did It Before and We Can Do It Again

Kelley, NCC:

"The contention that the present appointment restores a relationship that set the precedent in the 1800s (until broken off by Congress in 1867) is contrary to fact: Rufus King was minister-resident to the Papal States, an area of 16,000 square miles in central Italy, with over 3 million inhabitants, which the Pope actually governed as a civil ruler at that time. The Papal States are no longer in existence. The Vatican City today has an area of one sixth of a square mile and less than 1,000 inhabitants. It would be of no diplomatic interest if it were not also the headquarters of a great world church."

The Vatican in International Affairs

Senator Lugar:

"The Holy See maintains a diplomatic presence and has wide influence and unique access in areas of great concern to the foreign policy of the United States. Eastern Europe, Central America, Africa, and the Philippines offer several excellent examples.

"Vatican officials and diplomats are not simply observers or moral guides, but play an active role in international affairs. . . .

"Over the past two years the President, the Vice-President, the Secretary of State, and other cabinet officers have had audiences with the Pope to discuss a wide range of political and moral problems which confront the world. . . .

"The fact is that in many ways the Vatican is a far more significant and wide-ranging actor than many of the other governments with which we maintain formal relations."

Draper, SBC:

"We are disturbed that this Administration apparently views the Roman Catholic Church only in political terms and ignores its essentially spiritual qualities. Does the administration see all churches in this light? Are we all potential 'listening posts' in the State Department's eyes?

"The Southern Baptist Foreign Mission Board, the largest missionary organization in the world, has passed a resolution opposing 'such a dangerous precedent that intertwines American self-interest and the higher priorities of the Kingdom of God.'"

Dunn, BJC:

"[We hear that] this action will give the Pope more political leverage in his quest for peace and his struggle against Communism. Is this not the same Pope who directed his priests and nuns to avoid political involvement?"

Action Threatens Missionaries

Draper, SBC:

"We are disturbed by the threat this action poses to the 3,200 Southern Baptist missionaries in nearly 100 countries around the world. The implication that our government might use religious organizations for information, if not espionage, endangers not only the credibility of the message they deliver, but, in some war-torn countries, their very lives.

"Colorado's *Rocky Mountain Baptist* feared the indirect consequences to our missionaries in Latin American countries. . . . It is already too easy for leaders in those countries to identify all missionaries as involved in their political struggles as spies or revolutionaries."

Winning the Global Struggle Against Communism

Cogdell, Church of Christ:

"You are no doubt being told that our sending of an ambassador to the Holy See of the Roman Catholic Church is important to our winning the global struggle against Communism. We ask you to look at the Latin American and European countries, including Italy itself, where Communism has gained the greatest influence, and see that the Church of Rome is far from being a bulwark against the inroads of Communism. Indeed, it seems in some cases to pave the way for a Communist takeover. Why is this? We believe it is because the Roman Catholic Church seeks everywhere, as it is seeking right here and now, to link and entangle itself with secular power and authority and to receive special preference, privilege, and support from government—whatever government happens to be in control, whether fascist, communist, socialist, capitalistic, dictatorship, or democracy. Discerning people soon lose respect for both the church and the state which enter into such relationships, and finally choose a government which is hostile to religion in preference to one which debases religion by using it for political ends and purposes and which in return allows itself to be used for . . . ecclesiastical objectives."

Of Entangling Alliances and Controlling the Bishops

Dunn, BJC:

"The stated purpose of the ambassadorship is to tap into the Church's vast information network. This is patently entanglement. . . . The editors [of *America*, a Jesuit magazine] expressed concern that an ambassador to the Holy See would seek to exert pressure on the Church to control the activities of the Church in America.

"It has been suggested that United States foreign policy would be set forward and that some intelligence network would become available to our nation by establishing such a formal relationship with the Roman Catholic Church. If any credence at all is to be given to these suggestions, they pinpoint precisely what we oppose. This entangling alliance would be the occasion for practical problems for all those engaged in the far-flung missionary venture in developing countries. Because of anti-American, antireligious, and antidemocratic sentiments in many of the developing countries, missionaries and other persons representing religious institutions would actually become symbols of American governmental interests. Should the United States

Senate follow the unwise course of the establishment of full diplomatic relations with any church, it would offer an occasion for misunderstanding, an invitation to chaos and confusion, and would place a burdensome albatross upon every American who represents religion overseas."

Kelley, NCC:

"The contention that the appointment of an ambassador will provide a channel for the flow of valuable international intelligence information not now available to the U.S. does an injustice to the ability of Mr. Wilson as the President's personal representative to the Pope, since it suggests that with the title of ambassador he could gain information that is not available to him now. It also impugns the commitment of the Vatican to the cause of freedom that is ostensibly sought to be advanced by this appointment since it implies that the Vatican would withhold information important to that cause from Mr. Wilson unless he were a full ambassador. Furthermore, it misconstrues the role of an ambassador, which is usually more symbolic, formal, and ceremonious than it is facilitative of close communications. The United States is not without numerous channels for obtaining significant information via the Vatican and otherwise; an ambassadorship is not the missing link in intelligence transmission. And even if it were, that is not an adequate justification for flouting the First Amendment of the Constitution of the United States, as we believe any appointment of ambassador to the Vatican would."

Swomley, ACLU:

"It is a violation of the free exercise of religion by American Catholics in that an ambassador to the Pope will permit the President regularly to interfere with statements or action of the Catholic bishops and priests who publicly differ with Administration policies. For example, President Reagan sent General Rowney to see the Pope on two occasions to curb the pastoral expression of the U.S. Catholic bishops in their Pastoral Letter on War and Peace. Unofficial but reliable reports indicate that the Pope did intervene with respect to that document along the lines of President Reagan's request. . . .

"[Quoting *National Catholic Reporter* writer Peter Hebbethwaite:] 'In the future, a quiet word between Wilson and Casaroli (Vatican secretary of state) in Rome, or Laghi (papal nuncio) at the State Department in Washington, could cool the [American] bishops' radical ardor. All in all, and especially in an election year, it is a good deal for President Reagan.'—*National Catholic Reporter*, Jan. 27, 1984, p. 5. . . .

"The First Amendment clause protecting

the 'Free Exercise of Religion' was intended not only to prohibit direct government intervention, but also indirect overtures through a foreign prelate to stifle or alter the free exercise of religion."

Maddox, AU:

"Father Robert Graham, an American priest who works at the Vatican, expressed similar concerns in his book, *Vatican Diplomacy*: 'The presence of a representative of the White House at the Vatican, with direct access to the Holy Father, is almost a direct invitation to interference in internal American [Catholic] Church affairs' (Princeton University Press, 1959)."

Everybody's Doing It

Dunn, BJC:

"One hundred six states now have relations with the Holy See at the ambassadorial level. 'Everybody is doing it!' is an argument that never persuaded my mother and probably not yours either. Even President Reagan, on November 4, 1983, said, 'One hundred nations in the United Nations have not agreed with us on just about everything that's come before them where we're involved, and it didn't upset my breakfast at all.' The important point is that the United States alone has a First Amendment which forbids this action."

No Union of Church and State

Cogdell, Church of Christ:

"Honorable Senators, you are being urged to violate your oath of office to uphold the Constitution of this great free nation, and to drive a dagger into the heart of the First Amendment of the Bill of Rights.

"The divesting of the First Amendment of its strength and meaning by blatantly violating its plainest implications will be such a blow to this wonderful nation of ours as no alien power or ideology could inflict.

"It is the wall of separation between church and state and that alone which prevents the deep religious divisions of society from extending themselves into the public and political domain, and prevents the political divisions from being extended into the religious domain, to the detriment of church, of state, and of felicitous human relationships on every level. . . .

"The late Cardinal Cushing of Boston said—'I don't know of anywhere in the history of Christianity where the Catholic Church, the Protestant church, or any other church has made greater progress than in the United States of America; and, in my opinion, the chief reason is that there is no union of church and state.'—*Boston Globe*, Jan. 26, 1964, p. A-7."



JUANITA L. CLAY, Ph.D.

July 22, 1984

Senator Orrin Hatch, Chairman
Senate Subcommittee on the Constitution'
THE UNITED STATES SENATE
Washington, D. C. 20510

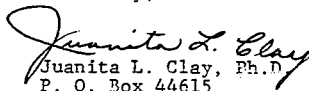
Dear Senator Hatch:

At the close of the Subcommittee Hearing on June 26th, you indicated that for thirty days, you would hold open the record for additional testimony about other incidents of governmental interference in church affairs.

I am enclosing the attached copy of a newspaper article about a case in the U. S. Fourth Circuit Court of Appeals in Richmond, Virginia, which describes government interference in church affairs. Please insert this into the record of the Hearing. I had hoped for a written testimony from the minister involved; but have not yet received a copy so I am forwarding the information contained in the news article. Since the case is a matter of record in the Federal court, the facts are easily available to your staff.

Please send me a complete transcript of the hearing. I sincerely appreciate your efforts in behalf of religious freedom in our country.

Sincerely,


Juanita L. Clay, Ph.D.
P. O. Box 44615
Indianapolis, IN 46244

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Journal & Guide



THE
PUBLISHER'S
PEN



By Dr. Milton A. Reid

SPECIAL
EDITION

April 27, 1984

IN DEFENSE OF RELIGIOUS LIBERTY

Special. . . Special. . . Special. . .

One of the most important cases in the defense of Religious Liberty will be heard in the U.S. Fourth Circuit Court of Appeals, Main Street Post Office Building, Richmond, Va., on Tuesday, May 8 at 9:00 a.m. The hearing will be for one hour only before a three-judge panel. There will be no witnesses, and no one will take the stand. The attorneys will argue the case based upon briefs filed and answers already in the hands of the court. You are invited to attend this hearing and to encourage as many ministers and lay persons from your congregation as possible to attend.

What Is At Stake

The issue is whether the Commonwealth of Virginia has the constitutional or the judicial authority to interfere in the ecclesiastical affairs of a church. The Honorable Alfred W. Whitehurst, judge of the Circuit Court in Norfolk:

- Nullified duly-called church meetings at New Calvary Baptist Church.
- Ordered the church not to install duly-elected officers or ordain deacons elected by the congregation.
- Ordered the church to maintain the status quo.
- Determined who could vote in the congregation and who could not.
- Invalidated the right hand of fellowship.
- Ordered a white man of the Jewish faith to conduct and oversee the annual meeting of New Calvary Baptist Church.
- Ordered the Pastor and four deacons to turn over the membership list of the church to Mr. Mazelle, the Jewish overseer and representative of the court, even at the objection of the church which voted overwhelmingly in two meetings that its membership list should not be turned over to a secular authority.
- Levied a fine of \$1000 a day against the pastor and \$25 a day against the deacons for not complying with his order and held the pastor and deacons in contempt of court.
- Nullified church disciplinary actions against dissident members who have filed suit after suit against the pastor and officers of the church. The church first "silenced" 18 members. The church since (on April 8 during the annual meeting) has dismissed 31 dissident members from the church. The Honorable Judge Whitehurst has ruled the church out of order on all of its activities.
- Ordered the church to meet and set up the agenda for the meeting. Determined how long members could speak and who could speak, in complete disregard for church policy and practice.
- Ruled invalid and out of order a constitution and

bylaws developed and adopted by the church. The bylaws and constitution were read before the congregation each Sunday for a month. Members were given copies to read for themselves. Only two members out of 308 disapproved the constitution and bylaws. No member was prohibited from voting.

Hard To Believe

I know you find this hard to believe. This is the kind of religious oppression that went on in the Soviet Union during the reign of Khrushchev. We would expect it there, but not here in America where we have the Bible as our authority of faith and practice and love, protection of the 1st Amendment, the 13th and 14th Amendments to the Constitution.

It is important that a significant number of clergy and members of the black church in Virginia attend this session of the Court on Tuesday, May 8. This court, 4th Circuit, has already ruled in other cases that the Constitution prohibits the state from interfering in the ecclesiastical affairs of the Church. Will the court uphold its own ruling or will the court reverse itself? Your presence will be of significance in the court's decision.

You know that the Black Church is the last of the institutions completely owned and controlled by black people. If we lose our basic rights because of the paternalistic and racist decisions of a modern-day Pilate, the black church will suffer greatly. Please do you very best to join with me and members of the New Calvary Baptist Church on May 8 in Richmond.

The Center for Constitutional Rights of New York has the case in charge under Attorneys William Kunstler and Betty Bailey of New York, and Attorney James Gay of Norfolk. Although the Center makes no charges for its services, the Church has spent over \$10,000 in this two-year-old battle with approximately \$6000 in local attorney fees now due. If you cannot attend this Court hearing, the officers and members of the New Calvary Baptist Church would appreciate any contribution that you could make by May 8. You may mail your contributions to Deacon Dennis Perry, Treasurer, New Calvary Baptist Church, 800 E. Virginia Beach Boulevard, Norfolk, Virginia 23504. As much as we need your financial support, your presence would mean much more. If you would attend with a check we would consider that a double blessing.

For All Of Us

This case, the first of its kind in the history of the world, is not just for New Calvary, it is for every church in America in defense of Religious Liberty.

JUANITA L. CLAY, Ph.D.

July 22, 1984

Honorable Orrin Hatch, Chairman
Senate Judiciary Subcommittee on the Constitution
THE UNITED STATES SENATE
Washington, D. C. 20510

Dear Senator Hatch:

Again I commend you for the excellent manner with which you conducted the subcommittee hearing on June 26th, regarding issues in Religious Liberty.

Prior to adjourning the hearing, you indicated that we had thirty (30) days in which to submit additional testimony for consideration by the subcommittee. Therefore, I am forwarding the attached testimony of Col. Robert L. Grete, director of the ROCKY BAYOU CHRISTIAN SCHOOL, in Niceville, Florida. This is only one of several situations I am concerned about, several of which I have forwarded to you already. However, I asked Col Grete to allow me to submit his testimony because it points up the problem of an althernative school, performing an excellent educational function, but subjected to repressive legislation and beaureaucratic interference, without the benefit of any denominational sponsorship.

As an informed layperson, not representing any of the constituent groups identified at the hearing, I am nevertheless concerned about the extent to which congressional legislation is not aimed at precluding government animosity toward religious organizations or institutions. Neither the Supreme Court nor the Internal Revenue Service should be allowed the authority to foreclose the rights of individuals or instututions they were designed to protect. Nor should civil authority seek simultaneously to weild supreme authority to tailor religious destiny, whether the destiny of a church, or a religious organization, or a Christian school.

Please continue your efforts to pursue full knowledge in this issue, and to guide the legislative process preserving the structure of government that makes the very idea of religious freedom and rights meaningful.

Sincerely,

Juanita L. Clay, Ph.D.
JUANITA L. CLAY, Ph.D.
P. O. Box 44615
Indpls., IN 46244



Rocky Bayou Christian School

2101 NORTH PARTIN DRIVE NICEVILLE, FL 32578

TELEPHONE 876-7712 13 July 1984

TESTIMONY OF ROBERT L. GRETE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Robert L. Grete, Director of the Rocky Bayou Christian School (RBCS) in Niceville, Florida. RECS, a member of the Association of Christian Schools International (ACSI) and the American Association of Christian Schools (AACS) is an independent rather than a parochial (organized as part of a local church or denomination) Christian school.

The purpose of my testimony is to provide a small independent Christian school's perspective on the erosion of religious liberty in America.

Since the founding of Rocky Bayou Christian School in 1973, each year an increasing amount of my time involves the defense of religious liberty. We constantly receive appeals from our Christian school associations for aid in alerting our representatives to threats to our freedom. Each year it seems more bills are introduced into the state and federal legislatures that threaten religious liberty. Decisions by the courts have had the same effect.

I believe that the threat to religious liberty arises from the efforts of antitheistic/humanistic leaders trying to establish a set of religious presuppositions that are antithetical to the traditional Judeo-Christian or biblical religious presuppositions upon which America was founded. Using secular education and the influence of the media (Hollywood films, television, the broadcast industry and the music industry), secular¹ and humanistic² leaders have worked toward a goal stated in the Humanist Manifesto II as

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1. Secular means "apart from the supernatural" or worldly. Secularism is a faith that leaves out the Creator of the universe.
 2. Humanism is a faith that defies man. Rather than submitting to the Creator, man is made the measure of all things, the provider, and the determiner of right and wrong.
 3. See Humanist Manifestos I & II (NY: Prometheus Books, 1973).

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"a secular society on a planetary scale." John Dewey, the father of American progressive education was a powerful subscriber to Humanist Manifesto I. The increasing success of such leaders is due in part to the inactivity of those who hold to the Judeo-Christian values. Such pietism in the Bible-believing community has surrendered much of the control of the centers of influence in American society to antibiblical humanistic leaders.

The education of children plays a vital role in shaping the values of the leadership of future generations. American education has been increasingly secularized as governmental authority was extended over it. Systematically, government power has been used to increasingly eliminate biblical values from public schools. Today, the efforts to purge biblically-based religious values from the public schools have been so successful that Congress and the federal courts are involved in such questions as, "Can children pray in the public schools?" and, "Can groups meeting in public facilities discuss theistic topics or is their speech limited to presumed secular subjects¹ no matter how perverted from a biblical viewpoint?"

Hand in hand with the purging of biblical truths and values from government operated schools, secular and humanistic leaders (using a number of organizations to include the National Education Association (NEA), local, state and federal government agencies, and the media have launched a frightening effort to subject non-government schools to their effective control. The result, if they are successful, will be as complete an eradication of biblical influence in the education of our nation's children as that accomplished in Germany by Hitler's Third Reich or by the Soviet Union today.

As the administrator of a Christian school, the defense against this effort requires daily energy. I am sure this Senate committee will collect

1. To a Biblicist, all subjects are religious since they involve some aspect of God or His perspective on His creation. Christ is sovereign over every area of a Christian's life.

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considerable data on a multitude of cases, many of which are a matter of court record. Before going into the specifics of RECS confrontations, I would like to mention some of the specific tools now being used by American governmental agencies to effect religious tyranny over religious educational ministries. The control devices, which have been used historically, include:

1. Licensing. If civil government can license an activity, it exercises the power to terminate it or require it to conform to regulations as a condition of operation.
2. School Accreditation/Teacher Certification Requirements.
3. Arbitrarily or discriminatory enforced health, welfare, safety, and zoning regulations.
4. Direct regulation of various aspects of the religious ministry (e.g.: personnel - immoral persons such as sodomites cannot be excluded from the faculty; curriculum - texts must be chosen from state approved lists; etc.)
5. Public trust concept. Religious organizations are considered creatures of the state to be operated according to the wishes of government agents rather than ministries under God required to operate according to biblical authority.
6. Biblically based religious faith must be subordinated to contrary public policy. Thus the whims of fallen man subordinate God's absolute standards.
7. Taxation. The power to tax assumes sovereignty or lordship, and is the power to control and destroy.
8. The tax expenditure concept. This is one of the most perverse concepts being pushed into the public policy arena; tyrants must love it. This radical idea rejects the biblical and constitutional concepts that the fruit of a person's labor belongs under personal stewardship and that the portion of a

Testimony of Robert L. Grete
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person's property that is transferred to civil government should be determined by the consent of the governed. Rather, the tax expenditure concept assumes that all property is owned by the civil government, which can then decide how much to allow citizens to keep under personal stewardship. Anything left in the hands of the citizens is a tax expenditure subject to the controls civil government desires to set upon its use. Thus, nothing escapes government control, since money a person or institution uses has either come from government or remains at its true point of origin by government grace. The degree to which this monstrous doctrine is finding acceptance today is frightening. Efforts to get Congress to reject it (e.g., HR 1002, 96th Congress, First Session) have failed. Also, consider the US Supreme Court's recent ruling in the Grove City case and the perverse "corrective" legislation being proposed (HR 5490). This case illustrates the logic that civil governmental control goes with any governmental financial assistance, which under the tax expenditures concept, even means any money the government lets individuals keep. Yes, tyrants must love it!

The perverse exercise of these control tools (whether legitimate authorities such as "3" above, or unconstitutional usurpations such as the rest) are based upon the presuppositions of the humanistic state. Some of the presuppositions underlying the concept of the humanistic state are that the civil state:

1. Has sovereignty over all authorities - even that of the Creator of the universe Who originates human authority and is alone sovereign.
2. Owns the earth, its produce, and the people under its jurisdiction, denying the biblical concept that God owns the earth and civil government is one of several limited jurisdictions designed to carry out specific purposes.
3. Owns the children, denying that God owns the children and has given parents stewardship over them.

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4. Authors human liberty, denying the concept that "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed." (Declaration of Independence)

5. Defines right and wrong rather than submitting to God's biblical standards of righteousness.

6. Is the provider of economic resources to the people. This denies that God distributes economic resources, generally to those who earn them through personal responsibility and work.

Citizens have no protection against tyranny when the civil state, which has the biblical function of protecting God-given liberty, assumes the role of God in society.

The exercise of the tools of tyrannical control based upon the presuppositions of the humanistic state is rapidly increasing in America. If Congress does not understand this trend or does not wish to reverse it, the sovietization of America will soon be complete. Consider the words of American communist, William Z. Foster in his book Toward Soviet America:

Among the elementary measures the American Soviet government will adopt to further the cultural revolution are the following; (SIC) the schools, colleges and universities will be coordinated and grouped under the National Department of Education and its state and local branches. The studies will be revolutionized, being cleansed of religious, patriotic and other features of the bourgeois ideology. The students will be taught on the basis of Marxian dialectical materialism, internationalism and the general ethics of the new Socialist society. Present obsolete methods of teaching will be superseded by a scientific pedagogy.

The churches will remain free to continue their services, but their special tax and other privileges will be liquidated. Their buildings will revert to the State. Religious schools will be abolished and organized religious training for minors prohibited. Freedom will be established for anti-religious propaganda. (@ page 316)

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Mr. Foster's view, the doctrine of the secular-humanists stated in the Humanist Manifestos I & II, as well as biblical doctrine, make one point absolutely clear: THE EDUCATION OF CHILDREN IS AN INHERENTLY RELIGIOUS ACTIVITY. Yet, it seems that few people in America today understand the inherent religiousness of education that forms the world view and values of children. RECS is presently developing a Christ-centered phonics and math curriculum at the kindergarten level that we would be happy to demonstrate to the Committee if desired. The point is that everything that we do in a Christian school is to be done from a biblical prospective. We must control, discipline, train, and love our children according to Christ's commands. We must teach every area of knowledge from a biblical perspective, heeding the biblical warning:

See to it that no one takes you captive through philosophy and empty deception, according to the tradition of men, according to the elementary principles of the world, rather than according to Christ.

(Col 2:8, NASV)

The First Amendment to the US Constitution bars Congress from making any laws respecting an establishment of religion or prohibiting the free exercise thereof. If we accept the judicial doctrine that the 14th Amendment applies the First Amendment to the states, or if we note that almost all State constitutions have a similar provision, then government operation or control of schools is constitutionally prohibited. I believe congressional action on this truth is essential to the preservation of religious liberty in America.

We should recognize the documented excellence of American education before civil government became involved. Those who believe that the education of America's children should be funded through the coercive government tax system have the constitutionally more acceptable tools of vouchers and tax credits to work with.

The foregoing comments indicate my conviction that parents should have the right to organize or utilize any school they choose to educate their children

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according to their own religious presuppositions. No school should survive through political coercion. Schools should survive because parents support them as their servants. Nevertheless, today civil government not only operates the nation's largest school system, but also seeks to extend control over non-government schools.

RBCS was organized in 1973 to provide a biblically-based education to the children enrolled. Over the first 10 years of our existence our student body has grown from 22 to over 370. This has been in the face of continuing handicaps caused by unwarranted governmental actions. I will mention those of most significance and would be glad to offer documentation or details to the Committee on any issue of interest.

First, government operation of tax funded schools produce a handicap to the existence of schools that reject their secular faith. RBCS parents are discriminated against because they must pay taxes to support the government school system which teaches an anti-Christian religious faith contrary to their own. How can it be constitutional for civil government to force people to pay for the propagation of a religious faith not their own? In addition, however, our parents must pay the cost of the biblically-based education of their children, which is a significant cost on top of the extravagant costs of secular education.

The second handicap caused by unwarranted governmental activities is the administrative cost incurred because we must meet purposeless government requirements. For example, when we organized RBCS we were to told to write, inter alia, an application for a Federal Tax Exemption Letter. After hassles like having to provide data not requested in the printed IRS instructions, we finally received our Letter in October 1974. The Exemption Letter directed us to file IRS Forms 990. After IRS lost our 1977 Form 990, I more closely examined the instruction booklet and got my first initiation into IRS

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insensitivity to religious liberty issues. The details are found in my attached letter to the Christian Law Association dated 26 December 1979 (ATCH 1). (If the Committee desires the letter's attachments, RBCS will provide them.) The letter indicates a trail of lost documentation, bureaucratic hassle and evasiveness, and possibly an attempt at intimidation. By refusing to genuinely respond to my question regarding IRS discrimination among religious organizations, IRS demonstrated an insensitivity to the religious liberty issue and successfully wore me down. I cannot teach students and administer a growing school if I must spend lots of time trying to get justice from the IRS bureaucracy.

Thirdly, there is an increasing volume of legislative proposals that threaten our ability to exist apart from government control. An increasing amount of time is spent by all of us in the field to deal with such issues. Many parents are discouraged from enrolling their students in Christian schools because of either the media's misinformation concerning government actions against schools or the fear of becoming involved in litigation. I am sure the Committee has the details of many such cases, but I would like to comment on one prominent example that you are familiar with.

On August 22, 1978, Jerome Kurtz, US Commissioner of the Internal Revenue Service, placed his "Proposed Internal Revenue Procedures on Private Tax Exempt Schools" in an inconspicuous part of the Federal Register. Those procedures, which have the potential of extending great control over Christian schools, were disguised as a defense of racial nondiscrimination. I attach my letters to Mr. Kurtz of 2 October 1978 and 11 April 1979 (ATCH 2 and 3) to indicate some of the details of this issue. Neither letter, of course, was responded to by IRS. A large response by the Christian community forced the IRS to hold hearings on this issue. Revised Proposed Procedures were subsequently published

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in the Federal Register February 13, 1979. The revised procedures, however, did nothing to remove the major issue in this case. The Proposed Procedures first of all would allow the IRS to arbitrarily consider a school guilty of racial discrimination without being required to prove it. Such schools, to be termed "reviewable schools," could prove their innocence only by a radical affirmative action program. The basic logic is that unelected government agents would gain the authority to place sanctions on any school that did not conform to the agency's concept of public policy. What a dangerous precedent! For several years the Ashbrook-Dornan Amendments to Treasury Appropriations Bills prevented the IRS from effecting these policies. Then the tragic US Supreme Court decision in the Bob Jones University case seemed to put into American law the principle that religious freedom would have to be subordinated to public policy. We live in an age when radical feminists and gay rights leaders are demanding affirmative action in favor of sodomists. Clearly biblical values could not be practiced by Christian schools if their radical demands became public policy. With hundreds of similar attempts to extend governmental control over religious ministries happening simultaneously throughout America, as a Christian school administrator I sometimes wonder where I will find the time to administer our biblically-based program. It seems I am derelict in my duty if I am not crying out against each of the threats against us. Yet to do so, would require all my time. More seriously, if the fruit of these adverse precedents soon come to pass, it is quite clear that the Christian school movement will no longer exist. Government will even have the ability to confiscate all the property of religious ministries that do not conform. Such a prospect is now a real possibility under the principles of the laws mentioned in the next item.

Fourthly, the federal government is handicapping Christian schools through laws which not only increase personnel costs but also provide the federal

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government with an instrument of control that can actually result in the confiscation of the property of a religious ministry. The acts used to accomplish this are the Federal Unemployment Tax Act (FUTA) and the Social Security Amendments of 1983. As a Christian I believe the socialistic systems effected by such laws go far beyond biblical and constitutional boundaries. Although I realize in today's environment that these socialistic systems are not likely to be eliminated, their recent extension into religious ministries violates the religious conscience of those forced to participate as a precondition to the exercise of their religious ministry. Allowing voluntary participation by members in religious ministries would be legitimate. Mandating participation in a government program as a precondition to employment in a religious ministry, however, certainly violates our First Amendment liberties. Religious ministries should be left alone to provide for such contingencies as unemployment and retirement in a way in keeping with their faith.

Further, applying these laws to religious ministries opens up a degree of federal government entanglement in the personnel policies of religious ministries that could be used for all kinds of offensive control. Failure to submit to the unbiblical and unconstitutional taxation required by these laws can lead to the confiscation of the ministry's property, which obviously puts an end to the ministry. Truly, the power to tax is the power to control or destroy.

Focusing on the alleged requirement of RBCS to pay the unemployment compensation tax, I attach a recent bill showing the state's claim of taxes due plus interest and penalties (ATCH 4). The reason we periodically receive such bills goes back to the unilateral action of Secretary of Labor Ray Marshall, who decided to expand FUTA revenues by including employees of religious organizations. The U.S. Supreme Court in St. Martin Lutheran Church v. South Dakota (May 26, 1981) blocked the Labor Department's attempt to collect

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such taxes from "church" organizations. Although independent Christian schools such as RBCS have religious ministries identical to those of parochial schools, this St. Martin decision did not extend to independent Christian schools. The Supreme Court decided to leave the status of Christ's schools organized differently for a future day. Consequently, parochial schools no longer have this hassle, but independent Christian schools (approximately 30 percent of the Christian schools in America) must continue to endure this harrassment. A case involving an independent Christian school is now in progress in Oregon. Should the Supreme Court uphold our position in that case, then I assume the State of Florida will stop sending us bills such as the one at ATCH 4. If the Supreme Court finds against us, it will be further progress along the road to the annihilation of religious ministries not organized in accordance with government specifications.

Similar issues are raised by the Social Security Amendments of 1983. In an effort to bail out the bankrupt system through increased tax revenues from extended coverage, Congress voted to include religious organizations in the Social Security system. In December, 1983, the Senate Finance Committee held hearings on this issue. Rather than concluding that religious ministries are not taxable (as the First Amendment requires), the Committee agreed on language which would pass the tax obligation of employees of "church" organizations from the ministry (institution) to the employee directly. This, it is believed, avoids the First Amendment issue caused by laying a direct tax on a church. The language to effect this change was incorporated in the Tax Reduction Act of 1984, which I now understand has been sent to the President for signature. If signed into law, the option given to church organizations may forestall some litigation by such ministries. The law, however, will not at all relieve RBCS and similar independent schools from the obligation to pay a direct tax to the federal government. The word "church" is not found in the First Amendment. In

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light of the fact that the First Amendment religious clauses use the expressions "establishment of religion" and "the free exercise thereof," confining unencumbered religious activity to churches or any other organizations prescribed by the federal government is obviously discriminatory and a direct violation of the First Amendment. I attach my letter to Senator Dole of 5 December 1983 (ATCH 5), which points out the difficulty caused by certain language included in several public laws that produce this discrimination. Attached to that letter is also a document explaining the biblical and constitutional objections RBCS has to any government taxation that permits controls over religious ministries. I believe the details in that correspondence are sufficient to completely illuminate our concerns in this area. I realize that I am now in the position, even after passage of the Tax Reduction Act of 1984, of being jailed and heavily fined for failing to pay our institution's share of this unconstitutional tax. I would pray that the Congress would see the catastrophic effects that coercive inclusion of religious ministries in the Social Security system can have on our country.

The above specific cases of our confrontation with the federal government is a rather mild sampling of the handicaps that government action have placed on Christian schools when viewed from a national point of view. Nevertheless, they are sufficient to demonstrate that religious liberty is at great peril in our country.

I thank you for this opportunity to express an independent Christian School administrator's perspective on the threat to religious liberty in America today. As we drift further away from the divine Author of liberty, the foundation for liberty is eroded. Liberty authored by autonomous man inevitably degenerates into tyranny.

Attachment 1



Rocky Bayou Christian School

2101 NORTH PARTIN DRIVE NICEVILLE, FL 32578
TELEPHONE 878-7712

26 December 1979

Christian Law Association
P.O. Box 30290
Cleveland, OH 44130

Dear CLA:

In accordance with the spirit of your article, "Helping the CLA to Help You," in the November Defender, I enclose the facts of a problem RBCS expects to have with the IRS. The most dangerous aspect is that IRS unilaterally revised our exemption in a way that implies RBCS must begin paying social security and unemployment taxes, which, of course, we will not do. To assist your analysis, I provide the following facts and supporting documents. Please advise if you need anything else to complete our file.

On 12 June 1973 (as a Christian Air Force officer and Elder, Forest Lake Bible Church) I accompanied my Pastor (Harold E. Thomas) to visit Bob Thoburn's Fairfax Christian School in Fairfax, Virginia. It was there I realized that I could not use the government schools to educate my six children, but was, of course, very ignorant of the details of the philosophy of Christian education and the increasing state animosity toward Christian schools. We reported the findings of our visit to the Joint Board of our relatively new and small church, which voted not to establish a Christian school because it would excessively dilute efforts to perform other necessary operations. I asked if there were any objections to individual members beginning an independent Christian school; there were no objections.

God led us, on 3 July 1973, to commit ourselves to establishing RBCS. Although on active duty, I accepted the responsibility of Director and using Bob Thoburn's manual and advice from a local "Christian" lawyer, began laying the school's foundation. We opened that September with 22 students, grades four-year-old kindergarten through six, two full-time teachers (Mrs. Grete and Mrs. Thomas) and two part-time teachers. We now have 200 students.

I was advised that we must write a Corporate Charter (Atch 1), Bylaws (Atch 2), and obtain Federal and State Tax Exemption Letters to legally operate as a tax-exempt corporation not-for-profit. I followed application procedures to obtain our original Federal Tax Exemption Letter dated October 21, 1974 (Atch 3), which directed us to file IRS Forms 990. Please forgive my continuing ignorance of the issues, but this we dutifully did.

In December 1976, the Air Force sent me on a one-year remote tour to Korea. While there, I continued to study and learn more about Christian education. In summer 1977, the school office filed our FY 77 Form 990, which IRS apparently lost in a shuffle between their Atlanta and Philadelphia offices. We were advised by IRS letters dated May 19 and June 23, 1978, (Atch 4) that IRS did not have our FY 77 form. We sent them a reaccomplished copy dated July 15, 1978 (see remarks, Atch 4). As we were accomplishing our FY 78 Form, we received another IRS letter from Mr. Samra dated October 19, 1978 (Atch 5), stating that IRS could not find our FY 77 Form 990. At this point, I began to question the propriety of our filling out the Form 990, and read the instruction booklet more carefully. Since the language of the instructions specifically exempts schools below college level operated by a religious order, I replied to Mr. Samra's October 19 letter with mine dated 6 November 1979, presenting rationale for the position that we should not file Form 990 (Atch 6). I did, however, include our reaccomplished FY 77 and new FY 78 forms.

I heard nothing for two months. On 15 January 1979, I queried Mr. Samra on his progress in getting an answer to my question of 6 November,

i.e. "Why must RBCS file annual Form 990?" (Atch 7). He responded on 7 February 1979, that he could not find my 6 November 1978 letter (although he apparently had the Forms 990 under control), and that he was forwarding my request to the Jacksonville, Florida, office (Atch 8). To facilitate the Jacksonville office's work, I indorsed Mr. Samra's letter and forwarded a copy of my 6 November 1978 letter on 13 February 1979 (Atch 8).

27 February 1979 is an interesting day in this case. On that day, Maye Harper of the Atlanta IRS office wrote that she had just received my 6 November 1978 letter to Mr. Samra. She explained how our forms may have been lost, and advised that she sent the 6 November letter to Jacksonville for reply (Atch 9). (I was so pleased with the helpfulness of her response that I wrote her a letter of thanks on 20 April to which she responded on 3 May. This correspondence is also at Atch 9.)

Also on 27 February, Ms. G. Farley (signed Withers) of the Jacksonville office sent a classic piece of bureaucratic garbage brushing off my question and giving us 60 days to file amendments to our charter since they had no record of them in their file (Atch 10). (Their own copy of our exemption letter, however, indicated that our file had been checked OK after our amendments had been received - see Atch 3.) I believe this is a case of harassment.

To understand what follows, I must relate something I subsequently discovered: Jacksonville had two separate working files on RBCS with two private case officers (Ms. Farley and Mrs. Dewey) who didn't know what the other was doing.

On 19 April 1979, I responded to Ms. Farley's February 27 letter (Atch 11), asking her to give a serious answer to my question (she hadn't even seen my 6 November letter), and providing additional copies of the amendments missing from her file.

On 25 April 1979 I received a phone call from Mrs. Dewey (see MFR at Atch 12), saying she just received my 6 November letter (probably the one sent by Maye Harper). After cordially discussing First Amendment issues, she said she would get with Ms. Farley to give me an official response.

On 7 May, I received a very hostile call from Ms. Farley, who had received my 19 April letter but had neither spoken to Mrs. Dewey nor read the rationale in my 6 November letter (see MFR at Atch 13). Before hanging up on me, she said she would leave it to Mrs. Dewey to respond to my question.

On 8 June 1979, Mrs. Dewey provided the IRS response to my question (Atch 14). She quoted two lower court cases which I do not believe are relevant to my argument. At issue in her argument is the definition of a church. I prefer that of Scripture; IRS does not. Her bottom line is that since our exemption letter of 21 October 1974 indicates RBCS is a school, we must file the 990. I took no action to respond to this since I was too busy with other things.

The shocker came when I received from D. Warnick (Jacksonville) an unsigned determination letter modifying our original 21 October 1974 letter (Atch 15). My comparison indicates that the revision imposes on RBCS the unlawful and unconstitutional requirements to collect social security and federal unemployment compensation taxes. It reaffirmed our obligation to file the 990.

I do not consider the unsigned revision authoritative. I do consider it unlawful harassment.

On 13 November 1979 I filed our FY 79 Form 990 covered by a letter reaffirming my conviction that IRS errs in asking us to file it (Atch 16), and responding to Dewey's 8 June 1979 answer to previous correspondence. Please see the letter for the exact language, but my bottom line is that IRS does not have constitutional authority to interfere with religious ministries either through tax laws or subversive definitions. I asked if it were the IRS position that Biblical definitions are to be rejected in favor of those of IRS's own making, and again appealed for a finding that we are not liable to file the Form 990.

I have not yet received a direct response to my 13 November 1979 letter, but did receive an IRS form letter dated December 17, 1979, acknowledging receipt of my FY 79 Form 990, and instructing me to provide additional information (Atch 17). In my original return, I inadvertently did not check a Part V block indicating the Reason for Non-Private

Foundation Status, and also missed the requirement to fill out Part VI. Since their request for additional information only requires a check in Part V, block 2, (they sent no form with Part VI) that is all that I am sending them at this time.

I hope to hear from you before I hear from IRS again. Request you advise me:

1. What action should RBCS take in response to the revised determination letter dated July 20, 1979?
2. Should I respond to any more requests for Form 990 information?
3. Where should I go from here in the effort to get IRS to recognize that they err in asking for the Form 990 from RBCS?

I praise God for your ministry.

In Christ's service,



Robert J. Grete
Director

EG:lh

Attachments

Attachment 2



Rocky Bayou Christian School

2101 NORTH PARTIN DRIVE NICEVILLE, FL 32578
TELEPHONE 879-7712

2 October 1978

Mr. Jerome Kurtz
Commissioner of Internal Revenue
Attention: E:EO
Washington, DC 20224

Dear Mr. Kurtz:

I have received a copy of your proposed Revenue Procedure on Private Tax-Exempt Schools, announced in the Federal Register of 22 August 1978. I appreciate the opportunity to provide you my comments on a proposal which I firmly believe is unsound and unconstitutional. I respectfully request that you withdraw the proposal from consideration.

Let me first make clear that Rocky Bayou Christian School has a genuine non-discriminatory policy. On both Biblical and Constitutional grounds, we declare that no student will be denied admission on the basis of race, color, or ethnic origin. My objections to your proposed procedures have nothing to do with the goal of facilitating equal opportunity in education. We fully support that goal. I find the proposal objectionable because it is destructive of that goal and the basic liberties guaranteed the American people by the First and Fourteenth Amendments to the Constitution of the United States.

First, I notice that the IRS definition of a racially nondiscriminatory policy requires that the school not discriminate on the basis of race in the administration of its policies. Yet the five factors to be used to determine that a school is nondiscriminatory are blatantly discriminatory and racist. Schools are being asked to demonstrate their nondiscriminatory policies by discriminating on the basis of race. This is nonsense. 1984 is here! Not only is it nonsense, but also it is unconstitutional (if I understand the Bakke decision correctly).

Secondly, the proposal to avoid discrimination by discriminating burdens schools with the administrative cost of keeping records according to race, when we should consider race an irrelevant criterion. I do not count how many blue-eyed/brown-eyed/green-eyed/icky-eyed students we have. This is irrelevant information. Why does IRS want me to keep records according to racist criteria? I want to see a student as Fred, Sally, or Brian, not as our Black, Chicano, or Asian. Your proposal is destructive of the goal to truly make race an irrelevant criterion. You are requiring decisions based upon racist criteria. You are forcing schools to bear costly, unnecessary administrative burdens to carry out racist actions in the name of nondiscrimination.

If the above two objections were my only objections, I doubt that I would take time out of my very busy schedule to comment on the proposal. I would figure IRS would not bother RBSCS anyway. No court has determined RBSCS to be discriminatory; we were not formed about the time of public school desegregation in our community, and we have enough fine students from the ethnic minorities in our community to meet your quota standards. So why should I bother to write to you? The answer lies in the significance of my third objection.

Our constitution incorporates some rather precious liberties which include due process of law and religious freedom. The proposal violates the former because guilt is presumed and the accused is required to go to the expense and trouble of proving innocence. That is backwards. If a school discriminates on the basis of race, those wronged can provide the basis for a legitimate determination of guilt. This illegal procedure is the type of tool tyrannical government can use to intimidate according to whim. For example, as the performance of Christian school students increasingly embarrasses those responsible for the increasing failure of the statist schools to graduate students of academic competence, the already increasing efforts of some governmental officials to eliminate the competition could reach a fever pitch. The NEA is already in a state of panic, and is collecting as many political debts as possible. The IRS has great potential in the hands of tyrants. We must be vigilant to insure that government agencies do not violate due process of law.

Similarly, we must insure that government does not violate the First and Fourteenth Amendment protection of religious freedom. The power to tax is clearly the power to control and even kill. That is the whole basis of the concept of tax exemption. Thus, the Federal Government cannot tax the State of Florida and vice versa, and neither can tax the religious associations and functions of their citizens. RBCS was founded because of our religious conviction that we must raise our children in accordance with Biblical principles. The secular schools, based upon the religious principles of Secular Humanism, cannot help Christian parents raise up their children to love God with all heart, mind, soul, and strength. The religious presuppositions of Secular Humanism are antithetical to those of Biblical Christianity. One of the main reasons that many of our founding fathers fled Europe was the religious oppression due to the establishment of state religions by various governments. One of the main concerns of the drafters of our precious Constitution was the protection of religious freedom. Sinful man has a natural tendency to oppress others who think differently. It is possible that religious Secular Humanists may gain complete control of our governmental machinery and use it to destroy the ability of Theists to freely practice their religion. I fear we are heading in that direction. I do not know what faith you hold to, Mr. Kurtz, but our Constitution was designed to protect your freedom to hold and practice that faith. Such freedom is rare on the face of the earth. Most people do not have this freedom; America is in danger of losing it. If the secular state is used to eliminate Christian education, the power to tax will undoubtedly be one of the weapons used. I pray that you do not want that to happen.

Usually, attempts to destroy freedom are disguised as noble attempts to protect it. The issue here is not freedom from arbitrary discrimination. The issue here is control over education, an inherently religious enterprise. I ask you to reverse the dangerous direction of current IRS policy by withdrawing the proposed procedures. Will you do that Mr. Kurtz? I await your reply with great expectations.

In Christ's Service,



Robert L. Grete,
Director

RLG/jr

Attachment 3



Rocky Bayou Christian School

2101 NORTH PARTIN DRIVE NICEVILLE, FL 32578
TELEPHONE 678-7712

11 April 1979

Mr. Jerome Kurtz, Commissioner
Internal Revenue Service
Attention: E:EO
Washington, DC 20224

Dear Mr. Kurtz:

I have carefully reviewed the Revised Procedure on Private Tax-Exempt Schools published in the 13 February 1979 Federal Register and partially corrected in the 26 February 1979 Federal Register. Although RBSC meets your ethnic minority quotas and therefore would fit the criteria for neither a "discriminatory" nor "reviewable school," I add my voice to those of hundreds of thousands of Americans concerned about the extent to which big government has extended its social engineering into the family life of our citizens. Your revision of the Procedures failed to remove their repugnance to our Constitutional liberties.

The issue is not racial discrimination; RBSC finds racial discrimination contrary to Biblical principles. The issue is whether our freedom to raise and educate our children according to Biblical principles will be trampled upon by bureaucracies such as yours. The First Amendment to the U.S. Constitution was designed to prevent government entanglement in religious affairs. Yet we find that government has violated the Amendment's Establishment Clause by establishing in the government school system the religious presuppositions and practicing faith of Secular Humanism. The unconstitutional establishment of this anti-Christian faith and practice in the tax-financed government schools has driven many Christian parents to pay tuition, in addition to required school taxes, to enable their children to be educated in accordance with Biblical principles rather than those of Secular Humanism. To so educate our children is a God-given responsibility protected by the First Amendment's Free Exercise Clause. Yet we see increasing governmental efforts to deny such liberty. John Dewey and his Humanistic followers have made it clear that they will not be satisfied until all American education is monopolized by those seeking to establish a secular society on a planetary scale. Mr. Kurtz, your organization should not be used as an instrument to eliminate the most precious of our freedoms.

The First Amendment bars the Federal Government from using the tax power or any other power to either establish a state religion or prevent the free exercise of religion. Your proposal violates the Constitutional barrier. Tax exemption is not Federal aid. It is not a benefit to be denied to religious groups not conforming to the Humanistic faith. It is part of the mechanism necessary to guarantee that the tax power cannot be used to inhibit the free exercise of religious liberty.

Mr. Kurtz, I respectfully request that you withdraw the Proposed Procedures and heed the cry of American citizens--"leave our liberty alone!"

Respectfully,

Robert L. Grete
Director

RLG:nb

Attachment 5



Rocky Bayou Christian School

2101 NORTH PARTIN DRIVE NICEVILLE, FL 32678
TELEPHONE 678-7712

5 December 1983

Senator Robert Dole
Chairman, Finance Committee
United States Senate
Washington, D.C. 20510

Dear Senator Dole:

I am so thankful that you have agreed to hold hearings on S 2099, which regards what I believe is one of the most serious threats to religious liberty in American history. The change in the Social Security Act, for the first time in American history, authorizes the federal government to directly tax religious ministries to include the church of Jesus Christ.

I have written to four attorneys specializing in First Amendment law. They all agree that the best way to avoid application of this unconstitutional tax upon religious ministries is for Congress to repeal it before it takes effect. Since Congress needs time to consider it, it is necessary to pass the Jepsen Amendment (S2099) or a slightly improved version as quickly as possible after it reconvenes. During the delay before implementation Congress needs to thoroughly examine the religious issue in taxation and repeal the tax on religious ministries. If this is not done I fear many of us will be in expensive litigation.

There is one deficiency that I see in the current language of the Jepsen Amendment. The final section says, "For purposes of this section a charitable or educational organization which is affiliated with a religious organization shall be considered to be a religious organization." I believe such language is included to insure that parochial schools are covered by the implementation delay. While such a purpose is clearly right, it ignores the fact that many Christian schools (approximately 30%) having the same religious ministry as schools organized under a local church or denomination are independently organized. Such schools are called Category III Schools. The danger of faulty legislative language is illustrated in the court cases involving application of the Federal Unemployment Tax Act (FUTA) to religious schools. When Secretary of Labor Ray Marshall unilaterally decided to include religious schools under the FUTA system, court cases sprang up all over America. In the St. Martin's case, the Supreme Court determined that the language of FUTA exempted schools operated by a church or convention or association of churches. The court went on to distinguish between church schools integrated into a church's structure and those separately incorporated. In footnote #12 it states, "The importance of this distinction...is heightened by the great diversity in church structure and organization among religious groups in this country. ...This diversity makes it impossible, as Congress perceived, to lay down a single rule to govern all church related organizations. Our holding today concerns only schools that have no legal identity separate from a church. To establish exemption from FUTA, a separately incorporated church school (or other organization) must satisfy the requirements of Section 3309(b)(1)(B)...we leave the issue of coverage under 3309(b)(1)(B) for the future." A serious consequence results from distinguishing between religious schools organized as part of a church and those that are not, even though they have the same religious mission. Following the St. Martin decision, the government continued to attempt to apply FUTA to separately incorporated or independent (Category III) religious schools. This meant that litigation on behalf of Category III Schools had to continue. In the Grace Brethren case, which went to the Supreme Court, the Supreme Court remanded the case on the grounds that the case should have proceeded to the Supreme Court through the state court system rather than the federal court system. Since the Salem Academy case had already been proceeding in Oregon through the state courts, the Grace Brethren case has been dropped and efforts have been concentrated in the Salem Academy case. For Rocky Bayou Christian School, an independent Christian school in Florida, state officials have gotten to the point where they wish to serve a tax lien on our property. This action is presently on a hold pending resolution of the Salem Academy case. All of this litigation and hassle would be unnecessary if the language of the law simply recognized that religious ministries, because

of 1st Amendment protection, are immune from federal taxation. Since taxation is a means of control and destruction, I would ask that we not make the same error in any language concerning the Social Security Act. Focusing on this point alone, I would recommend that the last paragraph of the Jepsen Amendment be changed to read, "For the purposes of this section, educational ministries organized for religious purposes are religious organizations." Since this is quite a technical point, very few are sensitive to this issue. I know that Attorney William Ball does understand it and if further clarification of the problems introduced into law by language which is not sensitive to this issue is necessary, I recommend discussing it further with him.

I attach a 13 September letter from Attorney William Ball to Dr. Paul Kienel giving some of his views. I also attach a brief analysis made by the Christian Education and Research Foundation. Finally, I attach my own analysis of the biblical and constitutional reasons that religious ministries should not be asked to pay such a tax. By way of a summary, let me ask a few key questions.

In Matthew 28:18 Jesus says to His disciples, "All authority has been given unto me both in heaven and on earth." Our founding fathers understood that man's law must recognize the higher law of God and conform to it. Has Congress lost this concept?

If only a greater can tax a lesser, how can we allow civil government to tax the church of our Savior?


In the first century, Christians went to the lions before they would simply make the false confession that Caesar was lord over Christ. If Jesus is Lord, how dare today's Christians confess the lordship of the federal government?

If the power to tax is the power to control and destroy, how dare American freedom lovers sit back and do nothing when such taxes are applied to Christ's ministries?

If the U.S. Constitution commands that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, how dare Congress pass a law to directly tax religious establishments, and how dare Christians submit to such a violation of biblical and constitutional principles?

I note that even the great Persian emperor Cyrus carefully excluded religious teachers from taxation (Ezra 7:24). In the American heritage, until now, governmental hunger for added funds has not run roughshod over religious liberty. I urge the Congress to reconsider, and I thank you, Sir, for allowing us an opportunity to discuss the religious liberty aspect of the Social Security Act.

In Christ's service,


Robert L. Grete
Director

RLG:plm

Attachments

1. William Ball letter.
2. CERF Analysis.
3. RBCS Analysis.

cc: Attorney William Ball

LAW OFFICES
BALL & SKELLY
511 N SECOND STREET
P O BOX 1108
HARRISBURG, PENNSYLVANIA 17108

September 13, 1983

MEMORANDUM TO: Dr. Paul A. Kienel
Executive Director, ACSI

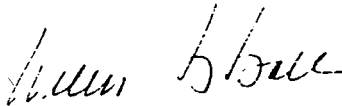
RE: Social Security Tax on Churches

Starting January 1, 1984, all churches and schools which are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code will be required to pay FICA (Federal Insurance Contributions Act) taxes for each employee who is paid \$100. or more in a calendar year.

This change was made by the Congress virtually without opposition. Some churches took a position supporting the amendment on the ground of its benefit to their employees. It was also argued that the new tax is necessary to keep the Social Security program in existence. Further, churches and schools in many states already pay sales and excise taxes.

The principle involved is plainly a tax on religion. Churches and religious schools are not afforded an option to pay, or not to pay, for an insurance program for their employees. The relatively small size of the tax is irrelevant (though to some the burden may be substantial). If religion may be taxed a little, why not greatly? The tax imposes obligations upon religious bodies in respect to the use and management of their own resources and with respect to the personnel of their ministries.

What should be done with respect to this change? It is our opinion that a test litigation would fail. Without spelling out detailed reasons, it is clear to us that the Supreme Court would not strike down the amended law. The only remedy we see is through the Congress. Corrective legislation should be prepared and introduced at a very early date.



William B. Ball

IN DEPTH

The New Social Security Law

As regular readers of *FOCUS ON FREEDOM* know, churches, Christian schools and other non-profit organizations must begin paying Social Security taxes on their employees beginning January 1, 1984. In the past, enrollment under the program has been optional, not mandatory. Many pastors have voiced their opposition to the new law; some, in fact, have indicated they will not pay Social Security taxes on their employees. There is considerable reason for their opposition. Social Security (F.I.C.A.) payments are taxes. The employer, in this case churches and Christian schools, are responsible for *one-half* of the tax. The other half is deducted from the employees' salary.

The National Christian Action Coalition (NCAC), a Washington-based lobbying organization, has examined possible legislative remedies. In their August newsletter, they report that the only reasonable solution would be to repeal that section of the new law which applies to religious, non-profit organizations. The normal route for such a repeal would be through the Senate Finance Committee (Bob Dole, R-KS, Chairman) and the House Ways and Means Committee (Dan Rostenkowski, D-IL, Chairman). "Unless there is a massive telephone and mail effort targeted at those Committees from 'mainstream' and independent churches, and Christian schools," cautions NCAC, "the Congress will not even move off first base. Look at it realistically: Nobody wants to reopen the Social Security 'can of worms.'"

NCAC does suggest, however, that there is an alternative if the committees fail to act. A repealer amendment could be attached to a finance bill on the floor of the Senate. To take advantage of this strategy, those seeking the repeal would need: (1) an appropriate "vehicle;" i.e., a finance bill that was "veto-proof;" (2) a Senator willing to introduce the amendment; and, (3) promises of votes from 51 Senators.

It is possible that the new law will be challenged in the courts. The Christian Law Association, based in Cleveland, Ohio, is currently examining that prospect. The way it would happen is this: On January 1, a church governing board could write a letter to Treasury Secretary Reagan politely informing him that they have no intention of paying F.I.C.A. taxes. Soon thereafter, the government would bring legal action against the church. What happens then is anybody's guess. Judging by how the Supreme Court ruled on the Bob Jones University case, the church could lose. However, there have been recent cases involving Christian organizations and the National Labor Relations Board which give some cause for optimism.

In conclusion, it should be noted that many churches and Christian schools *already* pay Social Security taxes for their employees. That is not really the issue. The issue is: Can such a tax be mandatorily levied against the church? Sometime in the next year we should know.

BIBLICAL PRINCIPLES:

What are the biblical principles underlying the refusal of RBCS as a religious ministry to pay taxes in any form to civil government? We don't have space for an exhaustive teaching on this subject. Therefore, I will simply sketch the logic that underlies our position. After describing the biblical basis for our stand, I will then turn to our constitutional basis.

What's the big issue? The big issue is the Lordship of Jesus Christ. In Matthew 28:18-20 we read these words in the New American Standard Version (NASV):

And Jesus came up and spoke to them, saying, "All authority has been given to Me in heaven and on earth. Go therefore and make disciples of all the nations, baptizing them in the name of the Father and the Son and the Holy Spirit, teaching them to observe all that I commanded you; and lo, I am with you always, even to the end of the age."

This passage tells us that Jesus has all authority both in heaven and on earth. Christians who believe the Word of God must, therefore, submit to the authority of Jesus Christ in every area of life. In considering the authorities that Christ has set up through His Word, we can determine that God has established various jurisdictions in His system of government. God commands each Christian to be responsible for self government. God requires each family to operate in accordance with the principles He lays down for family government. God gives commands to the local church and also gives commands laying down the basis for civil government. When Christ commands us to make disciples of all the nations, He is giving the followers of Christ the mission of cultivating more followers. When He says that we must teach them, "All that I commanded you," He is giving each Christian a responsibility to disciple others in accordance with the truth that Christ has laid down in His Word. When Jesus concludes, "I am with you always, even to the end of the age," He is emphasizing the fact that Jesus Christ is alive, is in authority and rules continually over His people.

Another passage relevant to this subject is Romans 13:1-8. That passage reads as follows:

LET every person be in subjection to the governing authorities. For there is no authority except from God, and those which exist are established by God. Therefore he who resists authority has opposed the ordinance of God; and they who have opposed will receive condemnation upon themselves. For rulers are not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? Do what is good, and you will have praise from the same; for it is a minister of God to you for good. But if you do what is evil, be afraid; for it does not bear the sword for nothing; for it is a minister of God, an avenger who brings wrath upon the one who practices evil. Wherefore it is necessary to be in subjection, not only because of wrath, but also for conscience' sake. For because of this you also pay taxes, for rulers are servants of God, devoting themselves to this very thing. Render to all what is due them: tax to whom tax is due; custom to whom custom; fear to whom fear; honor to whom honor. Owe nothing to anyone except to love one another; for he who loves his neighbor has fulfilled the law. (NASV)

This passage joins others to lay down the basis for human government. The concept of government is not restricted to civil government, for we are cautioned to be in subjection to the governing authorities. And we are told all authorities are established by God. In the home this means parental authority. In a local church it would mean the authority of church officers, such as elders and deacons. In civil government it would refer to civil rulers whether kings, governors, or sheriffs. In all cases, authority rests upon God's authority. The basis for obedience is that authority is exercised under God's authority. God has established authority as a minister unto us for good.

Thus we have the principle that Christians are to obey human authority because such authority is a servant of God. Quite

clearly, if a civil government operates in accordance with God's authority, there will never be a reason for us to disobey. We would obey not only because of wrath (that is, because of fear of punishment for getting caught), but also for conscience' sake. That means, we obey because it is right to do so.

Now what do we do if human authorities give conflicting commands? Suppose for example, a district court judge orders a person to carry out a certain act, but a court of appeals reverses the lower court's order. What is the citizen to do? The answer, of course, is to obey the higher authority.

What do we do if human authority gives a command contrary to the commands of God? This question was put to the Sanhedrin by the apostles Peter and John: "Whether it is right in the sight of God to give heed to you rather than to God, you be the judge." (Acts 4:19) The apostles were clearly stating that those in authority had the responsibility for discerning whether or not they were acting in accordance with the authority of God and if not, whether it was more important to obey God rather than man. The apostles supply a clear answer to their question in Acts 5:29 where they say, "We must obey God rather than men." The principle then is one of Lordship. When Jesus Christ commands His children, no authority can justly overrule.

Let's consider another passage. Jesus had God's sovereignty in mind when the Pharisees tried to trap Him on the issue of individual Jews paying tax to Caesar. Not only must we pay lawful taxes laid on by civil government,¹ but also we must render to God the things that are God's. We see that in the passage in Matthew 22:15-22.

1. It is appropriate to point out the difference between a tax on individuals (those of Romans 13, the poll tax of Matthew 22, or the Temple tax of Matthew 17:24) and a tax on a ministry of Jesus Christ. Only a greater can tax a lesser. In America, the federal government cannot tax a state government and vice-versa because neither has jurisdiction over the other. Biblically, civil government has no jurisdiction over the ministries of Jesus Christ. This is recognized in the 1st Amendment discussed later. Then the Pharisees went and counseled together how they might trap Him in what He said. And they sent their disciples to Him, along with the Herodians, saying, "Teacher, we know that You are truthful and teach the way of God in truth, and defer to no one; for You are not partial to any. Tell us therefore, what do You think? Is it lawful to give a poll-tax to Caesar, or not?" But Jesus perceived their malice, and said, "Why are you testing Me, you hypocrites? Show Me the coin used for the poll-tax." And they brought Him a denarius. And He said to them, "Whose likeness and inscription is this?" They said to Him, "Caesar's." Then He said to them, "Then render to Caesar the things that are Caesar's; and to God the things that are God's." (NASV)

This raises the question, "What is our responsibility to God, and what is our responsibility to Caesar?" Certainly if Caesar were to claim that which is God's, we must obey God rather than men. While the coin might be made in Caesar's image, man was created in God's image. Statist Humanist doctrine claims that the state is sovereign over all, and grants liberty as it chooses to its subjects. God tells us that He has created man in His image. Man is to exercise dominion over the earth as God's vice-regent. Human government is organized by man to protect God-given liberty and maintain justice.

When the issue is the education of children we must then ask the question, "To whom does God give jurisdiction over the education of children?" A basis for the answer to this question is, "Who owns our children?" Some might answer, "The state owns the children." No biblical authority however, is found for such an idea. Others might respond that the parents own the children. Again, such an answer is not to be found in Scripture. Scripture makes it quite clear that the children are owned by God and given to parents in stewardship. Psalm 127:3 says, "Behold, children are a gift of the LORD; The fruit of the womb is a reward." If then parents are stewards over God's children, what responsibilities in particular do

parents have? It is not my purpose to comprehensibly answer this question, but to focus on the one pertinent to this study. Parents are clearly made responsible for the education of their children. In Deuteronomy, Chapter 4, God calls attention to the fact that He has laid down statutes and judgments to be taught to His people. Verse 1 says, "AND now, O Israel, listen to the statutes and the judgments which I am teaching you to perform...." In verse 8 He says:

Or what great nation is there that has statutes and judgments as righteous as this whole law which I am setting before you today? Only give heed to yourself and keep your soul diligently, lest you forget the things which your eyes have seen, and lest they depart from your heart all the days of your life; but make them known to your sons and your grandsons. Remember the day you stood before the LORD your God at Horeb, when the LORD said to me, "Assemble the people to Me, that I may let them hear My words so they may learn to fear Me all the days they live on the earth, and that they may teach their children." (NASV)

Before moving to the next passage I would like to point out that the principle of these verses is that what God has taught us, we are obligated to teach our children, and a result of our teaching must be that our children learn to fear, or reverence, God all their days. Then in Deuteronomy, Chapter 6, Moses points out that God has commanded him to teach the people to obey God's law. In verse 2 he says, "so that you and your son and your grandson might fear the LORD your God, to keep all His statutes and His commandments, which I command you, all the days of your life, and that your days might be prolonged." This responsibility to teach our children extends 24 hours a day. That is seen in verse 7 where it is said, "and you shall teach them diligently to your sons and shall talk of them when you sit in your house and when you walk by the way and when you lie down and when you rise up. And you shall bind them as a sign on your hand and they shall be as frontals on your forehead." The symbology in the latter words indicates that the principles of God must be in the operation of our hand and in our mind. In Deuteronomy, Chapter 11, God again instructs His children in verse 18: "You shall therefore impress these words of mine on your heart and on your soul; and you shall bind them as a sign on your hand, and they shall be as frontals on your forehead. And you shall teach them to your sons, talking of them when you sit in your house and when you walk along the road and when you lie down and when you rise up." In Jeremiah 10:1-3 we read:

HEAR the word which the LORD speaks to you, O house of Israel. Thus says the LORD, "Do not learn the way of the nations, And do not be terrified by the signs of the heavens Although the nations are terrified by them; For the customs of the peoples are delusion." (NASV)

The warning to God's people is that they should not learn the way of heathen nations who are governed by their mythology, astrology, and so. The delusions that lead the world are not to lead God's children.

In the New Testament in Ephesians 6:1-4 we read, "CHILDREN, obey your parents in the Lord, for this is right." Verse 4 reads, "And, fathers, do not provoke your children to anger; but bring them up in the discipline and instruction of the Lord." God's children are warned of their obligation in Colossians 2:8. "See to it that no one takes you captive through philosophy and empty deception, according to the tradition of men, according to the elementary principles of the world, rather than according to Christ." Paul also instructs us in 2 Corinthians 10:5 that Christians should be "destroying speculations and every lofty thing raised up against the knowledge of God, ... taking every thought captive to the obedience of Christ." These passages teach us that parents have the responsibility, if they are under the authority of God, to teach their children from the time they get up in the morning until the time they go to bed at night, to love God with all heart, mind and soul, and to develop a world view, a philosophy of life, a commitment of life under God's authority rather than in accordance

with the philosophy of empty deception of the world, which is secularism, or according to the tradition of men, which is humanism. Christians are obligated to follow God's instructions concerning the education of their children.

This leads us to the next question, "What do we do if Caesar or civil government demands that we educate our children contrary to our faith, contrary to biblical principles, in accordance with the philosophy and empty deception of the world? Clearly if man gives us an instruction contrary to that of God, we must obey God rather than man. But also, we must draw the line at principle, not at the point of excessive violation of principle. The principle is that Christ is Lord or sovereign over His believers who cannot yield the responsibilities God has given them to the humanistic state. We must draw the line when the state steps out of its legitimate biblical bounds and asks that we accept its sovereignty rather than Christ's sovereignty over that which God has commanded us to do. The point at which the person is asked to go over his faith is a matter of individual conscience. Those Christians that do not see a challenge to their faith by the exercise of governmental control over the education of their children must make decisions in accordance with their conscience. Those of us who have seen God's clear commandment to us to raise our children in a way not generally done in the world, but in a way peculiar to those who adhere to His Word, must be willing to carry out God's instructions regardless of the cost. In fact, we must be willing to die for such convictions.

In the next section of this paper I will address in more precise terms why the levying of a tax is equivalent to an extension of government control over a religious ministry. If we grant, however, that both reason and history proves that taxation is in fact a means of control, then quite clearly, Christians cannot accept the imposition of a tax on a religious ministry. For Caesar to claim sovereignty over Christ is unacceptable to the Christian. We can see this issue in Christ's conduct before Caesar's representatives in John, Chapters 18 & 19. Assuming that the reader is familiar with those passages, let me simply point out a couple of key verses. In Chapter 19, verse 11, we find Christ's words to Pilate, "You would have no authority over Me, unless it had been given you from above; for this reason he who delivered Me up to you has the greater sin." Christ here is confirming God's sovereignty over all authorities and places a responsibility on Pilate for his exercise of authority. Those who delivered Him up, of course, are also political authorities. He points out to him that their sin was even greater. In verse 12 we read, "As a result of this Pilate made efforts to release Him, but the Jews cried out, saying, 'If you release this Man, you are no friend of Caesar; every one who makes himself out to be a king opposes Caesar.'" And then we find the accusers' declaration of their sovereign in verse 15. "They therefore cried out, 'Away with Him, away with Him, crucify Him!' Pilate said to them, 'Shall I crucify your King?' The chief priests answered, 'We have no king but Caesar.'"

What is the issue in Christ's crucifixion? The issue is, "Who is Lord?"

Why were believers sent to the lions in the first century? The issue is the same. They were unwilling to grant to Caesar sovereign authority over their religious exercise. They would not make a confession that Caesar is Lord. They insisted that Jesus is Lord. It would have been so easy for the principle of Roman religious toleration to grant them the liberty to worship Christ under the umbrella of Caesar's sovereignty. But they could not do that. They had to make a stand on the principle. And many were crucified or thrown to the lions for the stand they took. We should also take note of Paul's conflict with Jewish authority in Acts 19-27. Paul made his defense before Caesar's representatives and appealed to Caesar himself. He sought justice from Caesar for God has given to Caesar the responsibility to protect liberty and maintain justice. The definition of liberty and the criteria of justice of course must be God's. As Paul stood before civil authority asking for justice, so do we today.

CONSTITUTIONAL PRINCIPLES:

It is not the purpose of this section to exhaustively deal with all the constitutional considerations involved in this case. We could, for example, discuss equal protection of the laws and due process of law considerations from the 14th Amendment, as well as a number of First Amendment considerations. We could also deal with the Florida Constitution. The purpose here, however, is simply to trace the main thread of the First Amendment argument that works with our biblical stand to provide a sufficient case that taxation of the RBCS ministry is contrary to the supreme law of the land.

The First Amendment to the Constitution of the United States states, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." This simple statement, composed of two clauses, is to prevent government from exercising control over religious affairs. If government exercises the tax power over religious ministries or activity, it operates on the principle that government may exercise control over religious ministries or activities. That this is true has been clearly established in history as well as in constitutional law. The court clearly sees the power to tax as the power to control and destroy.

Supreme Court Chief Justice John Marshall clearly recognized this principle in M'Culloch vs. Maryland, 4 Wheaton 316 (1819). In that case the State of Maryland attempted to tax an instrumentality (a national bank) of the federal government. The first question Marshall dealt with in that case was, "Does Congress have the power to incorporate a bank?" Using the implied powers doctrine, Chief Justice Marshall concluded that the federal government did indeed have the power to establish or incorporate a bank. He then proceeded to inquire: "Whether the State of Maryland may, without violating the constitution, tax that branch?" In his consideration of that question, we get principles relevant to the tax power of any civil government. In M'Culloch, the Court held that the constitution sustains the claim that the bank is exempt from the power of a state to tax its operations. Let me quote a couple of excerpts from Chief Justice Marshall's opinion. He first points to a "great principle" that "the constitution and the laws made in pursuance thereof are supreme," and deduces from that principle three corollaries. These are: First, "that a power to create implies a power to preserve." Applying this to our RBCS case, that corollary would indicate that if citizens of the United States under religious freedom principles were at liberty to create religious institutions, then they have the power to preserve those institutions. The second corollary is "that a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve." Applying that corollary to the RBCS case, obviously if a power to destroy a legitimate religious ministry were exercised it would be incompatible with the First Amendment. The third corollary is "that where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme." He then observes: "That the power of taxing it [the bank] by the states may be exercised so as to destroy it, is too obvious to be denied." Clearly, this observation applies to religious ministries as well as banks. Chief Justice Marshall is telling us that the power to tax is an obvious power that can be used to destroy. His view has been confirmed by court decisions to this day. For example, in Murdock vs. Pennsylvania, 319 US 105, the court held a state license tax levied on religious colporteurs unconstitutional and said, "The power to tax the exercise of a privilege is the power to control or suppress its enjoyment." Is religious instruction a matter for control by civil government? As expressed by Mr. Justice Jackson, a state "cannot make public business of religious worship or instruction, or of attendance at religious institutions of any character." Everson vs. Board of Education, 330 US 1, at 26.

In M'Culloch, Chief Justice Marshall considered one of the objections that could be used to blunt a challenge to denying the tax power on such grounds. He states, "Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess

of destruction would be an abuse, to presume which, would banish that confidence which is essential to all government." Marshall's rejection of such argument is clear. He says, "But is this a case of confidence? Would the people of any one state trust those of another with a power to control the most insignificant operations of their state government? We know they would not." Applying this principle to our own case, we must admit that although a particular tax levied on a religious ministry may not in fact act to destroy that ministry is not argument to deny the tax power on the principle. A document quoted by Mr. Justice Douglas in his dissenting opinion, Waltz vs. Tax Commission, 397 US 664, at 721, reveals the attitude of our founding fathers on such issues. Some Virginians, objecting to a bill to tax the general public to support Christian teachers, said,

It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever? (at 721)

Have we forgotten this lesson? Many who have learned very little of America's Christian heritage may not have learned this lesson at all. Statist-humanist education has attempted to replace the principles of religious liberty and limited government with the old Roman concepts of religious toleration and the omnipotent state. So far, however, the court has continued to favor religious freedom from state control. In Waltz vs. Tax Commission, for example, the court upheld the State of New York's exemption of religious ministries from the property tax. In the course of Chief Justice Burger's opinion of the Court, he states:

The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference. (at 669)

Governments have not always been tolerant of religious activity, and hostility toward religion has taken many shapes and forms - economic, political, and sometimes harshly oppressive. Grants of exemption historically reflect the concern of authors of constitutions and statutes as to the latent dangers inherent in the imposition of property taxes; exemption constitutes a reasonable and balanced attempt to guard against those dangers. (at 673)

We must also be sure that the end result--the effect--is not an excessive government entanglement with religion. The test is inescapably one of degree. Either course, taxation of churches or exemption, occasions some degree of involvement with religion. Elimination of exemption would tend to expand the involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes.

Granting tax exemptions to churches necessarily operates to afford an indirect economic benefit and also gives to some, but yet a lesser, involvement than taxing them. (674-675)

Our constitutional argument can now be easily summarized. The American equivalent to Caesar is the Constitution of the United States. All laws must be consistent with that constitution. The constitution commands federal officials that they cannot

constitutionally tax or otherwise exercise control over religious affairs. Notice that the First Amendment does not specify a church. In fact, if government were to restrict religious exercise to that performed by defined or approved churches, that would itself be a violation of the establishment clause. Should the government, for example, state that to truly enjoy free exercise in a Christian school, you must organize it in a certain approved way, government would be involved in establishing religion. Once the federal government says that only churches are legitimate institutions from which free exercise of religion may be made, they can define away any objectionable religious activity that doesn't meet the test of popular public policy. This is precisely what the establishment clause was written to prevent. Since the education of our children is a religious matter, carried out by a religious ministry, it is unlawful for civil government to entangle itself in the affairs of that ministry through the tax power or any other means. Therefore, in our particular case, both the Social Security Tax Act and the Federal Unemployment Tax Act, if drawn constitutionally, must exempt any legitimate religious ministry, to include conventionally organized churches and religious educational ministries such as our own.

RELIGIOUS LIBERTY

The Uneasy Case Against Reverend Moon

JOHN McCLAUGHRY

DESPITE THE protests of the Reagan Administration that it supports freedom of religion against government intrusion, the Internal Revenue Service is once again launching an assault on the independence of the nation's churches.

In the 1983 Bob Jones University and Goldsboro Christian Schools cases, the Supreme Court upheld the IRS position by decreeing that church-sponsored schools could not enjoy the benefits of tax exemption and deductibility if they practiced any form of racial discrimination. These cases dealt with schools, not with churches per se. Now, however, there is litigation under way designed to inject the government into the internal workings of bona-fide churches.

The case, brought by the Internal Revenue Service in 1981, is that of Reverend Sun Myung Moon, the Korean founder of the controversial Holy Spirit Association for the Unification of World Christianity, commonly known as the Unification Church, or the "Moonies." The IRS charged Reverend Moon with tax fraud. The District Court of New York convicted him, and he was sentenced to pay a \$25,000 fine and serve 18 months in jail. A three-judge panel of the Second Circuit U.S. Court of Appeals recently affirmed the conviction on appeal, by a 2 to 1 vote. (Reverend Moon's lawyers have appealed for an en banc rehearing before the Second Circuit. If that is denied, they will seek review by the Supreme Court.)

It is unfortunate that the defendant in this case is such a controversial figure, for the public's feelings about the Moonies tend to override recognition of the key issue involved in the case. That key issue has nothing to do with Reverend Moon himself, or the theology of his church, or its fundraising and recruitment practices. It is, simply, the extent to which a bona-fide religious body can be penalized for refusing to adopt internal practices acceptable to the government. In addition, the circumstances surround-

ing the Moon prosecution strongly suggest a government vendetta against a church that politically powerful people find repugnant to their own brand of religion. Roger Williams, trudging south from Massachusetts Bay in 1635, would have understood.

Moon's Pilgrimage

Sun Myung Moon was born in 1920, in a rural part of what is now North Korea. His family converted to Presbyterianism when he was ten years old. When he was 16, he says, Jesus Christ appeared to him on Easter morning, telling him to go forth and complete Jesus's mission of reconciling humanity to God's word and His love. At the end of World War II, Moon, at age 26, founded what became the Unification Church.

He went to Pyongyang, then under Soviet occupation and now the capital of Communist North Korea. For his preaching the Communists had the usual respect. They threw him into a forced labor camp and tortured him to the point of death. American forces arrived at Hungnam in October 1950, and freed the young preacher from captivity. He made his way to Pusan, South Korea, six hundred miles away, pushing a bicycle carrying a comrade with a broken leg. From humble beginnings there the Unification Church took hold in Korea and Japan. By 1971 Reverend Moon, regarded by his followers as the embodiment of the faith and a new world prophet, was ready to go to America.

Now we come to the matter that led to Reverend Moon's prosecution. It is customary for new religions—and, indeed, many well established religions—to view their founders or clergymen as both spiritual and temporal trustees for the faithful. Adherents of the faith make their contributions to the leader of the church, who receives the assets in trust for the support and propagation of the faith.

In March 1972 Japanese church members contributed a substantial amount of

money to Reverend Moon in support of the church's new missionary crusade to America. Reverend Moon deposited these funds in an account in his name in the Chase Manhattan Bank. His accountants duly reported funds withdrawn by him for personal living expenses as taxable income to him. But the interest earned on the money in the bank—totaling \$106,500 over three years—was not reported as taxable income.

The crux of the matter is whether Reverend Moon accepted the contributions as trustee for the church and used them for traditional religious purposes. If so, the interest was not taxable. If not—if Reverend Moon simply pocketed the funds for his personal use—then the interest was indeed taxable, and Reverend Moon committed tax fraud in failing to report it.

Before examining this question further, it is worth noting the circumstances surrounding the prosecution of Reverend Moon, seven years after his failure to report the interest income. (In 1976 the Church incorporated in order to avoid further problems.)

There was in 1981 considerable public resentment against the Moonies. The National Council of Churches refused to accept the Unification Church's doctrines as compatible with traditional Christianity. There was widespread disapproval of the Church's fundraising methods, which included street solicitation. And there were frequent uproars over young people who had allegedly been seduced into Mooniehood by various brainwashing techniques.

In this atmosphere of public hostility the government brought its case for tax fraud. Reverend Moon, who had voluntarily returned from Korea to New York to stand trial, stated publicly his belief that the prosecution was motivated by racial and religious factors. His lawyers asked for a trial without a jury, fearing that no objective jury could be empaneled. Surprisingly, the government, which usually prefers court trials to jury trials, demanded a jury trial. Judge Goettel accepted the government's position.

At first the case seemed simple. It was clear that Reverend Moon had received the funds, put them into the bank, earned

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interest on them, and ignored the interest on his income-tax form. But Judge Goettel soon recognized that the real question was an intricate one, centering on the elusive nature of an implied trust relationship. At the same time, it became apparent that the jury was out of its depth. Even the judge himself observed, from the bench, that in the effort to secure a relatively unbiased jury it had been necessary to empanel jurors "who don't know much, because they are obviously the persons who start off with the least bias." These were, he said, "the less educated and less intelligent people." To this jury the judge then presented the complicated and subtle question of the implied trust relationship.

The technicalities of this question are better left to the law journals, but the basic issue was this: If the donors intended to give funds to the church for religious purposes, thereby implicitly creating a charitable trust, and if the funds were employed by the trustee (Reverend Moon) for such purposes, then Reverend Moon was not guilty of tax fraud in failing to report the interest on his personal tax return.

Anatomy of a Prosecution

Throughout its prosecution, the government insisted on the irrelevance of Reverend Moon's role as the founder of his church, terming him instead "an ordinary high-ranking businessman." When the defense sought to introduce evidence that Reverend Moon was merely a trustee for a religious body, the government objected. Even worse, government counsel openly intimidated the defense by promising to respond to a defense built around Reverend Moon's religious role by introducing "negative things about the church"—whether or not related to the financial arrangement in question. (The Christian Legal Society, representing the Christian evangelical movement, eventually filed an appellate brief arguing that this trial behavior by the government "unconstitutionally infringed on the defendant's free speech, [and] may also have a chilling effect on other individuals freely discussing and propagating their religions.")

The jury—improperly charged, according to the defense—found Reverend Moon guilty. His appeal was rejected, and at this writing his lawyers have asked for a rehearing before the entire appeals court to review what even the majority of the appeals panel termed the

"troubling issues of religious persecution and abridgement of free speech" in the Moon case.

That those issues are troubling to many far beyond the Unification Church is a fact reflected by the remarkably broad coalition of religious organizations joining in a friend of the court brief on Reverend Moon's behalf: the National Council of Churches, the United Presbyterian Church, the American Baptist Churches, the AME Church, the Unitarian Universalist Association, and the National Black Catholic Clergy Caucus.

In the view of these mainline church organizations, "when someone's religious beliefs and practices become relevant to refuting the charges against him, treating him as though religion had nothing to do with the matter is the very essence of unfairness and discrimination. . . . Upholding the conviction in this case," the church groups continued, "would establish the dangerous principle that courts may simply disregard the religious reasons for, and the religious meanings of, someone's conduct."

"The principle that religious notions and explanations must at least be fully taken into account . . . is critical to followers of all faiths, not simply those faiths that are new or small or in disfavor," said the brief. "From the tax-exempt status of a church's parking lot, to the validity of an unincorporated church association's assertion of power to direct the actions of a church corporation, little of what even modern-day mainstream churches routinely do would survive intact if squeezed through a religion-extracting filter."

"Upholding the conviction in this case," the brief concluded, "would also establish the proposition that judges and juries may simply override a religion's own decisions about how to organize itself, how to allocate responsibility over church matters, and how to expend church resources. . . . The judgment in this case does not simply run roughshod over religion: It positively penalizes religious fervor and spiritual expression."

At the heart of the government's position seems to be the idea that there is nothing special about religion. If you wish to start a church, or contribute to a church, you must follow practices dictated by the government. Those who do not will be prosecuted vigorously, and the more unorthodox the religious beliefs involved, the more ammunition the government will bring to bear to sway a jury against your cause.

Furthermore—and here is the threat to all organized religions—the government is here assuming the power to penetrate into church affairs. Even a church as established as the Roman Catholic Church observes a doctrine whereby the bishop is the personal manager of church funds. Under the doctrine advanced by the government in its pursuit of Reverend Moon, all decisions of a bishop or other church official would be made under peril of prosecution, if the government was somehow displeased with the result.

Choice of Victims

One may concede that the government was clever in its choice of victims. Reverend Moon is not a popular figure in the American religious world. He is a non-white, a foreigner who speaks only halting English. His theology is highly unorthodox. In addition, he is outspokenly anti-Communist and sees himself as a rallying force for a great American struggle to roll back the Communist tide in the world. Then there are the allegations concerning the Moonies' fundraising and recruitment practices. If the government wanted to establish a new doctrine of government supervision of churches, it could hardly have chosen a better target to make its case.

But the case of Reverend Moon is not just his own problem. It should be a matter of grave concern for all those who defend freedom of religion against unwarranted government intrusion. For if Reverend Moon goes to jail—this time not in Communist North Korea, but in the United States of America, the great bastion of religious liberty—something of vital importance to all American religions goes with him.

At this stage, having won on appeal, the government's lawyers can be expected to resist any further review of the case in a higher court. But in view of the momentous issues involved—which the appeals court recognized even as its majority ruled against the defendant—the Reagan Administration should take the unusual step of supporting Reverend Moon's petition for review at the appeals-court level and, if that fails, his petition for review by the Supreme Court. Such recognition by the Administration that this is more than a simple case of white-collar crime would vastly increase the chances of a definitive consideration of the religious-liberty issue by the highest court in the land. □