LIBERTY

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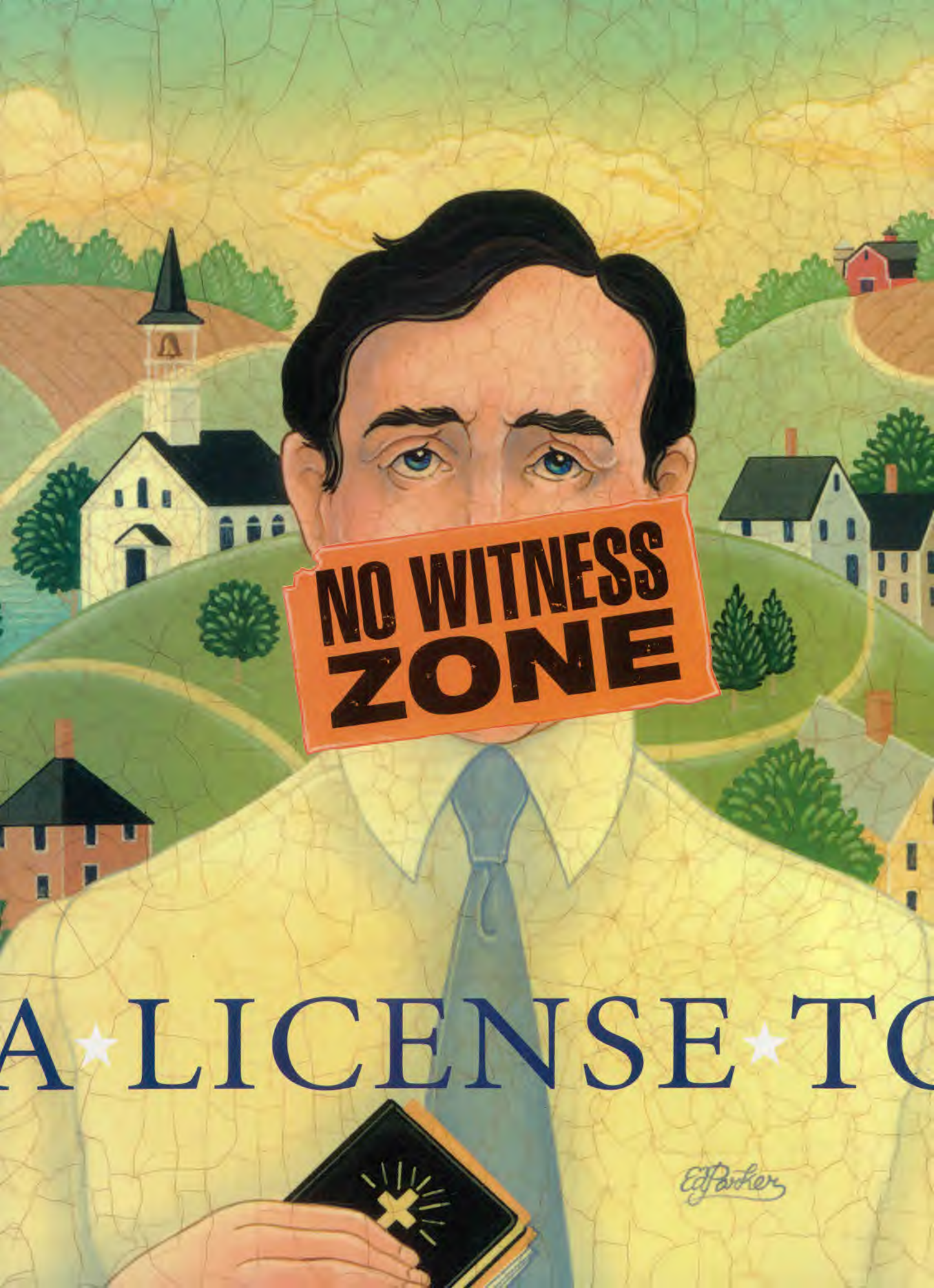
A Magazine of Religious Freedom
Vol. 97, No. 4
July/August
2002


NO WITNESS
ZONE
A LICENSE TO
Ed Parker

The Jehovah's Witnesses Challenge Licensing Requirements

SPEAK?

By ELIZABETH A. CLARK

The Jehovah's Witnesses are no strangers to Supreme Court litigation. They defended their constitutional rights to free speech and the free exercise of religion in the U.S. Supreme Court more than 45 times in the years between 1938 and 1945 alone.[1] Many of their cases from this period dealt with government attempts to license proselyting—an issue that they are again challenging in the Supreme Court. ✚ Earlier Supreme Court cases brought by the Jehovah's Witnesses, including the landmark case of *Cantwell v. Connecticut,*[2] which established that the First Amendment applies to the states, focused on the discriminatory use of commercial licensing requirements to bar or penalize public religious advocacy by the Jehovah's Witnesses.[3] The Supreme Court repeatedly struck down such requirements, establishing broad protections for the freedom of religious and political speech. In these cases, the Court held that "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional."[4]

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The Supreme Court is now faced with another case involving the Jehovah's Witnesses and licensing requirements, *Watchtower Bible and Tract Society of New York v. Village of Stratton, Ohio.* In this case, the Jehovah's Witnesses are again challenging a local ordinance, this time in the Ohio village of Stratton, which requires all would-be solicitors or canvassers to obtain a permit before approaching residences.[5]

The village of Stratton insisted that this ordinance would apply to Jehovah's Witnesses going door-to-door to explain their beliefs. The Jehovah's Witnesses filed suit, claiming that the ordinance violates their constitutional rights to free speech and free exercise of religion. The Supreme Court agreed to hear the case, and oral argument was held in February 2002. The case raises several significant legal issues and has broad implications for governmental licensing schemes, freedom of speech, religious proselyting, and possibly campaign reform.

The Case

Stratton, a quiet village in Ohio located along the Ohio River, boasts only one full-time police officer and has under 300 inhabitants, many of whom are elderly. In 1998 the village passed a solicitation registration ordinance requiring licensing of "canvassers, solicitors, peddlers, [or] hawkers" who approach private residences for the "purposes of advertising, promoting, selling and/or explaining any product, service, organization, or cause."[6] The ordinance imposes criminal sanctions on canvassing or soliciting without a license.

The registration procedure, revised once after objections from the Jehovah's Witnesses, requires the applicant to provide detailed information that is then posted in a public record: the applicant's name, home address, the organization or cause to be promoted, the name and address of the employer or affiliated organization (with credentials from the employer or organization showing the individual's exact relationship), the length of time that "the privilege to canvass or solicit is desired," the addresses to be contacted, and "such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege required."[7]

Stratton's antisolicitation ordinance not only requires registration of those who seek the "privilege" of going door-to-door, but also requires the would-be solicitor to carry with them a permit, which they are required to show upon demand to the police or a resident.[8]

Under the ordinance, residents of Stratton have the right to opt out of all or some solicitations through two means. First, they can post a "no solicitation" or "no trespassing" sign on their property. Residents can also fill out a "no solicitation" registration form at the office of the mayor.[9] As part of the registration form, residents can indicate permission for solicitations from any or all of a series of listed groups: Scouting organizations, trick-or-treaters, food vendors, Christmas carolers, political candidates, campaigners, Jehovah's Witnesses, "Persons affiliated with __ Church," and other groups.[10]

The Jehovah's Witnesses have pointed to the fact that they were the only religious organization singled out on this form, as well as to discriminatory statements made by Stratton's mayor, as indications of an anti-Jehovah's Witnesses bias underlying the law. The village of Stratton, on the other hand, has claimed that the ordinance was motivated out of a desire to protect Stratton's elderly citizens from potential frauds and scams.

After the ordinance was passed, the village of Stratton made it clear that they would apply it to Jehovah's Witnesses going door-to-door to explain their beliefs, arguing that the Jehovah's Witnesses would be "canvassers" seeking to "explain" a "cause." The Jehovah's Witnesses brought suit, seeking injunctive relief barring the village from applying the ordinance to their activities.

Can governments require a registration process before permitting people to speak about their religious and political convictions?

The Legal Issues in Stratton

The case of Stratton raises many core questions in the field of freedom of speech and religion. To what extent may the government regulate proselytizing? Must religious and political speech be treated differently than commercial speech? Can governments require a registration process before permitting people to speak about their religious and political convictions? Is such a registration process permissible if the goal is to protect the privacy of residents? Is it permissible if the permitting process allows for no government discretion in who obtains licenses? Does a registration process violate a right to speak anonymously? What criteria should be used to evaluate the constitutionality of a registration scheme?

To answer these questions, the legal aspects of this case touch on a number of theories within First Amendment law: prior restraint of speech by the government; content-based restrictions; limitations on time, manner, and place of speech; and anonymous speech. While discussion of each of these legal approaches could easily fill many articles, perhaps the simplest way to make sense of how the Supreme Court will choose to resolve the case is to look at

the two possible levels of judicial review it might apply—strict scrutiny and intermediate scrutiny.

In many aspects of constitutional law, the Supreme Court has invoked "strict scrutiny." In other words, a law can withstand constitutional review only if it is narrowly tailored to meet a compelling state interest.[11] In the First Amendment arena, strict scrutiny is applied on several bases. For example, a law that banned religious speech, advocacy of Communism, or complaints against a mayor would be held to strict scrutiny because the ban is content-based. On the other hand, a law that limited complaints and other speech from being shouted in over X decibels in a residential area would not invoke scrutiny, because it merely regulates the time, manner, or place of speech.

Prior Supreme Court cases have suggested that any compelled speech or ban on anonymous speech is a content-based restriction that would trigger strict scrutiny.[12] In *Stratton* the Jehovah's Witnesses are arguing that the licensing requirement, which forces a speaker who wishes to go door-to-door to disclose his or her name, completely bars anonymous speech. The village of Stratton points out that previous precedent has only upheld a right to anonymity at the point of persuasion—the main case in point, *Buckley v. American Constitutional Law Foundation* struck down a requirement that petitioners wear badges with their name while seeking support for their petition.[13] According to Stratton, the case currently before the Supreme Court is different because Stratton's ordinance does not necessarily require publication of the name of the individual except in the centralized register.[14] Still, the Supreme Court has repeatedly protected against disclosure of names, particularly in cases of pure political speech, noting itself the "respected tradition of anonymity in the advocacy of political causes."[15] Anonymous speech was a staple of the Revolutionary War era political discourse; even the now-famous *Federalist* papers were published anonymously.

In *Stratton* the Supreme Court could also invoke strict judicial scrutiny, which would require the ordinance to be narrowly tailored to serve a compelling governmental interest, based on other legal theories, including an argument that the licensing requirement serves as a forbidden "prior restraint" on speech. This legal theory is designed to avoid the chilling effect of advance censorship. A "prior restraint" is any limitation imposed on speech before the communication occurs, such as early English licensing laws that required licenses to print, import, or sell any books.

The Jehovah's Witnesses are arguing that Stratton's anti-solicitation ordinance is a prior restraint on speech, because it requires a license before engaging in pure speech.[16] The Supreme Court has struck down licensing schemes in the past, including discretionary commercial solicitation schemes applied to religious speech. The village of Stratton is depending on nonbinding dicta in a few Supreme Court cases. The Supreme Court has twice suggested that a "state's enforcement interest might justify a . . . limited identification requirement" for petition circulators or campaign literature, but has as of yet never upheld a licensing system for pure religious or political speech.[17]

The village has also stressed that issuance of the solicitation permits is nondiscretionary. This point, which is disputed by the Jehovah's Witnesses, would be significant because of additional dicta in another Supreme Court case. Justice Burger suggested that a municipality could license door-to-door soliciting to protect its citizens from crime and undue annoyance: "A narrowly drawn ordinance, that does not vest in municipal officials the undefined power to determine what messages residents will hear, may serve these important interests without running afoul of the First Amendment."[18]

The scope of the ordinance clearly moves it further from the would-be safe haven of Supreme Court dicta.

While past comments by justices suggest that a locality might have an interest in identifying commercial solicitors or those engaged in submitting petitions, this case is significant because it is the first Supreme Court case in which a municipality is depending on these justifications to regulate pure religious and political speech. During oral argument justices raised concerns about the breadth of Stratton's regulation. One asked, "Do you know of any other case of ours that has even involved an ordinance of this breadth, that involves solicitation, not asking for money, not selling goods, but . . . I want to talk about Jesus Christ, or I want to talk about protecting the environment?"[19] The scope of the ordinance clearly moves it further from the would-be safe haven of Supreme Court dicta.

If the Supreme Court determines not to apply strict scrutiny against Stratton's ordinance, based on a decision that it is not an illegitimate prior restraint on speech or a content-based ban against anonymous speech, Stratton's ordinance is still subject to a degree of judicial scrutiny. "Intermediate scrutiny," which is applied to time, manner, and place restrictions on speech, still requires that the government restrict no more speech than is reasonably necessary to accomplish significant government interests.[20]

Broader Implications

Under either legal standard, the Supreme Court will have to weigh Stratton's interest in protecting the privacy of its residents and preventing crime and look carefully at the means it has employed to protect those interests. If the Court decides to apply strict scrutiny, Stratton will have to show that it has a compelling interest in protecting its residents and that the solicitation ordinance is narrowly tailored to promote that end. Under intermediate scrutiny, the village will be required to show that it is legislating to protect a significant state interest and is restricting no more speech than reasonably necessary.

Based on oral argument, it appears that many of the justices are not convinced that the ordinance even meets intermediate scrutiny. The justices, like the Jehovah's Witnesses, pointed to the fact that the ordinance allows for people to opt out of some or all solicitation through posting "no trespassing" signs or filling out a no solicitation form. Requiring registration on top of this appears to be a superfluous restriction on speech. Stratton insists that registration is vital to prevent fraud and give city officials a basis for investigation of scams or crimes.

But, as a series of questions asked during oral argument reveal, the regulation of noncommercial speech can only weakly be linked to the city's purposes. The attorney representing Ohio noted that registration would allow a better chance of locating a con man, but was interrupted with the question, "Can you give me an example of a con man who doesn't want any money or anything else?" When the beleaguered attorney suggested that a noncommercial "canvasser" might be a thief seeking to break into people's homes, a justice remarked: "A potential thief who is willing to rape and burgle, but stops short of failing to register at city hall, right?"[21] The attorney's suggestion that the ordinance might still deter some crime elicited perhaps the most telling comment of the entire argument. Justice Scalia asked, "How necessary is [the ordinance]? We can all stipulate that the safest societies in the world are totalitarian dictatorships. . . . One of the costs of liberty is to some extent a higher risk of unlawful activity."[22]

The case of *Stratton* raises fundamental questions about the regulation of religious and political speech. Licensing requirements, which appear innocent enough, can serve as a powerful censor. The long tradition of freedom of speech, freedom of publication, and freedom to share religious beliefs that we have enjoyed in the United States is increasingly being encroached on by municipal regulations and concerns for privacy. It is important the Supreme Court reaffirm that "whether distributors of literature may lawfully call at a home" properly "belongs . . . with the homeowner himself," not the government.[23] Because the "dangers of distribution [of literature] can so easily be controlled by traditional legal methods" (such as the law of trespass) that allow "each householder the full right to decide whether he will receive strangers as visitors," stringent proscriptions against door-to-door distribution of literature "can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas."[24] By defending the right to spread ideas from door-to-door, the Jehovah's Witnesses are seeking to protect a vital part of our constitutional heritage.

By defending the right to spread ideas from door to door, the Jehovah's Witnesses are seeking to protect a vital part of our constitutional heritage.

[1] See Henry J. Abraham, *Freedom and the Court 236*, 4th ed. (Oxford Univ. Press, 1982).

[2] 310 U.S. 296 (1940).

[3] See, eg., *Lovell v. Griffin*, 303 U.S. 444 (1938), *Schneider v. New Jersey*, 308 U.S. 147 (1939), *Marsh v. Alabama*, 326 U.S. 501 (1946).

[4] *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-151 (1969), citing inter alia cases involving the Jehovah's Witnesses such as *Lovell, Schneider, Cantwell, and Marsh.*

[5] Village of Stratton ordinance 1998-5.

[6] *Ibid.*, section 116.03(a).

[7] *Ibid.*, section 116.03(b).

[8] *Ibid.*, section 116.04.

[9] *Ibid.*, section 116.07(b).

[10] See *Watchtower Bible and Tract Society of New York v. Village of Stratton, Ohio*, No. 00-1737, Appendix to Petitioner's brief, pp. 167aa-230aa.

[11] See, e.g., *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 348 (1995); *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

[12] See, e.g., *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 795 (1988); *McIntyre*, 514 U.S. at 347.

[13] *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999).

[14] It is not clear if the permit that solicitors are required to carry includes the name of the solicitor. Lower courts appeared to assume that the permit does require the name of the person, but there is no example of a completed permit in the record, and the parties disagree.

[15] *McIntyre*, 514 U.S. at 343; see also *Talley v. California*, 362 U.S. 60 (1960) (striking down a ban on anonymous leafleting).

[16] See, e.g., *Lovell v. Griffin*, 303 U.S. 444 (1938); *Tucker v. Texas*, 326 U.S. 517 (1946); *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

[17] *McIntyre*, 514 U.S. at 353 (striking down a ban on anonymous campaign leafleting); *Buckley*, 525 U.S. at 199 (quoting *McIntyre*) (striking down a requirement that petition circulators wear badges with their names).

[18] *Hynes v. Mayor*, 425 U.S. 610 (1976).

[19] U.S. Supreme Court official transcript, *Watchtower Bible and Tract Society of New York, Inc., v. Village of Stratton, Ohio* (Feb. 26, 2002).

[20] *Clark v. Community for Creative Nonviolence*, 468 U.S. 288 (1984); *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

[21] U.S. Supreme Court official transcript, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, Ohio* (Feb. 26, 2002).

[22] *Ibid.*

[23] *Murdock v. Pennsylvania*, 319 U.S. 105, 148 (1943).

[24] *Ibid.*, p. 147.

I believe in an America where the **separation** of church and state is absolute—where no Catholic prelate would tell the president (should he be Catholic) how to act and no Protestant minister would tell his parishioners for whom to **vote**—where no church or church school is granted any public funds or political preference—and where no man is denied public office merely because his **religion** differs from the president who might appoint him or the people who might elect him.

I believe in an America that is officially neither Catholic, Protestant, nor Jewish—where no public **official** either requests or accepts instructions on public policy from the pope, the National Council of Churches, or any other ecclesiastical source—where no religious body seeks to **impose** its will directly or indirectly upon the general populace or the public acts of its officials—and where **religious liberty** is so indivisible that an act against one church is treated as an act against all.

—John F. Kennedy, in an address to the Ministerial Association of Greater Houston, Sept.12, 1960, in *Great Quotations on Religious Freedom,* compiled and edited by Albert J. Menendez and Edd Doerr (Amherst, N.Y.: Prometheus Books, 2002), p.74.


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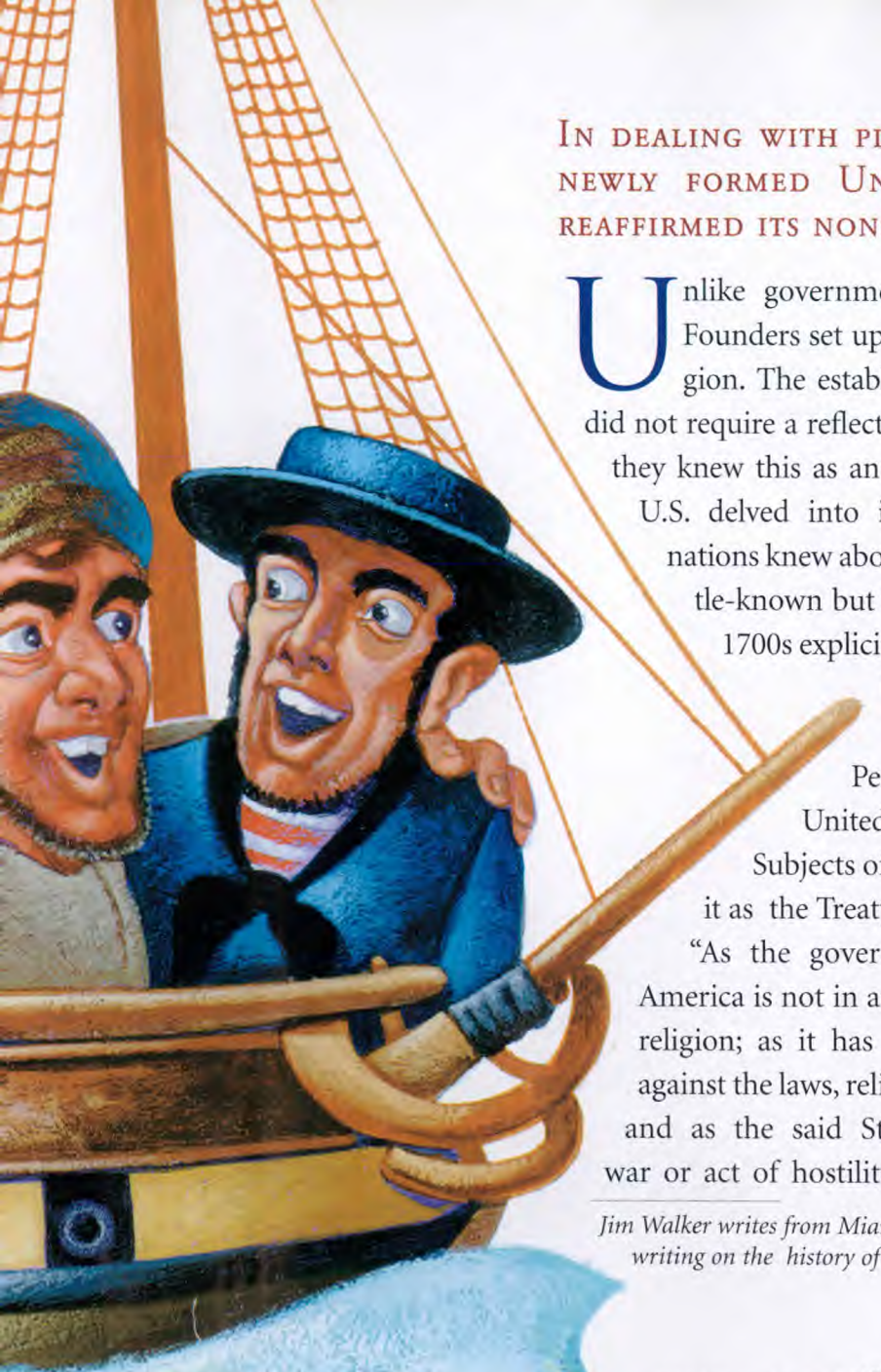

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STATE

By
JIM WALKER

IN DEALING WITH PIRATES AND TERRORISTS THE NEWLY FORMED UNITED STATES *of* AMERICA REAFFIRMED ITS NONRELIGIOUS STATUS.

Unlike governments of the past, the American Founders set up a government divorced from religion. The establishment of a secular government did not require a reflection to themselves about its origin; they knew this as an unspoken given. However, as the U.S. delved into international affairs, few foreign nations knew about the intentions of America. A little-known but legal document written in the late 1700s explicitly reveals the secular nature of the United States to a foreign nation. Officially called the "Treaty of Peace and Friendship Between the United States of America and the Bey and Subjects of Tripoli, of Barbary," most refer to it as the Treaty of Tripoli. In Article 11 it states: "As the government of the United States of America is not in any sense founded on the Christian religion; as it has in itself no character of enmity against the laws, religion or tranquillity of Musselmen; and as the said States never have entered in any war or act of hostility against any Mehomitan nation,

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it is declared by the parties that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two countries."[1]

The preliminary treaty began with a signing on November 4, 1796 (the end of George Washington's last term as president). Joel Barlow, the American diplomat, served as consul to Algiers and held responsibility for the treaty negotiations.[2] Barlow, who had once served under Washington as a chaplain in the Revolutionary Army, wrote the English version of the treaty, including Amendment 11. He forwarded the treaty to U.S. legislators for approval in 1797. Timothy Pickering, the secretary of state, endorsed it and John Adams concurred (by then in his presidency), sending the document on to the Senate. The Senate approved the treaty on June 7, 1797, and it was officially ratified by the United States with John Adams' signature on June 10, 1797.[3] During this multireview process, the wording of Article 11 never raised the slightest concern. The treaty became public through its publication in the Philadelphia *Gazette* on June 17, 1797.

The treaty is quite clear in stating that the United States government is not founded upon Christianity. Unlike the Declaration of Independence, this treaty represented U.S. law, as do all treaties, according to the Constitution (see Article VI, sec. 2). Although the Christian exclusionary wording in the Treaty of Tripoli lasted for only eight years and no longer has legal status, it clearly represented the feelings of our Founders at the beginning of the U.S. government.

Today some argue that our political system represents a Christian form of government and that Jefferson, Madison, *et al.*, had simply expressed Christian values while framing the Constitution. If this were true, then we should have a wealth of evidence to support it, yet just the opposite proves the case.

Although many of America's Colonial leaders practiced Christianity, our most influential Founders broke away from traditional religious thinking. They were strongly guided by ideas of the Great Enlightenment in Europe that had begun to sever the chains of monarchical theocracy—an institution deriving from a church-state coalition. Enlightenment figures such as Locke, Rousseau, and Voltaire greatly influenced our Founders; and Isaac Newton's mechanical and mathematical foundations served as a basis for their scientific reasoning.

There are well-intentioned calls for our nation to return to the Christianity of early America, but this is at best a utopian construct. While the culture of early America was nominally Christian, some historians have posited that no more than 10 percent—probably less—of Americans in 1800 were members of congregations.[4]

The Founders rarely practiced what today we might call Christian orthodoxy. Although they supported the free exercise of any religion, they understood the dangers of religion. Most of them believed in deism, and many attended Freemasonry lodges. Masonry welcomed anyone from any religion or nonreligion, as long as they believed in a Supreme Being. Washington, Franklin, Hancock, Hamilton, Lafayette, and many others accepted Freemasonry.[5]

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The Constitution reflects our Founders' views of a secular government that would protect the freedom of any belief or unbelief. Historian Robert Middlekauff observes that "the idea that the Constitution expressed a moral view seems absurd. There were no genuine evangelicals in the convention, and there were no heated declarations of Christian piety."[6]

George Washington revealed almost nothing to indicate his spiritual frame of mind, hardly a mark of a devout Christian. He rarely spoke about his religion, but his Freemasonry experience points to a belief in deism. Washington's initiation occurred at the Fredericksburg Lodge on November 4, 1752. He became a Master Mason in 1799; and he remained a Freemason until he died.[7]

To the United Baptist Churches in Virginia in May 1789 Washington said that every man "ought to be protected in worshiping the Deity according to the dictates of his own conscience."[8] After Washington's death, Dr. Abercrombie, a friend of his, replied to a Dr. Wilson, who had interrogated him about Washington's religion, "Sir, Washington was a Deist."[9]

Few would consider Thomas Jefferson a Christian in the usual sense. Jefferson believed in materialism, reason, and science. He never admitted to any religion but his own. In a letter to Ezra Stiles Ely, June 25, 1819, he wrote, "You say you are a Calvinist. I am not. I am of a sect by myself, as far as I know."[10]

In his *Defense of the Constitutions of Government of the United States of America* (1787-1788), John Adams wrote: "The United States of America have exhibited, perhaps, the first example of governments erected on the simple princi-

ples of nature; and if men are now sufficiently enlightened to disabuse themselves of artifice, imposture, hypocrisy, and superstition, they will consider this event as an era in their history. Although the detail of the formation of the American governments is at present little known or regarded either in Europe or in America, it may hereafter become an object of curiosity. It will never be pretended that any persons employed in that service had interviews with the gods, or were in any degree under the influence of Heaven, more than those at work upon ships or houses, or laboring in merchandise or agriculture; it will forever be acknowledged that these governments were contrived merely by the use of reason and the senses. . . . Thirteen governments [of the original states] thus founded on the natural authority of the people alone, without a pretense of miracle or mystery, and which are destined to spread over the northern part of that whole quarter of the globe, are a great point gained in favor of the rights of mankind."

Called the Father of the Constitution, James Madison also held an unconventional sense of Christianity. While he no doubt had respect for true Christian faith, he was cutting in his criticism of a state allied with church power. In 1785 he wrote the following in his "Memorial and Remonstrance Against Religious Assessments":

"During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity; in both, superstition, bigotry and persecution. . . . What influence in fact have ecclesiastical establishments had on civil society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the Civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been the guardians of the liberties of the people. Rulers who wished to subvert the public liberty may have found an established Clergy convenient auxiliaries. A just Government instituted to secure and perpetuate it, needs them not."

Benjamin Franklin revealed his perspective on matters of faith in his autobiography when, after mentioning his rejection of early religious training, he writes, "Some books against Deism fell into my hands . . . . In short, I soon became a thorough Deist." Dr. Priestley, an intimate friend of Franklin's, wrote of him: "It is much to be lamented that a man of Franklin's general good character and great influence should have been an unbeliever in Christianity, and also have done as much as he did to make others unbelievers" (Priestley's autobiography).[11]

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Evidence of the Constitution

Some of the most convincing evidence that our government did not ground itself upon Christianity comes from the very document that defines it—the United States Constitution. If indeed our framers had aimed to found a Christian republic, it would seem highly unlikely that they would have forgotten to leave out their Christian intentions from the supreme law of the land. In fact, nowhere in the Constitution do we have a single mention of Christianity, God, Jesus, or any Supreme Being. There occur only two references to religion, and they both use exclusionary wording. The First Amendment says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," and Article VI states, "No religious Test shall ever be required as a Qualification to any office or public Trust under the United States."

Thomas Jefferson interpreted the First Amendment in his famous letter to the Danbury Baptist Association on January 1, 1802: "I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and state."[12]

As Jefferson wrote in his autobiography in reference to the Virginia Act for Religious Freedom: "Where the preamble declares, that coercion is a departure from the plan of the holy author of our religion, an amendment was proposed by inserting 'Jesus Christ,' so that it would read 'A departure from the plan of Jesus Christ, the holy author of our religion;' the insertion was rejected by the great majority, in proof that they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mohammedan, the Hindoo and infidel of every denomination."[13]

James Madison, perhaps the greatest supporter for sepa-

ration of church and state, and whom many refer to as the Father of the Constitution, also held similar views, which he expressed in his letter to Edward Livingston, July 10, 1822: "And I have no doubt that every new example will succeed, as every past one has done, in shewing that religion and government will both exist in greater purity, the less they are mixed together."

Today, if ever our government needed proof that the separation of church and state works to ensure the freedom of religion, one only need to look at the plethora of churches, temples, and shrines that exist in the cities and towns throughout the United States. Only a secular government, divorced from religion, could possibly allow such tolerant diversity.

Only a secular government, divorced from religion, could possibly allow such tolerant diversity.

The Declaration of Independence

Some who think of America as founded upon Christianity present the Declaration as "proof." The reason appears obvious: the document mentions God. However, the God in the Declaration could not be describing Christianity's God. It describes "the laws of nature and of nature's God." This nature's view of God agrees with deist philosophy, and any attempt to use the Declaration as a support for Christianity will fail for this reason alone.

More significant, the Declaration does not represent the law of the land, as it came before the Constitution. The Declaration aimed at announcing a separation from Great Britain and listed the various grievances of the "United States of America." Today the Declaration represents an important historical document about rebellious intentions against Great Britain at a time before the formation of our independent government. Although the Declaration may have influential power, it may inspire the lofty thoughts of poets, and judges may mention it in their summations, but it holds no legal power today. Our presidents, judges, and police officers must take an oath to uphold the Constitution, but never the Declaration of Independence.

Of course, the Declaration depicts a great political document. It aimed at a future government upheld by citizens instead of a monarchy. It observed that all men "are created equal," meaning that we all come inborn with the abilities of life, liberty, and the pursuit of happiness. That "to secure these rights, governments are instituted among men." The Declaration says nothing about our rights being secured by Christianity, nor does it imply anything about a Christian foundation.

Common Law

According to the Constitution's Seventh Amendment: "In suits at common law . . . the right of trial by jury shall be preserved and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

Some hold that common law came from Christian foundations, and therefore the Constitution derives from it. They use various quotes from Supreme Court justices proclaiming that Christianity came as part of the laws of England, and therefore from its common law heritage.

Thomas Jefferson elaborated about this view of the history of common law in his letter to Thomas Cooper on February 10, 1814: "For we know that the common law is that system of law which was introduced by the Saxons on their settlement in England, and altered from time to time by proper legislative authority from that time to the date of the Magna Charta, which terminates the period of the common law. . . . This settlement took place about the middle of the fifth century. But Christianity was not introduced till the seventh century; the conversion of the first Christian king of the heptarchy having taken place about the year 598, and that of the last about 686. Here then, was a space of two hundred years, during which the common law was in existence, and Christianity no part of it. . . . If anyone chooses to build a doctrine on any law of that period, supposed to have been lost, it is incumbent on him to prove it to have existed, and what were its contents. These were so far alterations of the common law, and became themselves a part of it. But none of these adopt Christianity as a part of the common law. If, therefore, from the settlement of the Saxons to the introduction of Christianity among them, that system of religion could not be a part of the common law, because they were not yet Christians, and if, having their laws from that period to the close of the common law, we are all able to find among them no such act of adoption, we may safely affirm (though contradicted by all the judges and writers on

earth) that Christianity neither is, nor ever was a part of, the common law."[14]

Virtually all the evidence that attempts to connect a foundation of Christianity upon the government rests mainly on quotes and opinions from a few of the Colonial writers who professed a belief in Christianity. Sometimes the quotes come from their youth before their introduction to Enlightenment ideas or simply from personal beliefs. But statements of beliefs, by themselves, say nothing about their being a foundation of the U.S. Government.

There were some who wished a connection between church and state. Patrick Henry, for example, proposed a tax to help sustain "some form of Christian worship" for the state of Virginia. But Jefferson and others did not agree. In 1777 Jefferson drafted the Statute for Religious Freedom, which became Virginia law in 1786. Jefferson designed this statute to completely separate religion from government. None of Henry's Christian views ever got introduced into Virginia's or the U.S. Government's law.

Unfortunately, later developments in our government have clouded early history. The original Pledge of Allegiance, authored by Francis Bellamy in 1892, did not contain the words "under God." Not until June 1954 did those words appear in the pledge. The words "In God We Trust" did not appear on our currency until after the Civil War. And too many Christians who visit historical monuments and see the word "God" inscribed in stone automatically impart their own personal God of Christianity, without understanding the framers' deist context.

In the Supreme Court's 1892 *Holy Trinity Church v. United States,* Justice David Brewer wrote that "this is a Christian nation." However, Brewer wrote this *in dicta,* as a personal opinion only, and it does not serve as a legal pronouncement. Later Brewer felt obliged to explain himself: "But in what sense can [the United States] be called a Christian nation? Not in the sense that Christianity is the established religion or the people are compelled in any manner to support it. On the contrary, the Constitution specifically provides that 'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.' Neither is it Christian in the sense that all its citizens are either in fact or in name Christians. On the contrary, all religions have free scope within its borders. Numbers of our people profess other religions, and many reject all."[15]

"They all attributed the peaceful dominion of religion in their country mainly to the separation of church and state."

Conclusion

Acting on political grievances against Great Britain, the framers of the Constitution derived an independent government out of Enlightenment thinking. Our Founders paid little heed to political beliefs about Christianity. They gave us the First Amendment as a bulwark against an establishment of religion and at the same time ensuring the free expression of any belief. The Treaty of Tripoli, signed in the early days of this republic and an instrument of the Constitution, clearly stated our non-Christian foundation. And while we inherited common law from Great Britain, this law clearly derived from pre-Christian Saxons and cannot be seen as a simple codification of biblical Scripture.

"They all attributed the peaceful dominion of religion in their country mainly to the separation of church and state. I do not hesitate to affirm that during my stay in America I did not meet a single individual, of the clergy or the laity, who was not of the same opinion on this point"[16]

[1] Hunter Miller, ed, *Treaties and Other International Acts of the United States of America,* vol. 2, docs. 1-40: 1776-1818. D.C.: U.S. Government Printing Office, 1931).

[2] James Woodress, *A Yankee's Odyssey,* the Life of Joel Barlow (J P. Lippincott Co., 1958).

[3] Miller.

[4] Robert T. Handy, *A History of the Churches in U.S. and Canada* (New York: Oxford University Press, 1977).

[5] John J. Robinson, *Born in Blood* (New York: M. Evans & Co., 1989).

[6] Robert Middlekauff, *The Glorious Cause* (New York: Oxford University Press, 1982).

[7] Robert W. Miller, "A Republic—Can We Keep It?" *Education,* Summer 1987.

[8] F. Andrews Boston, et al., *The Writings of George Washington* (Charleston, S.C., 1833-1837).

[9] In John E. Remsburg, *Six Historic Americans* (New York: Truth Seeker Co.).

[10] Merrill D. Peterson, *Thomas Jefferson Writings* (Library of America, 1984).

[11] In Remsburg.

[12] Peterson.

[13] *Ibid.*

[14] *Ibid.*

[15] Robert Boston, *Why the Religious Right Is Wrong About Separation of Church and State* (Prometheus Books, 1993).

[16] Alexis de Tocqueville, *Democracy in America* (1835), Chap. XVII.

LIBERTY BRIEFS

Churches and Politics

The House of Worship Political Speech Protection Act (H.R.2357) has garnered 113 cosponsors. The bill states that it is designed to amend the Internal Revenue Code of 1986 to permit churches and other houses of worship to engage in political campaigns. The bill would permit houses of worship (but not other 501[c] [3] nonprofit entities) to not only endorse political candidates, but to use charitable donations to churches to fund political campaigns.

Exemption Under Scrutiny

A case challenging a cleric calculation of parsonage exemption has metamorphosed into questioning of whether the exemption violates the establishment clause. In an unusual step, the ninth Circuit Court of Appeals focused on the issue, even though neither litigant raised it. The court's action has brought unwelcome attention to the special tax deduction that is restricted to members of the clergy.

Attitudes About Religion

The Pew Forum on Religion and Public Life reports that 80 percent of Americans view religion's influence in this world as positive; 73 percent believe that it would be a good thing if the influence of religion on this world were increasing; 51 percent believe that a lesson from September 11 is that there is too little religion in the world; while only 28 percent believe that there is too much religion. Further, they report that 67 percent of Americans believe the U.S. is a "Christian nation" and 58 percent believe America's strength is based on religion. At the same time, however, 84 percent of Americans believe that you can be a good American without having religious faith, and 75 percent believe many religions can lead to eternal life.

Evolution Monopoly Challenged

A movement to add alternative theories of human origins to public school science curriculums is gaining momentum. The movement is facing an active challenge from Americans United for Separation of Church and State and from some in the scientific community. Some scientists have come out in favor of including additional theories of origins, however, noting that there is significant evidence of design in our natural world and that recent research raises serious questions about the validity of the evolutionary theory.

International Criminal Court

A permanent international criminal court (ICC) to adjudicate gross human rights abuses is close to becoming a reality. While Canada has been leading the efforts to create the ICC, the court remains intensely controversial in the United States, where there are continuing fears of lost sovereignty and the potential use of the ICC to make political statements against U.S. policy.

A Dimension of Security

The Fifth World Congress of the International Religious Liberty Association (IRLA) met June 10-13, 2002 at the Westin Philippine Plaza Hotel in Manila, Philippines. The timely theme was "Religious Liberty: A Basis for Peace and Justice." Chair of the meeting was Dr. Denton Lotz, president of the IRLA, secretary general of the Baptist World Alliance.

The Congress was opened by the president of the Philippines, Dr. Gloria Macapagal Arroyo, while Professor Abdelfattah Amor, United Nations' Special Rapporteur Regarding Freedom of Religion and Belief, gave the keynote address.

Robert Seiple, former U.S. Ambassador-at-large for Religious Liberty, spoke about "Freedom of Religion: The Missing Dimension of Security." Time was set aside for a special Hearing Committee to receive reports of egregious violations of religious liberty.

ILLUSTRATION BY RALPH BUTLER

SCHOOL VOUCHERS AND SCHOOL EQUITY

By Paul E. Peterson

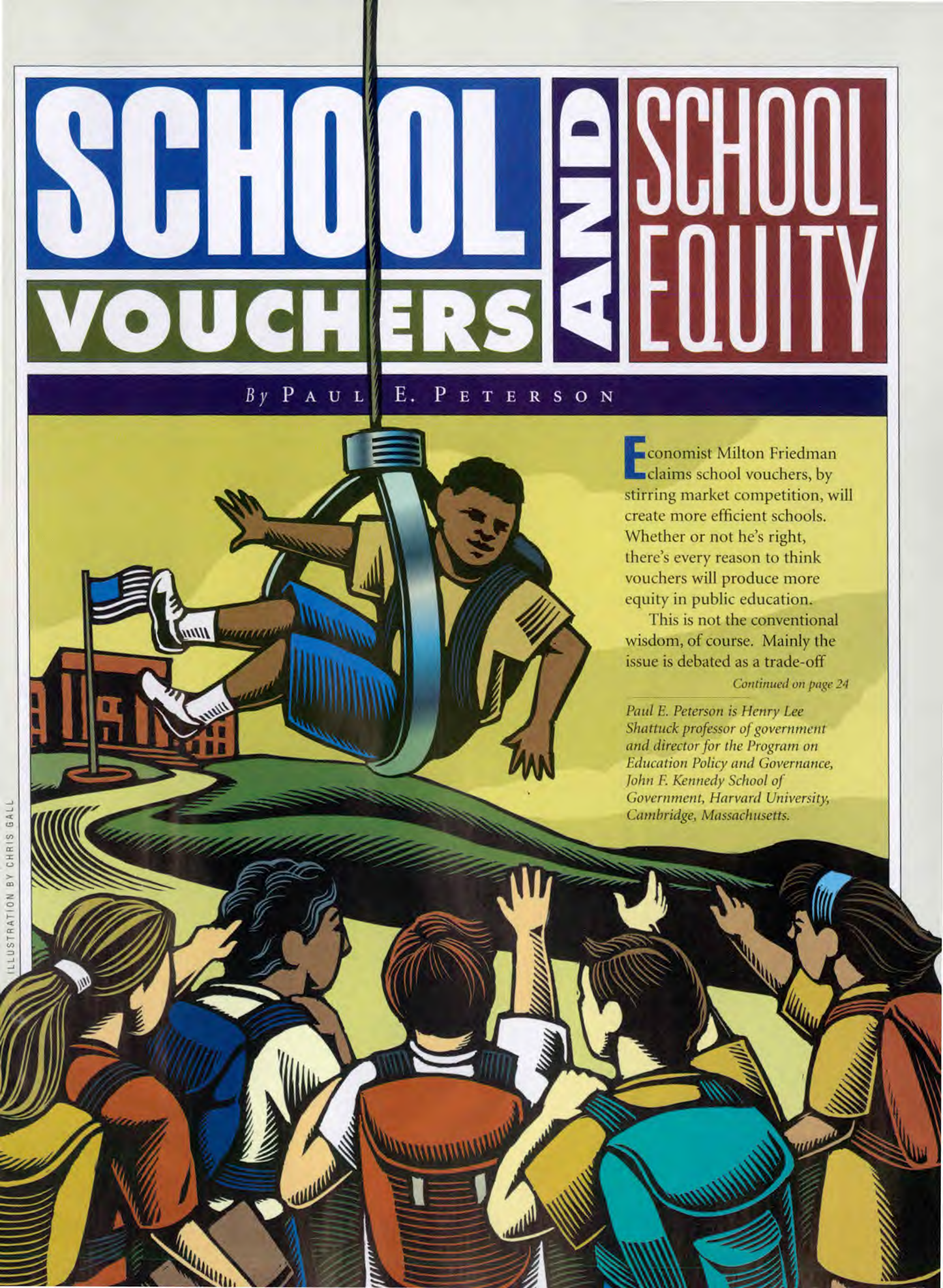

ILLUSTRATION BY CHRIS GALL

Economist Milton Friedman claims school vouchers, by stirring market competition, will create more efficient schools. Whether or not he's right, there's every reason to think vouchers will produce more equity in public education.

This is not the conventional wisdom, of course. Mainly the issue is debated as a trade-off

Continued on page 24

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By John W. Whitehead

NO Abaya FOR McSally

When Lt. Col. Martha McSally takes to the skies, she is the embodiment of a modern-day hero: courageous, selfless, and loyal to God and country. She is a patriot who has willingly put her life on the line to protect American interests abroad—a perfect example of how far women have come in their fight for equality. ❖ But upon Lt. Col. McSally's landing at the Saudi Arabian base where she was stationed with the U.S. Air Force to carry out combat search and rescue missions for operations in the Middle East, her faithful service to her country was quickly overshadowed by one unavoidable fact—she is a woman. ❖ As a woman in the military, McSally has fought to overcome a number of hurdles—and in the process accomplished a great deal for herself and her country. She was one of the first seven women trained by the Air Force as a fighter pilot. During a 1995-1996 tour of duty in Kuwait she became the first woman in the Department of Defense's history to fly a combat sortie in a fighter aircraft. She was promoted to the rank of major, and then lieutenant colonel, four years ahead of her peers. This rare endorsement is given only to the most capable,

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ILLUSTRATION BY JAMES MELLETT

competent, and professional officers and only to those who are identified as future leaders in the Air Force.

Yet even these notable distinctions were not enough to afford her the basic respect and treatment given to her male colleagues in Saudi Arabia. In fact, because she is a woman, when off the base McSally was required by U.S. military policy to wear the traditional Muslim abaya—a black head-to-toe robe and head cover worn in certain Muslim cultures and perceived as a sign of subordination to men. This is in spite of her religious objections—McSally is a Christian—and her repeated requests that she be allowed to wear appropriate American clothing, as her male counterparts do. The policy, which applies to all female joint operations military personnel in the U.S. Armed Forces in the kingdom of Saudi Arabia—about 1,000 servicewomen in all—went so far as to force servicewomen to ride in the back of military vehicles, subordinate even to the men under their command.

Neither the U.S. State Department nor the government of Saudi Arabia actually requires American service members to wear traditional Muslim attire for any reason. In fact, the Saudis do not require non-Muslim women to wear the abaya at all. And servicemen are actually prohibited from wearing traditional male Muslim clothing while off base. Indeed, the regulation requiring Lt. Col. McSally to wear the abaya is a peculiarly American rule.

Furthermore, although Islamic values and cultures in other countries such as Kuwait, Pakistan, and Afghanistan are as strong as they are in Saudi Arabia, the military has yet to place similar restrictions on female military personnel stationed in those, or any other, countries.

Considering the fact that our host country does not even insist on such measures, the military's insistence that the established dress code gives greater respect to the religious and cultural customs of the community, that it avoids public conflict, and that it aids the U.S. military in carrying out its mission simply does not comport with reality. Especially when considered in the context of the war on terrorism, with the national spotlight being redirected to focus in on the plight of the Afghan women, McSally's humiliating situation seems even more incomprehensible and ridiculous.

Five U.S. senators evidently agreed that the regulations might violate the service members' "rights and liberties as U.S. citizens." With Bob Smith (R-N.H.) as spokesperson, Jesse Helms (R-N.C.), Don Nickles (R-Okla.), Susan Collins (R-Maine), and Larry Craig (R-Idaho) went so far as to urge Defense Secretary Donald Rumsfeld to do a top-level review of the policy. They also felt the policy would discourage other qualified women from enlisting in military service.

Should a Christian, whose right to religious freedom is protected by the U.S. Constitution, be forced to adopt Islamic dress and adhere to Islamic customs just because she is protecting U.S. interests on foreign soil?

After all, at the same time that American politicians are calling for the liberation of Muslim women in Afghanistan, should we be forcing American servicewomen in Saudi Arabia to violate their constitutional rights and be treated as second-class citizens? Should a decorated military hero be forced to take on a subservient role, despite her rank, simply because she is a woman? Should a Christian, whose right to religious freedom is protected by the U.S. Constitution, be forced to adopt Islamic dress and adhere to Islamic customs just because she is protecting U.S. interests on foreign soil?

To McSally, a decorated officer who has flown 100 combat hours over Iraq and has served as flight commander and trainer for combat pilots deployed to Kosovo and South Korea, the policy seemed to contradict the very principles she and so many other brave Americans have been fighting for. That is, the right to express one's religious beliefs freely; the right not to be forced to adopt someone else's religious beliefs; the right to be treated equally; the right not to be subjected to gender discrimination.

For several years before being assigned to Saudi Arabia, McSally had been working

within the system to have the dress policy for Saudi Arabia changed. And for as many years military brass promised policy reviews that never took place.

But when she was assigned to Saudi Arabia, the issue became much more personal. So McSally once again voiced her personal objections to the policy—and requested accommodation of her beliefs. Two days prior to her departure for Saudi Arabia, McSally received e-mails from military personnel threatening her with court-martial if she didn't follow the order to wear the abaya. Even before she'd set foot on Saudi soil, the U.S. military was forcing her to decide between following an order or following her conviction as an officer and a Christian. One military commander did urge her to keep working within the system—to abide by the policy long enough to get to the Saudi base, to give the military brass stationed in Saudi Arabia the chance to see her as an officer, a warrior, a fighter pilot—so that she would have a better chance of bringing about a change from the inside.

So McSally flew into Prince Sultan Air Base, Saudi Arabia, only to be met by a young enlisted man, who informed her that she had to sit in the back of the vehicle and cover herself with an abaya. There it was, the middle of the night, and she was traveling from one base to another in a Suburban with dark tinted windows, with a group of American military men wearing collared shirts and jeans. Yet only Lt. Col. McSally, the highest-ranking person in the group, was forced to sit in the back seat and put on the abaya and the abaya scarf.

During the course of the 13 months that followed, there were numerous times when McSally found herself having to decide between following her faith and oath of office or following an order she believed to be unconstitutional. Time and again she made the choice to fulfill her military duty. Yet when given a chance to leave the base for R and R, always wearing the abaya and accompanied by a male, McSally chose to stand on principle, stay on base, and work toward a change in the policy.

McSally waited and waited for change. For more than six years she had tried to bring about a change to these policies from the inside. For 13 months she abided by this policy herself. And after the bidding of the five Republican senators she waited another four months for a promised policy review. Finally in December 2001 McSally decided it was time to have the third branch of the government take a look at the policy. With the help of the Rutherford Institute she decided to try to bring about a change from the outside.

"I'm a follower of Christ, and my Christian faith is the centerpiece of who I am. To be forced to put on the garment of a religion that I do not believe in and a faith I do not follow, to me, was unacceptable," shared McSally. "Second, the women whom this affects—the officers and enlisted personnel serving over there—we are putting our lives on the line to serve our nation, and we are over in Saudi Arabia as officials of the United States government and the United States military, doing a mission alongside the men.

"Wearing the abaya, sitting in the back seat, not being able to drive and having your subordinate have to claim you as his wife, as opposed to his supervisor, is so demeaning and so humiliating. To treat just some of our people in that way for reasons that I still haven't been able to get a very solid answer on is unacceptable."

Within a matter of weeks after the Rutherford Institute had filed suit on behalf of McSally and had taken the media by storm, General Tommy Franks issued a new directive about the abaya. Local commanders would revise policies on wearing the full body veil from mandatory to "strongly encouraged."

Ultimately, the lawsuit against Secretary of Defense Rumsfeld comes down to several key constitutional issues. One is the freedom of religion. Lt. Col. McSally is, in effect, forced to wear a religious outfit—which the abaya is—required by Islamic law for women to wear in Saudi Arabia—and to pretend she's Islamic, which violates her religious freedom as a Christian.

The second is a course of action embraced in the terms of the once legislated and then judicially overturned (not because the principle was erroneous, but because the act gained its power over the states by improperly invoking the commerce clause) Religious Freedom Restoration Act, which says that if the government in any way violates a person's religious freedom, it has to show a compelling state interest to do so. Even if a compelling state interest can be shown, the government has to show that it is being accomplished by the least restrictive means possible.

Third is the freedom of speech. By forcing Martha McSally to wear the abaya, the military is indirectly forcing her to voice a belief that is not her own—namely, to buy into what the abaya symbolizes: that women are the property of men.

Fourth is an establishment clause concern.

Because the government is purchasing the abaya as military issue and forcing women to wear it, it's establishing a religion and, thus, violating the separation of church and state.

And finally, there is freedom from gender discrimination. This military policy is obviously targeted at American military women. It's very clear that women are treated differently than men according to the policy, and, therefore, it's a violation of the Constitution.

With the attention of the world upon us, is the disparaging treatment of this servicewoman an example we want to set for how to respect women and those members of our Armed Forces who are placing their lives on the line to protect our freedoms?

It is especially during times of crisis that we must rely on our government—and our government leaders—to respect and stand by the freedoms afforded us in our U.S. Constitution.

As part of her oath of office Lt. Col. McSally pledged to "support and defend the Constitution." Thus, she believes, as does the Rutherford Institute, that the protection of the U.S. Constitution applies to all American servicemen and women, whether they are serving their country at home or abroad. Furthermore, even in service to her country, Martha McSally is first and foremost a citizen of the United States and entitled to the protections of the U.S. Constitution.

As a result of intense media coverage over the lawsuit, some further policy revisions were instituted, making it strongly recommended, rather than required, that a woman sit in the back seat and be accompanied by a male when off base. Citing these changes, attorneys for Rumsfeld filed a motion in federal court, asking that McSally's case be dismissed.

But contending that in a military environment a strongly encouraged or recommended statement by a four-star general to a young enlisted woman can easily be construed as an order, McSally and institute attorneys are pushing forward. McSally wants to know that in six months' time, someone won't come right back and make the policy mandatory again.

As McSally says from her own experience, "I've been in several situations where I was strongly encouraged to do something, and that was essentially a code word that we had all better do whatever they were talking about. So this language is troubling, because I would hope that the abaya would truly be optional, that a woman would feel free to make an informed choice as to whether she wants to wear it or not, and that nobody would be coercing her, even subtly."

It hasn't been an easy fight for freedom. Despite the support of some within the military and a great deal of public and media support from around the world, she continues to find herself on the firing line. Suddenly, because Lt. Col. McSally dared to raise the issue and say, "This is unconstitutional, it's un-American, and it's got to change," she is being told that her choices and actions in this matter are disloyal and unprofessional, that she is exuding poor leadership.

And with each new criticism comes a reairing of the same military mantra about cultural sensitivities, forced protection issues, and absolute obedience. One critic went so far as to declare that it wouldn't hurt to wear the abaya. "Well, it didn't hurt Rosa Parks to sit in the back of the bus, either," replied McSally, "but that's not the criteria we use for whether something's right or wrong." Indeed, as McSally has pointed out numerous times, would Americans support the military's claims if they were being used to justify treating Black service members like second-class citizens during apartheid in South Africa?

There are some who have criticized Martha McSally for addressing these issues during a time of war. But it is especially during times of crisis that we must rely on our government—and our government leaders—to respect and stand by the freedoms afforded us in our U.S. Constitution. Lt. Col. McSally took an oath of office to defend the Constitution—she is willing to lay down her life for it and for the freedoms embodied within it. As a loyal citizen of the United States she has a right to enjoy the same freedoms she has sworn to defend.

VIEWPOINT

Your Other Right

By Bruce N. Cameron

The main problem with becoming a lawyer is not lawyer jokes; it is going to law school. I remember my fears. Most college seniors who wanted to get into my school were rejected. Those who got in nursed the general suspicion that they might not be as smart as the rest of the people who made it. The unspoken goal was to appear smarter than you were.

One casualty showed up the first day in a huge classroom of new students. As the professor was yelling out names I managed to respond "Present" to "Cameron." Moments later, when the professor shouted out "Cohen" three guys responded "Present." One of them, sitting right in front of me, immediately amended his answer to "No—Chase."

I figured the guy was so nervous he couldn't get his own name right. That made me feel better. At least I could correctly recognize and recite my own last name. When this nervous fellow and I later became best friends, he told me that he had recently changed his name from Cohen to Chase. But when the pressure was on, he reverted to his old name.

Pressure is like that. It strips away pretense. It reveals what you are really thinking and tests the fundamentals. Have you ever helped someone learn to drive? Both my automobiles and I have survived this process with my two children. With the pressure on, I'd direct a right turn. As we began to slew left, I'd yell out, "Yer other right."

"Yer other right" is something the regular readers of *Liberty* need to consider somberly. For years *Liberty* magazine has been warning against, and at times seeming to heap abuse on, the Religious Right. In tune with the secular press, *Liberty* has often been overly wary of conservative evangelical leaders who believe they have an obligation to God to try to promote godly principles in the public square.

Since *Liberty* is published by a church that is theologically conservative and at times stridently evangelical, the obvious question is "What is going on?" "How does this make any sense to be part of an attack on Christians who have very similar religious beliefs?"

What is "going on" is that *Liberty* fears that the Religious Right will at some point trample the rights of those who disagree. Now, as the United States enters a new era of "pressure," let me challenge *Liberty* readers by calling your attention to "yer other right." Let's consider the fundamentals again.

Since September 11, United States citizens have been under pressure from an external source. That, however, is not the only source of pressure. The week of February 17, 2002, *USA Today* ran a series of special reports on what the paper calls a "values gap" in the United states. Those who attend church often tend to vote Republican, and those who don't tend to be Democrats. According to the February 18, 2002, edition of the paper, a new *USA Today*/CNN/Gallup poll shows that the country remains "evenly divided on politics and fractured on values issues." How big is the divide? The poll revealed that of those who planned to vote, 44 percent planned to vote Republican and 42 percent planned to vote Democratic.

This represents a huge shift that has happened during my lifetime. The *USA Today* series was based on an eight-month examination and recent polling. If the paper is right that the fissure in the country between Republicans and Democrats is partly a division between values, then isn't that precisely what has historically concerned the readers of *Liberty?*

And what kind of candid statements does this division produce? The February 18, 2002, edition of *USA Today* quoted well-known Democratic strategists Stan Greenberg, James Carville, and Bob Shrum as writing that the September 11 attacks create "a moment of opportunity for Democrats" and went on to

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describe how this "opportunity" involved equating conservative Christians with Afghanistan's Taliban fundamentalists.

In response, that same article quoted Ed Goeas, a Republican pollster and strategist, as saying about the Greenberg, Carville, and Shrum team that "they directly compare fundamentalist Christians, or conservative Christians, with fundamentalist Muslims."

Stop just a minute to consider this claim. Here are prominent political strategists; strategists who have enjoyed access to government at the highest levels—who believe a winning political strategy is to equate conservative Christians with the Taliban.

What is the United States currently doing to the Taliban?

Talking about something, getting a polite reception for your ideas, having your ideas discussed as a viable political strategy, is the first step toward actually implementing those ideas. Everyone, especially serious Christians, should be sobered by suggestions from the other side of the values divide that conservative Christians are the functional equivalent of the people that we as a nation are killing. To those who have long been warning about the danger to our freedoms from the Religious Right, I say look more closely at "yer other right."

To those who have long been warning about the danger to our freedoms from the **Religious Right**, I say look more closely at "yer other right."

I began writing this article right after I returned from the National Religious Broadcasters (NRB) Convention. If there is any group that reflects the Religious Right or Evangelical Right, this is it. These are the conservative Christians who own the radio and television stations. These are the book publishers, these are the Internet giants of the Christian world.

John Ashcroft, the attorney general of the United States, addressed those attending the NRB convention. Ashcroft, as the principal law enforcement officer of the United States, is currently under the most extreme pressure because of the continued threat of terrorist attacks. If any single person in the U.S. government personifies the Religious Right today, it is John Ashcroft, a man who hosts Bible studies in his office each morning.

So John Ashcroft, the most prominent government representative of the Religious Right, was speaking to the media leaders of the Religious Right. Under the intense pressures of the day, there was no need for pretense. No reason for pretense.

John Ashcroft started his discourse by speaking about the constitutional basis for our freedoms in the United States. But the U.S. Constitution, Ashcroft continued, is not ultimately the source of our liberty. He quoted the preamble to the Constitution, which points to the "Creator" as the ultimate source of human freedom. This God-based, Bible-revealed, foundation for religious freedom, according to Ashcroft, guarantees the right of every citizen to freely choose their own religious beliefs—even beliefs that Ashcroft personally rejects. In the clearest possible terms, Attorney General Ashcroft painted a picture of a God who gives each human the complete freedom to accept or reject Him.

When John Ashcroft bottoms our religious freedom upon God-given and not human-issued rights, what stronger lockbox could we have?

And how did this group of Religious Right leaders respond to this kind of talk about the rights of citizens to reject the very religious beliefs they were earnestly promoting? They not only applauded Ashcroft's declaration of a God-based right to religious freedom; they gave him a standing ovation.

I heard not a murmur of dissent anywhere in the audience. No one I spoke to later at the NRB convention expressed even the slightest concern about Ashcroft's declarations of religious liberty.

What I observed at the National Religious Broadcasters Convention and what I read about leading Democratic strategists trying to portray conservative evangelicals as another type of Taliban reflect a broader movement in this country. Which side of the political spectrum most appears to consistently attack free speech on college campuses—with "speech codes" that

prohibit "offensive" ideas? Which side of the political spectrum promotes the idea of hate crimes—the concept that the unusual punishment for terrible crimes is not sufficient if the criminal had some political or ideological basis for the crime?

The time may have come to consider again the fundamentals of Christian belief and pay better attention to the direction in which we are heading.

We need to be very careful about aiming and

firing our weapons at fellow Christians. The teaching of 1 Corinthians 6:1-7 is that we should not air our disputes with fellow Christians before the world. It does nothing for the cause of Christ for us to be attacking fellow Christians. Instead, the apostle Paul tells us, such disputes defeat the goals of Christianity.

Luke 9:49 records that the apostle John discovered a man who was not one of the disciples of Jesus "driving out demons" (NIV)* in the name of Jesus. John became quite exercised about this and tried to stop the man. It didn't work, so John went to Jesus to get help in stopping this fellow. Jesus refused, saying, "Do not stop him . . . for whoever is not against you is for you" (verse 50, NIV). This is advice worth heeding. Just because a fellow Christian may not be "one of us," if they are working in the name of the Lord and are "not against" us, then Jesus says to leave them alone.

Standing down our weapons against fellow Christians is the first step. The second step is to stand down our weapons against government officials. Too many Christians loved to hate President Bill Clinton. His obvious character defects made him an easy target. Is it possible that the Carville/Greenberg/Shrum strategy of equating Christians with the Taliban arises in part from the public beating that some Christians gave Bill Clinton? If so, it is very regrettable.

Jesus and His disciples were very concerned about arousing the wrath of the government against them. Peter admonished us to "show proper respect to everyone: Love the brotherhood of believers, fear God, honor the king" (1 Peter 2:17, NIV). Needless to say, the Roman leaders were far more corrupt than any of those who ran the country under the Clinton administration. Yet Peter calls on us to show "proper respect" and to "honor the king."

While there is a substantial difference between the rights of Christians in the United States today and the "rights" of those who lived under the Roman Empire, the practical side of this advice to refrain from poking government officials in the eye still remains. There is neither any "upside" for Christians attacking government officials nor any need. Paul reminds Christians in 2 Corinthians 10:3-5 that we do not "wage war as the world does" (NIV). Instead, our weapons are "divine power to demolish strongholds." It is foolish to think that publically attacking the moral failures of government officials is the best way to convince others to avoid that kind of conduct. Instead, Christians have available to them divine power to help convert the hearts of those around us.

The real power of Christians lies in turning away from attacking each other and relying instead on the divine power available to us to change the hearts and minds of those around us. That, too, is "yer other right."

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—Continued from page 15

between efficiency and equity. Many begin with the premise that public schools, though not very good, are at least "common schools," serving all citizens alike. Of course, no one, not even the most militant public school advocate, actually believes this.

Consider, for example, the current system of funding public education, in which half the revenue comes from the local property tax. Under this arrangement fancy residential suburbs such as Concord and Scarsdale enjoy lavish facilities, while Revere and Yonkers struggle to hang on. Nor can one dismiss fiscal inequities as temporary problems soon to be resolved by equity cases brought in state courts. The Supreme Court years ago said fiscal inequity was not contrary to the federal constitution, and—careful studies show—state courts have had in most cases only marginal impacts on legislative policy.

Or consider the growing rate of racial segregation within the public system. In 1997, 69 percent of African-Americans were attending predominantly minority schools, up from 64 percent in 1973. For Latinos the upward trend is much steeper, from 54 to 75 percent over the past 25 years.

Above all, the test score gap between central city and suburb, between Black and White, remains disturbingly large despite a wide range of federal interventions, from Head Start to compensatory education, designed to bring it to an end. According to a 1996 survey, only 43 percent of urban students read at a basic level, compared with 63 percent of students in nonurban areas.

But if inequities abound in public education, won't vouchers simply make them worse? Most ordinary African-Americans and Latinos think otherwise. Support for vouchers is greatest among minority families—especially those living in central cities, who suffer the greatest disadvantages from the current system. According to a survey undertaken at Stanford, 90 percent of the inner-city poor favor a voucher plan, compared with 60 percent of Whites who live in more advantaged suburban areas. When asked if they "strongly" favor a voucher plan, the percentages are 61 percent for poor urbanites, compared to just a third of upper-middle-class suburbanites—the winners under the current system.

SCHOOL AND EQUITY VOUCHERS

Some think the establishment clause of the Constitution's First Amendment **forbids** vouchers; others wonder how a program that places all schools, religious and secular, on an equa footing **"establishes"** anything.

With strong support among minority Americans fed up with central-city schools, vouchers are gaining ground. Some developments include:

Signing by Governor Jeb Bush of a voucher bill that in a couple of years could potentially affect more than 200,000 children in Florida.

Supreme Court refusal to rule unconstitutional Milwaukee's expanded voucher program involving up to 15,000 students and all of the city's private schools, religious and secular.

Ohio legislature's repassage of the Cleveland voucher program, with broad bipartisan support, after the state supreme court ruled the program not to be in violation of the church-state clause of either the federal or state constitution.

Initiation of a privately funded voucher program offering 40,000 scholarships to winners of a nationwide lottery.

Vouchers to all students from low-income families living in the Edgewood Independent School District (EISD) in San Antonio.

Will vouchers add to inequity? Much depends on the particulars of a specific voucher program, but consider the following findings from national data as well as several evaluations my colleagues and I are conducting:

Consider the question of racial segregation. Nationwide, private schools are more integrated

than public schools, and, of the voucher programs for which we have ethnic data, all were reducing racial segregation. Two factors produce this result: (1) private schools are less tied to residential boundaries, making it less likely that the ethnic composition of the school simply replicates the rigid racial lines of most neighborhoods; (2) private schools are often religious, providing a common tie that cuts across racial lines.

Minority students seem to learn more in private schools, especially after the early grades. In a carefully controlled experiment in New York City, voucher students—almost all minority—were found to have achieved, after one year, three points more in reading, six points more in math than did an essentially identical group of public school students. If these gains accumulate in subsequent years, much of the racial gap in test scores can be eliminated.

The church-state question is sometimes set up as an equity issue, but in fact it is not. Every other industrial country in the world, many of them a good deal more egalitarian than the United States, is funding religious schools. Some think the establishment clause of the Constitution's First Amendment forbids vouchers; others wonder how a program that places all schools, religious and secular, on an equal footing "establishes" anything.

In my view, the most serious equity issue is not the constitutionality question but the possibility that private schools may cream off the better students. Like the separator in the shed by the farmhouse door, schools have for centuries found ways to swirl the milk until they can skim the best off the top. The elite suburban schools have even found a way of letting the housing market serve as their cream separators.

So when vouchers for poor families are proposed, the accusation most generally believed is that they will cream, cherry-pick, separate and divide. According to President Bob Chase at the National Education Association's annual convention, vouchers are like "applying leeches and bleeding a patient to death." North Carolina's governor, Jim Hunt, recently made the same analogy: "Vouchers are like leeches. They drain the lifeblood—public support from our schools. . . . They are creating separate and unequal school systems."

The creaming issue was among the first to surface in the debate over the voucher program in San Antonio. Students from all low-income families in Edgewood were offered a handsome $3,600 scholarship for elementary school and $4,000 for high school, more than enough to cover tuition at most San Antonio private schools. The voucher's duration covers the child's remaining school years; new vouchers have been promised for the next nine years.

The Texas Federation of Teachers claimed that the private schools would "cherry-pick" which students they want, saying the program would "shorten the honor roll" in public schools. "Right now I don't have the profile of every child," said Edgewood's school superintendent, Delores Munoz, but "I guarantee you that at least 80 percent will be the high-achieving students. They will be. The private schools are having the choice of the best students around: their doors are not open for every child."

Edgewood's school board was outraged at the possibility that "private schools may legally discriminate on the basis of academic performance and disciplinary background." The Edgewood school board president personalized the process with the following tale. He said he had received a call from "a mother for help because their application to the [Horizon program] had been denied. I asked why she was denied. The mother said she was a single mom, had two jobs, and was told she was unacceptable because she could not dedicate time for extracurricular requirements, like helping out with homework and fundraising."

To find out whether these allegations were correct, my colleagues and I collected information on the voucher families as well as a cross section of the families left behind in the Edgewood public schools. We found some selection, but the best dairy analogy is 2 percent milking, not creaming.

One cannot deny that creaming is unknown in Edgewood. In a focus-group session one savvy parent, a resident within EISD, reported that she had previously avoided the Edgewood schools by placing her seventh-grade daughter in a neighboring school district. With the arrival of the voucher program it was now possible to place her in a private school closer to home: "She is an honor student, she's real good, she's real smart. She talks about going to college, she already picked out a college. She wants to go to Notre Dame." However, this same mother decided to leave her son in an EISD school because he did not have the same personal resources her daughter had. "I don't think that the private schools have a lot of programs—the Edgewood district has a lot of pro-

grams for kids that need extra help. After-school care. They have a lot of tutoring where you don't have to pay. [At the private school] you have to pay for tutoring."

The anecdote is the exception however. When we looked at the full set of information that students and parents provided us, we found only modest differences. On the math component of the Iowa Test of Basic Skills (ITBS) no separation at all could be detected. Voucher students scored at the 40th percentile, while Edgewood public school students scored at the 38th, a difference that is not statistically significant. On the reading component voucher students scored at the 39th percentile, public school students scored at the 35th. The difference hardly justifies all the shouting.

Did the voucher kids flee from Edgewood's programs for the gifted and talented, Edgewood's own cream separator? Not at all. On the contrary, only 21 percent of voucher students had been in programs for gifted students, while 27 percent of public school students had been. (This difference does not pass the significance test.) On the other hand, only 8 percent of voucher students had participated in special education programs, as compared to 16 percent of public school students.

But if the cream separator does poorly with students, perhaps it does better with their parents. But if one looks at the hard demographic data, one finds an inefficient cream separator any self-respecting farmer would have discarded long ago. Both groups of families had almost identical incomes—around $16,000. Ethnic background was virtually the same—for more than 90 percent Latino. The two groups were equally likely to be on welfare and to have lived in the same residence for two years.

On the other hand, mothers of voucher students had completed, on average, 12 years of education, as compared to 11 years for public school mothers. Fifty percent of voucher mothers were employed full-time, as compared to 37 percent of public school mothers. Only 19 percent of voucher mothers were receiving food stamps, as compared to 33 percent of public school mothers.

So, demographically, voucher parents were modestly better off in some ways. At most, vouchers in Edgewood appear to be serving the working class, those families of low income in which moms are somewhat better educated and, presumably, more concerned about what is happening to their child, families that are connected to the labor force and making it on their own. Vouchers in Edgewood resemble such government programs as Upward Bound for low-income families, Pell grants for low-income college students, and the Earned Income Tax Credit program—all of which tend to serve the working poor, less so the most severely disadvantaged that are barely connected to the country's economic and educational systems. Do liberals want to abandon all these worthwhile programs in the name of creaming?

If Pell grants are OK, why not vouchers—especially when we listen to what Horizon families say about their new schools. Consider their answers to the following questions:

Do voucher parents like their school? Seventy-eight percent of voucher parents are very satisfied with the academic quality of the

SCHOOL AND EQUITY VOUCHERS

What the **problem** is exactly is not yet entirely clear, though my ow sense, after talking with many parents and combing through lots of facts and figures from several cities, is that effective **education** in big cit schools cannot take place, given the disorder that currently prevails in inner-city public schools. But if we do not know the answer, then we certainly should be exploring alternatives.

school, as compared to 52 percent of public school parents. In the words of one focus-group parent:

"The kids are gonna be acting silly, jumping around in class, you know, if teachers are not in charge of the children. And these are children. And I had a problem with that because these kids did not learn. She [her daughter] didn't bring any homework, I didn't see nothing. When I changed her to here [the private school], she was not used to the discipline. [Now,] I see a lot of change in my daughter. She likes to read, she likes to talk, she's more caring."

How does the educational climate differ between public and private schools? Fifty-two percent of Edgewood public school parents report fighting as a serious problem, as compared to 27 percent of voucher parents.

Do voucher parents get a school they want their child to attend? Only 7 percent say no, as compared to 25 percent of public school parents.

Are voucher students suspended? Suspension rates were equal for the voucher students and the Edgewood public school students—a round 5 percent for both groups. But perhaps what is in fact an expulsion from private school is reported by the parent as a mere change in school. Do we find voucher kids changing schools in the middle of the year? Hardly. Changes are less likely among voucher students than public school students. Only 6 percent of voucher students had changed schools since the beginning of the school year, as compared to 16 percent of public school students. Nor were there any differences between voucher parents and public school parents with respect to schooling next year. Similar percentages were reporting no change of school.

Class size. The teacher unions claim the problems of the big city school can be more easily addressed simply by lowering class size. But in Edgewood voucher parents, on average, report their child is in a class of 20 students, as compared to a class of 21 students in Edgewood public schools.

It would be nice if the problems in urban education could be solved by more dollars and cents. It would be a small price to pay, indeed. But Americans are spending more per pupil today than ever before. Average per-pupil expenditures in big cities lag only slightly behind expenditures in suburban areas, and well exceed those in rural communities. Private schools spend only about half as much—not enough, in my opinion, but enough to be doing a better job than many public schools, especially in urban areas.

What the problem is exactly is not yet entirely clear, though my own sense, after talking with many parents and combing through lots of facts and figures from several cities, is that effective education in big city schools cannot take place, given the disorder that currently prevails in inner-city public schools. But if we do not know the answer, then we certainly should be exploring alternatives. Why rule out vouchers? Why not give them a chance, somewhere, somehow, in some place? Let's see what happens.

Almost 60 years ago the American Federation of Labor (AFL) fought for federal funds for Catholic schools. Ignoring teacher organization objections, the AFL, listening to its members, asked Congress in 1943 to distribute federal aid to "all children, including parochial school students." In recent years the labor movement has switched sides on this issue. It now claims that vouchers for students attending religious schools are unconstitutional, a change in position that owes more to the newfound power of teacher unions within the labor movement than to any revision of the Constitution, to say nothing of equity considerations. If anything, working-class children are getting a worse deal from public schools today than ever before.

By the time this article is printed, the Supreme Court of the United States may have given its determination on the constitutionality of school vouchers. It seems to many that it is likely to rule in favor, although it is also foolish to stake too much on double-guessing the Court. This article takes a very well-reasoned scientific approach to the issue and minimizes the risk to the constitutionally mandated separation of church and state. Liberty *has consistently raised an alarm on the possible hazards in that direction. However, we must make it clear that we are not opposed to the educational improvements hoped for through vouchers, and if approved, they may well work without obvious threat to religious autonomy. As always, we must guard against the intent of any plan that involves church-state issues. And indeed, there are two tracks to the pro-voucher argument. A very logical one—in the reasoning given here: and another that tends to include vouchers in a larger agenda to fund established churches more broadly. That we will always regard with constitutional caution.*—EDITOR.

Observation on Editorials

Your editorials (aside from their lengthiness) reveal your observation and effort to write them. You are a fit successor to preceding editors Roland Hegstad and Clifford Goldstein.

In the January-February issue you refer to "these United States" and "these blessed states." The name of our country is "the United States." It is not a confederation; it is a union. Its governmental principle was described as early as 1830 by Daniel Webster in a speech that concluded with the familiarly famous words "Liberty and union, now and forever, one and inseparable."
ROSS THOMPSON
Fresno, California.

Long editorials! I write them to fit. But thanks for the note of appreciation. I take the point on "these" and "the" without conceding a problem with language. The United States of America, truly one national entity, is composed of states that united to form a union, while retaining certain sovereign rights. It was the stuff of a civil war, settled forever in the favor of a union.—Editor.

Religion in Public School

The Bible states that he who displays his religion in front of men will not be welcome in his Father's house. It also states that one should go into a room alone and shut the door when praying. One should not make a public display like the pagans. In light of this it is hard for me to understand how religious people can justify forcing children to pray in public in their schools.

The Bible also states that we should give unto the Lord that which is the Lord's, and give unto Caesar that which is Caesar's. The place for children to pray is in church, not in the public school. The public school is supposed to teach children how to live in this world.

I attended parochial schools as a youth. We said our prayers four times a day and had 50 minutes of religion every morning. Yet every time I turned my back in that school somebody stole something from me. Maybe the neighborhood I grew up in Chicago had something to do with it. But I can assure you, all that religion we swallowed seemed to have very little influence on the honesty of the children I grew up with. Religious people have too much of a tendency to claim things without proof. Not only do they not have proof that teaching religion in the public schools enhances children's character; they do not even have God's justification for doing it.
WILLIAM MICHAEL FAGAN
Arcadia, California

I might differ on the value of a religious education, but agree with William Fagan's point that the state should not be in the religion business. After all, true religion, as many know, is of the heart, not in the forms and conventions.
—Editor.

Admirer of *Liberty*

I am a long-time admirer of your magazine. I have always admired your position on church and state separation and your understanding about what religious freedom in a multireligious nation really means.
ROBERT SANDLER
Miami, Florida.

Appreciates Balance and Insight

Congratulations for publishing a fine, balanced, and insightful magazine.

I'm a born-again cradle Catholic—one who took a few detours before coming home. I am extremely skeptical and wary of faith-based news reporting, particularly from sources not sanctioned by the church. However, I must say that I find your efforts to be most rewarding, and I recommend everyone find time for *Liberty*.

Keep up the good work—and for Pete's sake (pun intended), come home to Rome.
PATRICK JOSEPH FETTER
Saint Simons Island, Georgia.

Thanks to Patrick Fetter for his kind comments. Like many thousands of lawyers who receive Liberty, *he finds our approach reasoned and persuasive—well, almost! We seem not to have warned enough of the dangers to religious freedom inherent in the "come home" message!*—Editor.

True to the Sabbath!

I have been a subscriber to *Liberty* magazine for a year. The articles I read about Seventh-day Adventists keeping the Sabbath at any cost seem very inspirational, yet what disturbs me is the impression that the Sabbath is Saturday. The Sabbath begins Friday at sundown and ends Saturday at sundown. Could it be that these inspirational stories of religious freedom are not inspirational after all? Do these individuals, such as Air Force major Allen Davis, face the same challenges when sundown begins on Friday? The Godhead did not follow the Gregorian calendar during Creation and on the day of rest (sundown to sundown), nor should we.
GLORIA WRIGHT
Whitehall, Ohio.

Not sure what point Gloria is making. She appears to be in favor of the same biblically based stand as the Seventh-day Adventists we featured. There is little question that the injunction of the fourth commandment in Exodus 20:9-11 is for the seventh day—Saturday—and that the weekly sequence was protected by the Jews from that point till now. And the observance of Sabbath from sundown Friday to sundown Saturday is specified in Leviticus 23:32.—Editor.

Church Zoning

When the "Dover amendment" was passed, megachurches didn't, for the most part, exist. In my part of this fine country the neighborhoods don't object to churches in general, nor to their location within properly infrastructured residential areas—with one caveat. Once a church passes a certain size (current numbers being bandied about are based on sanctuary seating exceeding 500 or so), it is no longer a "neighborhood" church. It has transformed into a regional entity, and its pri-

mary thrusts—despite its roots—much more closely resemble a business. That being so, mega-churches belong in business, or at least office zoned areas.
NORM FLOYD
Planning Commissions Member,
Little Rock, Arkansas.

Good point, which explains a dynamic of why church zoning has become a more contentious issue. We must still address the issue of community prejudice against certain religious groups. We cannot have selective religious liberty.
—Editor.

An Educator's Ditto

I appreciate the consistent stand that *Liberty* takes against the acceptance of state aid by religious schools. As an educator for more than 50 years I have witnessed the adverse effect of the acceptance of government funds by Christian schools in many places of the world, including Trinidad, Grenada, Fiji, Nigeria, and even tiny Pitcairn Island. History records that in Ceylon (now Sri Lanka) the Seventh-day Adventist Church alone retained its schools in the 1960s because it had accepted no state funds.

In the mid-1970s, while I was president of Columbia Union College, a Seventh-day Adventist college in Takoma Park, Maryland, we refused Maryland state funding. Twice I saw the wisdom of this decision.

1. We were informed that we could not add an Allied Health Department until the State Board of Education approved it. However, when we informed the board that we accepted no state funds, we were able to proceed immediately.

2. While I was secretary for the Association of Maryland Independent Colleges and Universities, the presidents of all the member schools were informed that no new programs could be added unless approved by the state board. I explained that three of the colleges, including Columbia Union College, accepted no aid from the state. This exempted these schools from state intervention in program development.

Your journal is on the right track. Not only is state or federal funding a violation of the separation of church and state; it also deprives Christian schools of their freedom to operate solely according to their understanding of God's leading.
COLIN D. STANDISH
Rapidan, Virginia.

Kingdom Awareness

Like you, I am a strong advocate of the wall that separates church from state. Like you, I am a Seventh-day Adventist. I am concerned that my church, which believes so deeply in the separation of church and state, would use the state (courts) to solve disputes. This seems to me to be a real violation of principle and should not be acceptable as a means of solving such disputes. The Word of God makes it quite clear that we are to take no brother to court (1 Corinthians, chapter 6). It would seem far better to take our losses than to bring the law into our problems: After all, we are really accountable to a wise God, not the state.
TOM EICHORST,
eicon@USQ.net

This letter touches on an area of vulnerability in church-state relations. Biblical counsel is quite clear that the church should stay clear of political matters, and in behavior between fellow believers avoid legal contentions. The traumas of the Middle Ages show how far church reliance on state power can go. Even the Roman Catholic Church has "apologized" for this approach in a recent Vatican document entitled "Memory and Reconciliation." But there is a practical side to how a church organization deals with legal issues. A church has to deal with zoning and safety regulations; it has to protect its employees and guard against misuse of message and facilities by nonauthorized persons. The law provides reasonable means for a religious entity to guard its integrity and defend the purity of its standing. Where the letter writer and others may be right is in identifying an incipient trend toward substituting secular legal means for missionary persuasion.—Editor.

Liberty *reserves the right to edit, abbreviate, or excerpt any letter to the editor as needed.*

DECLARATION OF PRINCIPLES

The God-given right of religious liberty is best exercised when church and state are separate.

Government is God's agency to protect individual rights and to conduct civil affairs; in exercising these responsibilities, officials are entitled to respect and cooperation.

Religious liberty entails freedom of conscience: to worship or not to worship; to profess, practice, and promulgate religious beliefs, or to change them. In exercising these rights, however, one must respect the equivalent rights of all others.

Attempts to unite church and state are opposed to the interests of each, subversive of human rights, and potentially persecuting in character; to oppose union, lawfully and honorably, is not only the citizen's duty but the essence of the golden rule–to treat others as one wishes to be treated.

LIBERTY

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Liberty (ISSN 0024-2055) is published bimonthly by the North American Division of the Seventh-day Adventist Church, 12501 Old Columbia Pike, Silver Spring, MD 20904-6600. Periodicals postage paid at Hagerstown, MD. POSTMASTER send changes of address to Liberty, P.O. Box 1119, Hagerstown, MD 21741-1119.

Printed by the Review and Herald Publishing Association, 55 West Oak Ridge Drive, Hagerstown, MD 21741-1119. Subscription price: U.S. $6.95 per year. Single copy: U.S. $1.50. Price may vary where national currencies differ.
Vol. 97, No. 4, July/August, 2002.

SYMBOLS

Monday, July 16, 2001

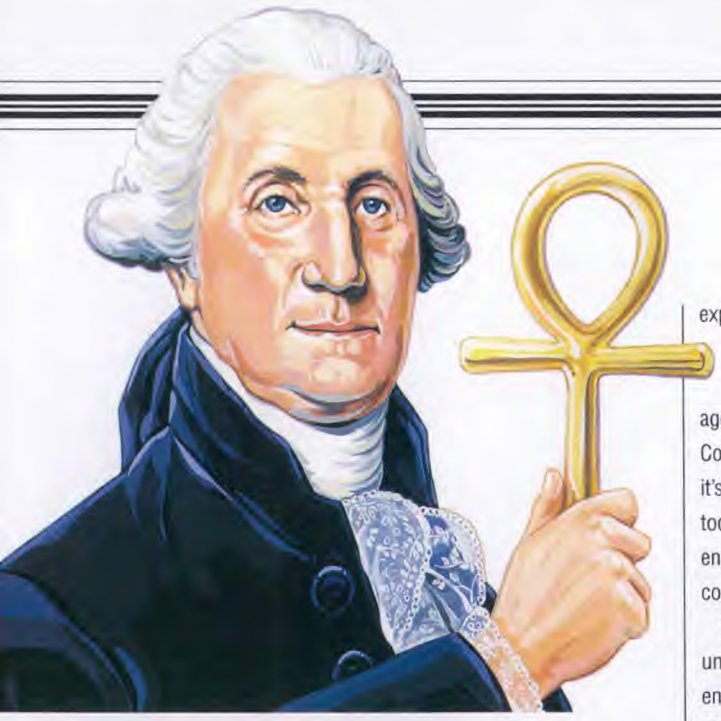
12:00 noon: I'm at the U.S. Capitol to sit in on a press briefing in room H-157. Usually I take the Metro from our offices in Silver Spring, and walk the few blocks from Union Station to the Capitol. A little early, I decide to drive in and take a chance at finding a parking spot. I drive up and down the near-noon crowded streets to no avail. So it's back to the standby of parking at Union Station. I jog to the Capitol and arrive—still early—bathed in perspiration. The room is locked; no sign of the press corps and the politicians with something to say to the world.

So I blend with the tourist crowd on the main level and look over some of the artifacts on display. I do love history, and this is almost a sacred spot for democracy. A largish glass case catches my eye. It's all about the laying of the cornerstone on September 18, 1793—a big moment to be sure. There under glass is the Masonic apron worn by President Washington as he led out in what newspaper reports gave as the most significant Masonic ceremony in the country to that point. H'mmm. No secret about the lodge activities of Washington and other major figures of the new republic, but this ceremony obviously went a bit beyond basic "club" activities. I had a little trouble picturing the scene happening today—even in our oft-lamented decline of Christian sensibilities. I could not see a public figure today daring to preside over that scene in such a garb and to the accompaniment of fellow members' chanting Masonic songs—as did President George Washington.

12:45 p.m.: The press conference in room H-157 gets under way. It's hot, and there's plenty of free soda for the press reps crammed into the little room. There must be 40 or so inside or squeezing into the doorway to catch a little of the moment. House Republican Conference chair J. C. Watts and Democratic friend Tony Hall are on hand to outline the arguments and immediate battle plan for H. R. 7, otherwise known as the faith-based initiative. We are told it will go to Congress the next day. Lots of confidence by J. C. Watts and advisers. Justified, it turns out, but even in that room there is some press disease that H. R. 7 is opposed by the Black caucus and most Democrats. I get the impression that to question the bill is a little like questioning Christianity itself. Midway through the briefing I look to the wall off to my left and notice with some sense of irony a medium-sized framed reproduction of the Ten Commandments—how recently placed there I cannot say. Is it reassuring or too obvious?

2:00 p.m., rear steps of the Capitol: It's a busy tourist day. The guards are overtaxed in maintaining a little decorum around the perimeter. I see one guard warn away a quiet fellow with a camera who'd been sitting on the steps, waiting no doubt for a powerful face to come by. And then in the center of those rear steps, about halfway up the empty rows, I see a familiar, startlingly lifelike figure. It's a life-sized figure of Jesus Christ, positioned to look down on the milling crowds of tourists. Next to it is a boom box blaring out Christian hymns. I wonder why the guards have not removed this curious display. Would they have removed a Mason in apron and boom box of chants? H'mmm.

2:30 p.m., hoofing it back to Union Station: I look past the Capitol and down the Mall to the Washington Monument. It's an imposing sight, at first rush a



powerful symbol of democracy. Of course my head tells me that the symbol itself is a little more complex. The obelisk harks back to Egypt, and of course those Masonic symbols again. I've seen the obelisks in Paris (reminders of Napoleon's fascination with and conquest of Egypt), and in Rome in front of St. Peter's (I'm not sure why it should be there, actually, since, Egypt aside, the Masonic order has often been under the most severe papal frown). But the Washington Monument retains persistent Masonic (see pre-Christian) elements. At the laying of its cornerstone July 4, 1848, Benjamin French, grand master of the District of Columbia, wore the same apron used by George Washington in 1793.

Back in the office: I mull over some of the symbols and what they might mean today. Oh yes, I take time to scan the Internet for Masonic meaning, and in the process uncover some way-out paranoid takes on even the layout of the city of Washington itself—at best I think they make too much out of what was probably an inside joke by Masonic architects. But the superficial and public aspect of these symbols does bear commenting on. The singing effigy of Christ; the Ten Commandments elevated when courts have in other instances removed them; the vigorous attempt to move the state toward an alliance with certain Christian churches—all show the power of the symbol, the pull of the cultural assumption. And the icons of the Mason! How at variance with the assumptions reality can sometimes be.

Much lamenting of late over the expulsion of religion (usually expressed as Christianity) from public life. But public display has seldom before been as aggressive and as enabled by Constitution and courts as today—it's just that a lot else is allowed too. Unfortunately the same enabling freedoms work to allow countervoices!

My worry is that a faith base untroubled and indeed unthreatened by Masonic dalliance in another age will today feel so threatened by vocal competitors that it will attempt to rearrange the assumptions of democracy for extra support.

After all, the strength of faith is belief itself. Faith has powerful icons of its own. People of faith should not need to rework the symbols of history to suit their ideal of a faith community. Faith does not need—in fact, cannot afford—to co-opt the state in reeducating the populace in faith. Among other dangers, that carries a risk to the state itself.

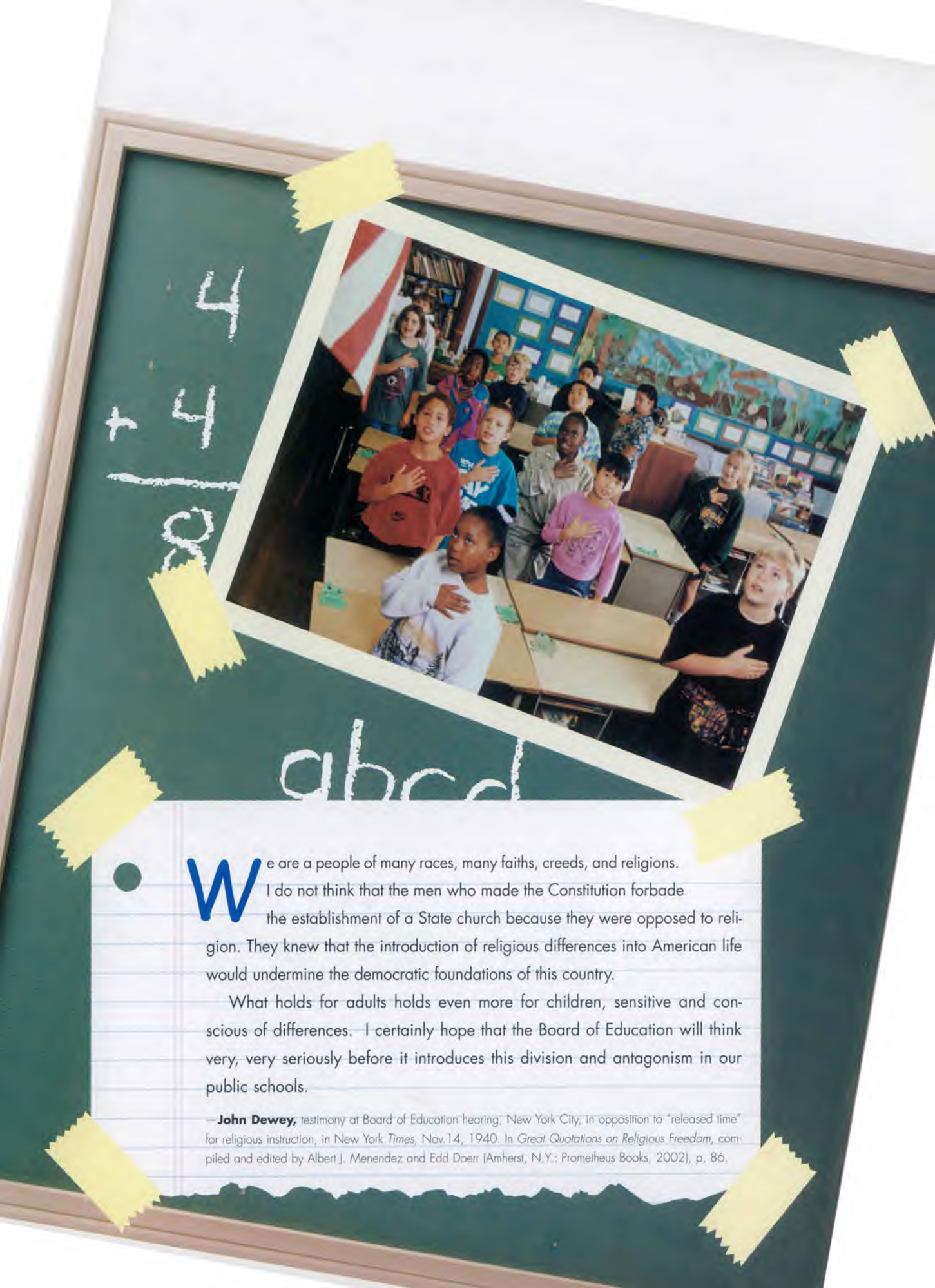
The United States of America has been a grand experiment in human governance. I tend to think that one of the reasons it has succeeded so well is the abiding godliness of a significant portion of its citizens. There have been people of faith at all levels and at all times. But any study of history shows it worse than naive and pernicious to equate faith with all the aims and actions of state and people. Symbols do matter, but they can easily be co-opted to a bad end if confused with the reality. The reality is that the American system, embracing Constitution and culturally informed views of freedom, has worked well in the past to enable religious liberty. What has changed is the faith component itself: the hard-to-quantify "moral" sense. It responds poorly to legislation and reorganization. The answer, I think, is best summed up in the prayer I have so often heard in meetings of concerned Christians of all denominations: "Lord, heal our nation."

That's the type of faith-based initiative I'm looking for. It might have a Christian origin, but it can be taken up by all and will best elevate the tone of discussion.

And then September 11:

Midnight in the garden of good and evil. "For us or against us". . . "axis of evil" and the "c" word (crusade). God bless America.

ILLUSTRATION BY JAMES MELLETT



We are a people of many races, many faiths, creeds, and religions. I do not think that the men who made the Constitution forbade the establishment of a State church because they were opposed to religion. They knew that the introduction of religious differences into American life would undermine the democratic foundations of this country.

What holds for adults holds even more for children, sensitive and conscious of differences. I certainly hope that the Board of Education will think very, very seriously before it introduces this division and antagonism in our public schools.

—**John Dewey,** testimony at Board of Education hearing, New York City, in opposition to "released time" for religious instruction, in New York *Times*, Nov.14, 1940. In *Great Quotations on Religious Freedom*, compiled and edited by Albert J. Menendez and Edd Doerr (Amherst, N.Y.: Prometheus Books, 2002), p. 86.