

Relations with Faith Communities: Current and Potential Problem Areas

Treasury

The Customs Service has had discussions with members of the Native American community who are bringing items across the border for religious use. Some of these items, such as eagle feathers, would not normally be allowed into the country. There have been several incidents at the border, including strip searches. Native American groups are concerned by what they consider to be a violation of their rights.

Justice

The Department of Justice is monitoring, and in some cases intervening in, a range of cases concerning the enforcement of the Religious Freedom Restoration Act. Some of these cases raise troubling conflicts between religious free exercise and other important governmental interests, such as the integrity of our bankruptcy code. (See the attached memorandum from Nancy McFadden.)

In his April 29 message to tribal leaders, the President backed passage of the Native American Free Exercise of Religion Act. One of the issues is legal protection for Native American use of peyote in religious ceremonies. You should be aware that the Department of Defense and Department of Transportation protested vehemently against versions of this legislation worked out by Bill Richardson's Interior subcommittee in close cooperation with the Department of Justice, the Department of the Interior, and Native American advocacy groups. The DPC and OMB coordinated an ad hoc interagency process last week, and the controversy seems to have been resolved.

Transportation

As indicated above, DOT is a party to the Native American/peyote dispute. The Department also drafts and administers common carrier regulations that upset some religious communities, and it makes decisions concerning transportation infrastructure construction that affects the geographical integrity of some religious communities. (See the attached memorandum from Ann Bormolini.)

HHS

The Department of Health and Human Services is administering a number of programs that create friction with faith communities. The principal issues include: enforcement of the Child Abuse Prevention and Treatment Act against Christian Science "spiritual healing"; abortion counseling regulations (the "gag rule"); the Adolescent Family Life program (abstinence education); the Health

Security Act (reproductive services, teen health, school-based clinics); human embryo research; mandatory Medicaid funding of abortion for rape and incest victims; and RU 486. (See the attached memoranda from Kevin Thurm and Nancy-Ann Min.)

The "family cap" provision of the Administration's welfare reform proposal has created an odd alliance between liberals, who see it as mean-spirited and punitive, and religious and other conservatives, who fear that it will increase abortion.

USDA

A USDA employee with Equal Employment Opportunity (EEO) responsibilities was moved into another position of equal rank after making statement to the effect that as a Christian, he could not support USDA policies concerning nondiscrimination based on sexual orientation. In response, Sen. Helms offered, and the Senate approved, amendments to USDA's appropriations prohibiting the use of funds to compel or encourage USDA employees to (1) recruit for employment on the basis of sexual orientation and (2) celebrate homosexuality as a legitimate lifestyle.

Commerce

A condition of the Public Telecommunications Facilities Grant Program administered by Commerce's National Telecommunications and Information Administration stipulates that a grantee cannot use a facility funded under this program for sectarian purposes during the ten-year federal interest period. Fordham University was found ineligible for funds for a public broadcasting program because its application described plans to broadcast a weekly Catholic mass. On July 7, 1994, the U. S. District Court for the District of Columbia upheld Commerce's ineligibility decision. Fordham may appeal.

Education

A number of conservative religious groups are organizing at the state and local level to impede implementation of Goals 2000.

The House has passed the Helms school prayer amendment to the ESEA, which would place the Secretary of Education in the position of determining when local school districts had prevented students from engaging in constitutionally protected school prayer and would require him to withhold federal funds pursuant to that determination. The Senate defeated the Helms amendment and instead passed a Kassebaum amendment that would leave the determination in the hands of the courts and withhold funds only in cases of willful violation of court orders. We will support the Senate amendment in conference.

Controversy over private school choice and vouchers continued during recent debate over the reauthorization of the ESEA.

Administration opposition to all voucher proposals, even the limited demonstration projects backed by moderate Democrats as well as Republicans continues to rankle some religious groups.

In Felton, the Supreme Court ruled that it is unconstitutional to provide Chapter 1 funding to religiously affiliated private schools. There are cases pending in the lower courts that address the issue of providing Chapter 1 services in vans on private school property. The Department is defending the constitutionality of those services.

Defense

The administration has proposed repeal of the prohibition on the use of appropriated funds to pay for abortions in military facilities. Currently appropriated funds may only be used for abortions when the life of the mother would be endangered if the fetus were carried to term. Congress has not enacted the proposed repeal.

There have been other developments on the Defense/abortion front. On February 14, 1993, then-Secretary Aspin directed the military services to reinstate the pre-1988 policy of allowing abortion in overseas military facilities on a pre-paid basis. On May 9, 1994, the Assistant Secretary of Defense for Health Affairs issued a guidance which said, in part: "As a matter of DOD health care policy, to the extent feasible and consistent with legal obligations, Service women stationed outside the United States and women dependents of members so stationed should have access to abortion services comparable to that of women in the United States."

Controversy continues between DOD and religious groups concerning the Administration's policy allowing homosexuals to serve in the military under certain conditions.

National Endowment for the Arts

The NEA has been heatedly criticized by some religious groups for funding arts projects that are said to denigrate traditional morality or perpetrate blasphemy. The grant to gap performance artist Ron Athey turned into a public relations disaster and is leading to a substantial cut in NEA's FY 1995 appropriation. The recent decision not to award a fellowship to photographer Andres Serrano (famous for "Piss Christ") may cool the temperature somewhat. But the potential for recurring controversy remains.

National Endowment for the Humanities

Sheldon Hackney's signature program (the "National Conversation" on the contemporary meaning of *e pluribus unum*) has gotten off to a relatively tranquil start. But this may be the calm before the storm. At last week's NEH council meeting, controversy erupted over a film to be used as a focal-point for discussion at local

meetings, and the vote divided along liberal/conservative lines. If the National Conversation is seen as tilting toward cultural criticism or separatist multiculturalism, it does not take a crystal ball to predict that conservative religious groups will mobilize against it.

Equal Employment Opportunity Commission

The EEOC is in the process of reviewing public comments on proposed harassment guidelines published in the Federal Register last October. The proposed guidelines covered harassment based on race, color, gender, national origin, age, disability, and religion. Of all these categories, the guidelines dealing with religion have sparked the most heated controversy, with religious groups insisting that they impede constitutionally protected religious expression in the workplace.

The religious harassment guidelines will not be made final any time soon. The House approved language prohibiting the EEOC from spending money to enforce the guidelines as currently drafted. The Senate went somewhat farther, requiring the EEOC to drop the proposed guidelines altogether and to hold a series of public hearings before drafting new ones for final approval.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Chief of Staff

Washington, D.C. 20201

AUG 1 1994

MEMORANDUM FOR LAURIE LABUDA

FROM: Kevin Thurm *Chris Hargis for*

SUBJECT: Department of Health and Human Services (DHHS)
Activities Affecting the Religious Community

As requested, the following are DHHS activities that affect the religious community:

- o The Head Start program has had strong links to religious communities from the beginning when many programs began in the basements of churches. Today, religious groups are Head Start grantees and delegate agencies, and continue to provide the necessary space for Head Start operations in many communities.
- o Many of the agencies participating in the Voluntary Agency Matching Grant program are religious-based. This program, administered by the Office of Refugee Resettlement (ORR), provides cash assistance and services to refugees for their first 4 months in the United States, and is funded through matching grants to private, national voluntary agencies. In recent years, the program has been funded at approximately \$39 million. The Council of Jewish Federations/Hebrew Immigrant Aid Society is the program's largest participant, receiving about 85% of the funding. Other major participants are the United States Catholic Conference and Lutheran Immigration and Refugee service.
- o The Social Security Administration (SSA) engages in many cooperative arrangements and agreements with churches, shelters, soup kitchens and other religious-related organizations for the purpose of identifying people who are potentially eligible for benefits, and helping people conduct their business with SSA.

The Department also is involved in several controversial issues of interest to various components of the religious community.

- o Child Abuse Prevention and Treatment Act (CAPTA). The regulations implementing CAPTA that concern eligibility for the Basic State Grant program require States to have all suspected cases of medical neglect reported to a child protective service agency. Medical care must be provided if investigation substantiates neglect. The regulations do not require a State to find a parent guilty of medical neglect simply because that parent is practicing a religion that

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uses spiritual treatment instead of medical treatment. Christian Scientists, because they practice spiritual healing, have been particularly concerned about this issue.

- o Abortion Counseling Regulations -- "The Gag Rule". On February 1, 1993, Secretary Shalala suspended the Gag Rule which prohibited abortion counseling at Title X projects and reinstated the pre-1988 performance standards for Title X family planning grantees. At the same time, a Notice of Proposed Rulemaking was issued soliciting comments on the pre-1988 standards.

The Title X grantees are currently operating under the pre-1988 performance standards which permit health care professionals to offer "non-directive" abortion counseling. Comments have been received on this policy and other pre-1988 standards, however, a final rule has not yet been issued.

- o Activities Concerning the Adolescent Family Life Program (AFL). The President's FY 1995 budget requests \$6.8 million for the Office of Adolescent Health (OAH) but does not request funding for the AFL program. The Office of Adolescent Health (OAH) was authorized in 1993 and has not yet been funded. The Administration diverted funding from the AFL program to OAH in an effort to implement a more comprehensive approach to improving the health of adolescents.

Although the AFL program has not been reauthorized since 1984, the program has been funded through the annual Appropriations Act. The AFL program requires the teaching of abstinence, but prohibits the teaching of complementary information on contraception and avoidance of sexually transmitted diseases. Under the Administration's plan, current or new grantees who propose to conduct adolescent pregnancy prevention projects using abstinence-based curricula will be eligible to compete for funding, but such abstinence education efforts will have to be part of a more comprehensive approach that includes a broader range of health, education and social services for adolescents.

Both House and Senate Appropriations Committees have indicated their intention to continue funding the AFL program. The House Appropriations Bill does not fund the OAH. The Senate Appropriations Bill, however, provides \$300,000 for an OAH in another part of the Public Health Service, not in the Office of the Surgeon General.

- o Administration positions as reflected in the following provisions of the Health Security Act (HSA) are cause for concern among some religious groups.

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Reproductive Services. This provision has caused some controversy and possible changes to language are always under discussion. Jennifer Kline in the First Lady's Office is closely monitoring this issue.

Teen Health. The HSA includes a comprehensive benefit package that would provide all teenagers access to preventive services including regular clinician visits and services for pregnant women with no cost sharing; and family planning services including prescription contraceptives.

School-Based Health Education. The HSA authorizes two new programs for school health education including motivating teens to avoid teen pregnancy and stay in school, and school health services targeted to those areas with high levels of poverty and high rates of health risk among children and youth.

- 0 **HUMAN EMBRYO RESEARCH.** Until June 10, 1993, Federal regulations governing research on human subjects required research involving in vitro fertilization (IVF) to be reviewed by a Departmental Ethics Advisory Board. However, because no Ethics Advisory Board had been chartered since 1980, a de facto moratorium had existed on IVF since that time. In June 1993 this de facto moratorium was lifted when Congress included a provision in the NIH Revitalization Act that lifted the regulatory requirement for an Ethics Advisory Board review of such research. It is the enactment of this law that now enables the NIH to fund IVF proposals as well as research involving human embryos that result from IVF or other sources.

However, IVF and human embryo research has not gone unnoticed, particularly by some members of the far right religious community. While the Congress provided the authority to go forward, due to the public interest in these areas of research, the NIH did not want to proceed without first broadly considering the moral and ethical questions raised by such research and developing guidelines for its review and conduct. With the concurrence of the Assistant Secretary for Health, the NIH established the Human Embryo Research Panel as a group of special consultants to the Advisory Committee to the Director, NIH. The Panel is composed of 19 individuals with broad expertise in the fields of basic and clinical research, ethics law, social science, public health, and public policy.

Discussions of the Panel focus on competing ethical frameworks with respect to the moral status of the human embryo; the ethical acceptability of human embryo research; issues raised by research on human embryos that are not intended for transfer into human; ethically acceptable

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sources of human embryos or eggs; informed consent requirements; issues raised by compensation of gamete providers; concerns regarding commercialization of human gametes and embryos; and the need for additional mechanisms for the review, evaluation, and monitoring of human embryo research at local and national levels.

A critical part of the process of considering the issues involved in Federal funding of human embryo research is to gain an understanding of the diversity of beliefs and opinions held about the moral status of the human embryo and about Federal funding of research involving the human embryo. In an effort to ensure broad public awareness of the Panel's work and encourage participation in the public comment process, the NIH has issued press releases and mailed public comment solicitations to over 200 organizations in addition to publishing the required Federal Register notices. The NIH has considered some 13,000 comments on issues related to this research, including comments from various religious communities concerned with such research. These comments will be summarized in a final report the Panel will issue which will include recommendations on those areas it views to be acceptable for Federal funding, areas that warrant additional review, and areas that are unacceptable for Federal support. For areas acceptable for Federal funding, the Panel will recommend specific guidelines for the review and conduct of this research.

- o Under the Work and Responsibility Act of 1994, States will have the option to limit, in whole or in part, the increase families now receive for an additional child conceived while the mother is on welfare. Some religious groups are critical of this proposal because they believe it could encourage women to have abortions.

Also as part of a Welfare Reform, the Administration is proposing school-linked teenage pregnancy prevention grants for areas with high poverty or high teenage birth rates and comprehensive service demonstration grants for various prevention approaches. Under these grants, a community will have the flexibility to design a prevention program which reflects its values on how to promote personal responsibility and prevent pregnancy. Again religious groups may be concerned about the content of these programs, but the local communities will have ownership of them.

- o Enforcement of mandatory Medicaid funding for certain abortions. It now appears likely that the current Hyde amendment language governing Medicaid abortions will be retained in 1995. Last year, the Hyde Amendment was expanded to require Medicaid coverage for abortions of

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pregnancies resulting from rape or incest. There was speculation by some States that this was not Congress' intent, but both the House and Senate FY 1995 appropriations bills include language identical to the FY 1994 Hyde amendment language.

In March 1994, the Health Care Financing Administration (HCFA) advised the States that they must implement the revised Hyde provision. As of July 27, 20 States are not in compliance with the amendment, although nine of these States are taking actions to comply. The next step is to notify officially each State that is not in compliance of its status. After this notice is provided, Department regional teams will work with the States to help them achieve compliance.

Federal District Courts have ordered three States that have been out of compliance (Arkansas, Colorado, and Michigan) to fund such Medicaid abortions. Montana has been so ordered by a state court.

- 0 Mifepristone (RU-486). Mifepristone, developed by the French pharmaceutical firm Roussel Uclaf, has been marketed for use to non-surgically terminate pregnancy in France, the United Kingdom, and Sweden. In May 1994, after months of complex negotiations, Roussel Uclaf donated, without remuneration, its United States patent rights for RU-486 to the Population Council, a not-for-profit organization. The Population Council will conduct clinical trials, identify a manufacturer, and submit a new drug application to the Food and Drug Administration (FDA), steps necessary to bring RU-486 to the American market.



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

August 2, 1994

MEMORANDUM FOR: Laurie Labuda
Office of Cabinet Affairs
The White House

FROM: Ann Bormolini *AB*
Chief of Staff

SUBJECT: DOT Interaction with the
Religious Community

Per your request, attached is a briefing paper summarizing the Department's interaction with the religious community.

Attachment

**DEPARTMENT OF TRANSPORTATION
INTERACTION WITH THE RELIGIOUS COMMUNITY**

- Pending legislation (H.R. 4230) would legalize the use of peyote in Native American religious ceremonies. DOT supports religious freedom for Native Americans, but we have serious safety concerns regarding the use of peyote. Peyote is listed as a hallucinogenic Schedule I Controlled Substance in 21 U.S.C. Section 812, and we have serious misgivings about its use by military members of the Coast Guard or by persons holding safety sensitive transportation positions, in the absence of conclusive medical evidence that it is safe for them to use it. Most of the clinical studies of peyote's medical effects are more than 100 years old, and we have found virtually no reliable information about the length of recovery time necessary to allow a person to be ready to perform military or safety sensitive duties or the likelihood of "flashback" effects occurring. Consequently, we are working to insert legislative language that would give us authority to restrict the use of peyote by persons in the military or in safety sensitive transportation positions; our proposal would also keep present rules in place until new ones are promulgated.
- DOT/FHWA regulations define a commercial passenger carrying vehicle as one equipped to carry 15 or more persons in addition to the driver. Regulations promulgated in 1988 required any driver of such a vehicle to obtain a Commercial Driver's License by 1992 and be subject to drug and alcohol testing. These rules apply to "church buses" and their drivers, as well as other buses of similar size. Churches have protested that regulation of their buses and drivers sharply restricts their activities. However, we believe regulation is appropriate: many such buses are unsafe, and often the drivers have no training in operating large vehicles.
- Construction of transportation infrastructure (e.g., highways, bridges, railroad or transit roadway, airport runways) raises a number of issues.

- Construction through Native American sacred grounds raises the same concerns as construction through any other religious facilities or cemeteries. In addition, concerns about proprietary information may also arise; some tribes may not want to divulge the location of sacred grounds. S. 2269 addresses these issues.
- Other construction impacts on churches arise from nearby construction (e.g., a noisy highway or a road that cuts off access to the church by its members).
- With respect to federal actions, these issues are addressed through the NEPA process (e.g., environmental impact statements).
- In order to meet the public interest, the process balances religious concerns with environmental and transportation needs.
- With respect to any form of transportation operations or construction, certain labor-management issues could arise. These might include such issues as working on holy days or the wearing of religious garments.



U.S. Department of Justice

Office of the Associate Attorney General

Deputy Associate Attorney General

Washington, D.C. 20530

August 4, 1994

To: Bill Galston
Domestic Policy Council

From: Nancy McFadden *Nancy*
Principal Deputy Associate Attorney General

Joan Silverstein *OK*
Special Assistant to the Associate Attorney General

Subject: Department of Justice Activities affecting the
Religious Community

This memorandum presents an overview of Justice Department activities that affect the religious community.

A. Religious Freedom Restoration Act (RFRA)

Much of the Department activity in the upcoming year that is expected to affect the religious community and to raise potentially controversial issues will involve the Religious Freedom Restoration Act (RFRA), a new and untried statute. Accordingly, the Department recently formed a RFRA Task Force (1) to anticipate the contexts in which RFRA might arise, (2) to identify and examine the legal issues surrounding RFRA, and (3) to develop a litigation strategy for RFRA cases coming to or learned of by the Department.

Attached is a summary compiled by the Task Force of litigation in which RFRA has been raised. The majority are prison cases in which it has been alleged that prison regulations or conduct by prison officials denies plaintiff prisoners the free exercise of their religion. Defendants in these cases have responded with challenges to RFRA, both with respect to its constitutionality and its retroactivity. The Department has intervened to defend the constitutionality of RFRA.

In two cases, pro-life groups have argued that the Free Access to Clinic Entrances Act (FACE) impedes the free exercise of religion in violation of RFRA. The district courts in the Eastern District of Virginia and the Southern District of California hearing these cases rejected the groups' argument on the grounds that FACE does not touch upon religious beliefs or

grant to a school it considered too religious. We will continue surveying the Department further for other activities and will provide updates.

Finally, the Department is working with Congress to draft a Native American Free Exercise of Religion Act (NAFERA), a bill much like RFRA addressing the specific concerns of Native Americans. The President has stated his support for a NAFERA. NAFERA will protect sacred sites and religious peyote use, which RFRA does not necessarily cover. NAFERA should become law in the upcoming year.

APPENDIX B: SUMMARY OF PENDING LITIGATION

A. Christians v. Crystal Evangelical Free Church (8th Cir.).

Bruce and Nancy Young filed a Chapter 7 bankruptcy petition. In the preceding year, and while they were insolvent, the Youngs contributed \$13,500 to their church. The bankruptcy trustee assigned to the Youngs' Chapter 7 petition filed this proceeding to recover the \$13,500 contribution under Section 548(a)(2) of the Bankruptcy Code, 11 U.S.C. 548(a)(2). That Section authorizes the trustee to avoid any transfer of an interest of the debtor that was made or incurred within one year of when the Chapter 7 petition was filed if the debtor "received less than a reasonably equivalent value in exchange for such transfer" and "was insolvent on the date that such transfer was made * * * or became insolvent as a result of such transfer." 11 U.S.C. 548(a)(2)(A), (B)(i).

The bankruptcy court granted summary judgment for the trustee. It held that Section 548(a)(2) authorized recoupment of the Youngs' gifts because the religious services, theological programs, and access to the premises the Church provided to the Youngs are not "property" under that Section and were not provided "in exchange for" the transfer. The district court affirmed, and also held that Section 548 does not violate the Free Exercise, Establishment, or Free Speech clauses as applied to the Church. (The Church did not raise any constitutional defenses before the Bankruptcy Court.)

The Church appealed to the Eighth Circuit, which invited the United States to intervene because the appeal draws into question the constitutionality of an Act of Congress. The Department filed a brief as intervenor in support of the trustee. Our brief argues that the District Court was right to hold that Section 548 applies to the Youngs' gift to their church and that the trustee can recoup the gift from the church under Section 548 consistent with the Free Exercise, Free Speech, and Establishment Clauses. We also argue that applying Section 548 to the church does not violate RFRA. We argue that recouping the Youngs' contributions to their church does not "substantially burden" their religion under RFRA because they have no First Amendment right to give away money that the law deems as rightfully owned by their creditors, and that the trustee has a compelling interest in protecting the property rights of creditors.

B. Gede v. Salt Lake County (D. Utah).

Two individuals who were briefly incarcerated on federal charges in county jail in May, 1993, assert that jail officials improperly confiscated clothing of religious significance and denied them vegetarian meals. Each asserts affiliation with the Church of Latter Day Saints. Defendant officials assert: 1) nothing on the face of the statute indicates that the RFRA was intended to be retroactive (Landgraf v. UST Film Prods., Inc., 114 S. Ct. 1483 (1994)), and it would be unfair to construe RFRA as

retroactive because retroactivity would increase the liability of the defendants; 2) Congress, in seeking to overturn the Smith decision, has exceeded its authority under Article I of the Constitution and principles of separation of powers. Defendants cite, *inter alia*, United States v. Sioux Nation of Indians, 448 U.S. 371, 393 (1980); Georgia Ass'n of Retarded Citizens v. McDaniel, 855 F.2d 805, 810 (11th Cir. 1988), *cert. denied*, 490 U.S. 1090 (1989). They also assert that the prisoners did not invoke any religious belief when they requested vegetarian meals and that the requirement that prisoners wear jail-issued garments reflects legitimate security, sanitation and administrative interests.

The complaint was filed April 23, 1994. The case is currently pending on plaintiffs' motion for partial summary judgment. A hearing on that motion is scheduled for August 26, 1994. The United States will file its intervention notice on July 18, 1994, and will simultaneously move the court to postpone the hearing until September 26, 1994 and set a deadline of August 19, 1994, for the United States to file its opening brief. It is our understanding that the parties are currently engaged in settlement discussions.

C. Muhammad v. Coughlin (S.D.N.Y.).

In February 1994, plaintiff prisoners amended their complaint, which was originally filed in 1991, to challenge a variety of practices by state and local penal officials, involving alleged restrictions on practice of religion by members of the Nation of Islam. These include access to religious advisors and literature, observance of fast periods, etc. By letter dated May 31, 1994, the New York Attorney General's Office has notified the court that it challenges RFRA's constitutionality. Its letter offers arguments similar to those asserted in Gedo -- that Congress cannot reverse a constitutionally-based decision of the Supreme Court, citing United States v. Nixon, 418 U.S. 683, 703 (1974); Cooper v. Aaron, 358 U.S. 1, 18 (1958); Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803). New York also asserts that Congress does not have the power to implement the guarantees of the First Amendment as incorporated through the Fourteenth Amendment and that Congress has abridged the Tenth Amendment rights of the states, citing New York v. United States, 112 S. Ct. 2408, 2418-21 (1992); Oregon v. Mitchell, 400 U.S. 112, 124-26 (1970).

District Judge Loretta A. Preska has given the state until July 25, 1994 to file its motion to dismiss. Judge Preska has certified the case under 28 U.S.C. § 2403(a) and has given the United States until September 30, 1994, to file its brief in support of RFRA, should we choose to intervene.

D. Alameen v. Coughlin (E.D.N.Y.)

Suit brought under RFRA challenging prison officials' restrictions on the wearing or display of Dhikr beads that plaintiffs' claim substantially burden their right to exercise their religion (Islam). Plaintiffs have filed a motion for preliminary injunction and defendants have filed a motion to dismiss, contending that RFRA is unconstitutional. Defendants contend that RFRA represents Congress' attempt to "overrule" the Supreme Court's interpretation of the First Amendment, in contravention of principles first established in Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803). Defendants also argue that South Carolina v. Katzenbach, 383 U.S. 301 (1966), and City of Rome v. United States, 446 U.S. 156 (1980), are distinguishable because they involve the enforcement of the equal protection clause rather than a right judicially incorporated into the Fourteenth Amendment. Furthermore, defendants contend that in enacting the Voting Rights Act -- which was the statute at issue in South Carolina and City of Rome -- Congress had substantial evidence before it of widespread efforts by states effectively to disenfranchise black voters and that Congress lacked analogous evidence of efforts to deprive citizens of their free exercise rights in enacting RFRA.

On June 24, 1994, Judge Charles P. Sifton certified the case under 28 U.S.C. § 2403(a) and the United States filed its intervention notice on July 12, 1994. It is our understanding that no briefing or hearing schedule has been set yet, but we expect the United States' brief to be due mid- to late-August.

E. Jolley v. Coughlin (S.D.N.Y.)

An AUSA has recently informed us that this is another prisoner's suit brought under RFRA. We do not presently know anything more about this suit. If the defendant, the State of New York, has not yet argued that RFRA is unconstitutional, it undoubtedly will, and will advance the same arguments made in Alameen v. Coughlin (E.D.N.Y.), supra. We expect to receive the pleadings shortly from the AUSA.

F. American Life League v. Janet Reno (E.D. Va.).

A pro-life group challenges the Freedom of Access to Clinic Entrances Act ("FACE"), which makes it a crime to use force, the threat of force, or physical obstruction to injure, intimidate, or interfere with individuals because they provide or obtain reproductive health services. Plaintiffs assert that FACE violates RFRA as well as the Free Exercise Clause. The Civil Division, in its defense of FACE, responded that FACE does not substantially burden anyone's exercise of religion and, even if it did, it would further a compelling governmental interest of assuring access to such clinics by the least restrictive means in furtherance of that

interest. The district court recently denied plaintiffs' motion for a preliminary injunction and granted the Department's motion to dismiss, holding that FACE does not violate RFRA because FACE does not touch upon religious beliefs or practices.

G. Council for Life Coalition v. Janet Reno (S.D. Cal.)

A challenge to FACE brought by a pro-life group arguing, among other things, that FACE violates RFRA. On July 6, 1994, Judge Erma Gonzales granted the government's motion to dismiss. She held that plaintiff had failed to establish that FACE substantially burdened the exercise of religion. In the alternative, she reasoned that even if FACE had substantially burdened the plaintiff's free exercise of religion, Congress had a compelling interest in enacting FACE, i.e., prohibiting the use of force to prevent women from exercising their constitutionally-protected right to abortion.

H. Other Cases.

A Westlaw search has located fourteen decisions in which RFRA has been cited.

1. Five cases state that the law applies retroactively. Smith v. Elkins, 19 F.3d 29 (Table), 1994 WL 65299 (9th Cir. 1994) (reversing and remanding district court summary judgment ruling involving prisoner disciplined for praying in foreign language); Keith Brown-El v. Charles Harris, ___ F.3d ___, 1994 WL 250157 (8th Cir. June 13, 1994) (removal of prisoner from list of those on special meal schedule) (dictum); Lawson v. Dugger, 844 F. Supp. 1538, 1540 (S.D. Fla. 1994) (prisoners' suit alleging interference with distribution of literature by Hebrew Israelite faith); John Rust v. Harold W. Clarke, ___ F. Supp. ___, 1994 WL 157662 (D. Neb. April 22, 1994) (prisoners claim discrimination in restrictions on practice of Asatru [Nordic gods] faith) (dictum); James Messina v. Police Officers Frederick T. Mazzeo, et al., ___ F. Supp. ___, 1994 WL 231998 (E.D.N.Y. May 24, 1994) (misclassification of prisoner's religious affiliation) (dictum).

2. One court has cited RFRA in granting a preliminary injunction. Western Presbyterian Church v. Board of Zoning Adjustment, 849 F. Supp. 77 (D.D.C. 1994) (church challenge to zoning restriction on feeding homeless).

3. Another court has held that RFRA does not entitle the bankrupt to tithe to a church. In re Faulkner, 165 B.R. 644 (Bankr. W.D. Mo. 1994).

4. Two district courts have relied on RFRA in prisoner suits. Allah v. Menei, 844 F. Supp. 1056 (E.D. Pa. 1994) (denying summary judgment to defendant prison officials in suit involving recognition of Temple of Islam sect); Lawson v. Dugger, 844 F.

Supp. at 1542 (ruling for plaintiffs as to ban on literature distribution.

5. The constitutionality of RFRA appears to have been challenged in only one of the above cases. Rodriguez v. Coughlin, ___ F. Supp. ___, 1994 WL 174298 (S.D.N.Y. May 4, 1994) (granting preliminary injunction). The court was able to avoid the issue because it ruled that the restriction on prisoner conduct (wearing of Santeria religious beads) could not be justified even under Smith. The Seventh Circuit has noted the potential constitutional issues raised by RFRA, but had no occasion to decide them. Canedy v. Boardman, 16 F.3d 183, 186 n.2 (7th Cir. 1994) (strip searches of prisoners observed or conducted by guards of opposite sex).

Espy sued by worker critical of gay policy

By Ruth Larson
THE WASHINGTON TIMES

Agriculture Secretary Mike Espy, still fighting to remove a Senate hold on his agency's nominees, is now threatened with a lawsuit—all because an outspoken employee was transferred for his remarks on homosexuals.

Karl Mertz, an equal employment opportunity manager for the Agricultural Research Service in Athens, Ga., was abruptly transferred from his post in March, after he criticized the administration's policy on homosexuals in a television interview while on personal leave.

Sen. Jesse Helms, North Carolina Republican, has championed Mr. Mertz's case, successfully amending the Department of Agriculture appropriations bill to bar removing someone for off-duty remarks against homosexuality.

He and a coalition of 13 Republicans have also put a procedural "hold" on confirmation of three nominees to USDA agencies, hoping to force Mr. Espy to reinstate Mr. Mertz.

Now another group has taken up his cause.

On Friday, Mr. Espy was notified by the Beckett Fund that Mr. Mertz would seek "substantial sums in both compensatory and punitive damages" if he was not reinstated immediately with a formal apology and a clear record.

USDA officials did not return repeated calls requesting comment.

Kevin J. Hasson, president and general counsel of the Beckett Fund, took Mr. Espy to task for the "bureaucratic retaliation (Mr. Mertz) has suffered at the hands of you and your agency for his religiously based views on the morality of homosexuality."

The Beckett Fund is a bipartisan and ecumenical public-interest law firm that defends religious liberty. Its advisory board includes Cardinal John O'Connor, archbishop of New York; Sen. Orrin Hatch, Utah Republican; Rep. Henry Hyde, Illinois Republican; Sargent Shriver, president and CEO of Special Olympics International; Eunice Kennedy Shriver, founder of Special Olympics International; and William P. Barr, attorney general under President Bush.

In his letter to Mr. Espy, Mr. Hasson cited Mr. Mertz's record of upholding the rights of homosexuals. He noted that Mr. Mertz had actively defended a transsexual employee who was harassed. Mr. Mertz also hired a black homosexual who was HIV-positive to be his personal secretary while in the army.

"Nevertheless, you have seen fit to effectively demote him to a newly invented, make-work position for which he is unsuited. ... You have done this solely because of the content of Dr. Mertz's private speech."

The threat of a lawsuit is the latest twist in Mr. Espy's ongoing "war of words" with Mr. Mertz's defenders.

Last week, the Senate approved two Helms amendments during debate on the USDA's fiscal 1995 appropriations bill. One would prohibit removal of employees who make remarks during personal time opposing the USDA's policies on homosexuals; the other would prohibit using appropriated funds for positions, seminars or programs that promote homosexuality.

Late Friday, Mr. Helms fired off yet another letter to Mr. Espy, critical of his latest comments on the Mertz case. In his four-page letter, Mr. Helms pointed out several apparent inconsistencies contained in two previous letters from Mr. Espy.

For example, he noted that while Mr. Espy denied there was a "gay rights agenda" at his department, he had concluded Mr. Mertz's comments "indicate he strongly disagrees with — and cannot faithfully implement current policies in equal employment opportunity."

Mr. Helms questioned how Mr. Espy could say there is no "gay rights agenda" in his department, given that it was among the first to officially sanction the Gay, Lesbian or Bisexual Employees group, or GLOBE.

Mr. Helms also pointed out that the Foreign Agricultural Service has established a position known as the "gay, lesbian and bisexual program manager." It is designed to help recruit for the agency's "Gay, Lesbian and Bisexual Employment Program" and to track homosexual employment statistics.

"I can conclude only that Dr. Mertz was removed from a job in which he has served well because he questioned policies which you say do not exist; certainly they are not authorized in law," Mr. Helms wrote.

"If you will agree to give Dr. Mertz his job back, the more than a dozen senators who have holds on Agriculture nominees will, I am confident, be willing to permit these nominations to go forward immediately," Mr. Helms wrote. "It's your call, Mr. Secretary."

NOTE FOR MATT MILLER

FROM: Nancy-Ann Min 

SUBJECT: HHS Issues of Concern to Religious Groups

Attached per your request is a bullet-ized list of issues of concern to communities of faith. Also attached are recent HHS briefing materials prepared for the Secretary on these issues.

Please contact myself or Barry Clendenin (ext 54920) if you need more information.

Attachments

Issues of Concern to Communities of Faith: HHS

Current Issues

- o Abortion. Certain interest groups are concerned about the Administration's abortion policy in several areas: health care reform, Medicaid reimbursement, RU486 (see below), and fetal tissue (see below).
 - In FY 1994, Congress expanded the Hyde amendment to allow Medicaid reimbursement in cases of rape or incest (in addition to cases where the life of the mother was in danger). HCFA issued a letter on December 28, 1993, requiring States to expand their reimbursement policies, consistent with the new Hyde amendment. Several States have opposed this change because it conflicts with State law and/or policy.
 - The Health Security Act contains family planning services, including abortion, in its comprehensive benefits package. A number of alternatives are under consideration now, including the idea of offering two packages to all consumers (one with abortion coverage and one without), and a "conscience" clause that would allow employers to offer packages without abortion coverage.

Future Issues

- o Health Education. The FY 1995 Budget contains \$11 million for studies of adult and adolescent sexual behavior, primarily related to AIDS risk. NIH is now prohibited by statute from funding the two most controversial sex surveys (the Survey of Health and AIDS Risk Prevalence and the American Teenage Survey), which were criticized for being too explicit. Future explicitly-worded surveys would probably receive attention from certain interest groups.
- o Teen Pregnancy and Family Planning. Certain interest groups continue to be concerned with statements by the Surgeon General regarding appropriate measures to reduce teen pregnancy. Also, neither the House nor the Senate L/HHS appropriations subcommittees took the recommendation in the President's Budget to shift funding from Adolescent Family Life (which primarily funds teen abstinence grants) to a new Office of Adolescent Health. Neither subcommittee chair wanted to create a lightning rod for certain interest groups.
- o RU486. The manufacturer of RU486, Roussel Uclaf, has donated its U.S. patent rights on the abortifacient drug to the non-profit Population Council. FDA Commissioner David Kessler told a Congressional committee on May 16, 1994, that he expected the Population Council to have clinical trials of the drug up and running by the fall of 1994, that it would take the Population

Council approximately one year to prepare a New Drug Application (NDA), and that FDA could probably approve an NDA for RU486 within six months after receipt. The Population Council has not yet located a sponsor to manufacture the drug in the U.S. FDA approval of RU486 will cause an outcry from certain interest groups.

- o Use of Fetal Tissue in Biomedical Research. On January 22, 1993, the President asked Secretary Shalala to end the five-year moratorium on Federal funding of research involving human fetal tissue from induced abortions. Since then, standards for funding such research (regarding informed consent, solicitation of tissue, etc.) were enacted in the NIH Revitalization Act of 1993. NIH plans to fund \$21.3 million in fetal tissue research in FY 1995.
- o Needle Exchange. The statute authorizing the Substance Abuse Block Grant prohibits the use of Block Grant funds for needle exchange programs, and the L/HHS Appropriations Act annually contains a similar prohibition on the use of any Labor, HHS, or Education monies for this use. A forthcoming draft reauthorization bill from the House Energy and Commerce Health Subcommittee may modify this prohibition (e.g., to allow needle exchange programs at State discretion).

The Office of National Drug Control Policy opposes any relaxation of the needle exchange prohibition, and Dr. Brown (ONDCP) has testified to that effect (i.e., "The Administration can find no compelling reason to depart from existing Federal policy."). Needle exchange has not been a religious issue so much as it has received attention from conservatives. A shift in this policy would probably draw fire from certain interest groups.

July 28, 1994

NATIONAL INSTITUTES OF HEALTH

Sharp & Other Sexual Survey Funding

QUESTION:

Does the FY 1995 budget contain any funding for surveys of sexual behavior? Have you reconsidered funding for the teenage sex survey?

ANSWER:

- ▶ The FY 1995 request for NIH includes \$11 million to fund studies which will include surveys of adult and adolescent sexual behaviors, primarily related to AIDS risk. The Child Health (NICHD), Mental Health (NIMH), Drug Abuse (NIDA) and Alcohol (NIAAA) Institutes all have such studies planned.
- ▶ There are no plans to fund the specific surveys called the Survey of Health and AIDS Risk Prevalence (SHARP) or the American Teenage Study (ATS), and, in fact, there is now a statutory prohibition (in the NIH Revitalization Act) against funding these two studies.
- ▶ Research on AIDS risk behaviors, which has been recommended by every advisory group that has examined the NICHD AIDS program, is considered by many scientists important to understanding the behavior of our adult citizens so we can better target our interventions to slow the spread of HIV.
- ▶ For example, data from a NICHD funded study completed last year was very beneficial in increasing our knowledge of the use of condoms to prevent AIDS and other diseases. This and other studies provide vital information for our AIDS prevention strategies.
- ▶ We understand research of this type has been delayed in the past because it is controversial. We are ready to work with members of Congress to work out any potential problems in advance so we can proceed to collect this important information which may save lives in the future.

NIH Spending on Research Involving Sex Surveys (millions)

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>+/-94</u>
NICHD.....	\$4.0	\$6.0	\$8.0	+\$2.0
NIMH.....	.2	--	--	--
NIAAA.....	1.9	1.6	0.6	-1.0
NIDA.....	<u>2.7</u>	<u>3.2</u>	<u>2.5</u>	<u>-0.7</u>
Total NIH...	\$9.9	\$10.8	\$11.1	+\$0.3

KEY INFORMATION:

Study Being Funded By NICHD:

- ▶ Prospective Longitudinal Study on Adolescent Health - This study, which is specifically authorized in the NIH Revitalization Act, is being funded at \$2 million in FY 1994, and will be funded at least \$2 million in FY 1995 (the second year of the grant has been approved for \$7 million, but it will most likely be funded at a lower level). The study will provide information on the behaviors that promote health and the behaviors that are detrimental to health of adolescents.

Past Efforts Halted By Congress:

- ▶ Survey of Health and AIDS Risk Prevalence (SHARP) - \$3 million was included in the FY 1992 request for NICHD within its AIDS budget. Congress explicitly indicated in appropriations language that NICHD funds could not be expended on the SHARP survey. No funds were requested in FY 1993 or 1994.
- ▶ National Survey of Health and Sexual Behaviors - The FY 1991 budget request included \$3 million for this survey, however, because the House Appropriations Committee specifically prohibited expenditure of funds for this purpose the survey was not funded.
- ▶ American Teenage Study (ATS) - In May of 1991, NICHD used \$2 million to support the first year of this five year study. Funds used to award this grant were drawn from the regular pool for competing research project grants for the Institute. At that point, neither the President's Budget nor the Congress had identified this particular research. In July, former Secretary Sullivan directed NICHD to terminate the award. The FY 1992 appropriations bill language also prohibited NICHD from using 1992 funds to support this survey.
 - About 75% of the funds awarded to the University of North Carolina for the ATS, were recouped by NICHD and reallocated to other research grants.

NIH Revitalization Act:

- ▶ Both the SHARP and ATS studies are permanently banned from receiving funds from NIH in the NIH Revitalization Act of 1993 (enacted June 10, 1993).
- ▶ At the same time, the NIH Revitalization Act requires that NIH-funded surveys of human sexual behavior:
 - meet the same ethical and peer-review requirements as other research using human subjects;
 - obtain information expected to assist in reducing the incidence of sexually transmitted diseases, including AIDS, and in improving reproductive health and other health conditions.

Other Studies Being Done By PHS:

- ▶ The Centers for Disease Control and Prevention does collect some information on sexual behaviors through several instruments designed to collect a wide range of general health information among targeted populations. These instruments include the National Household Interview Survey and the survey of Knowledge, Attitudes, Beliefs, and Behaviors, a project funded from CDC's AIDS budget.
- CDC funded two contracts in FY 1993 on the Evaluation of a School-Based Intervention to Reduce Behaviors That Result in HIV/STD Infection. Initiation of these contracts was initially delayed because of some concern that the nature of the questions being asked in the survey instrument would be controversial. These contracts will run through August 1996.
- ▶ The 1989 Condom Study, reported in *The Washington Post* on April 15, 1993, was funded by NICHD under a 1988 Request for Application for a total of \$1.8 million beginning in FY 1989. The study was conducted by Dr. Koray Tanfer of the Battelle Human Affairs Research Centers in Seattle, Washington. This grant was completed December 31, 1993.
- The study was designed to examine condom use in a national sample of 3,321 men aged 20-39.
- Participation was voluntary and strict confidentiality measures were observed.

NATIONAL INSTITUTES OF HEALTH

Fetal Tissue/Human Embryo Research

QUESTION:

The past year has seen some dramatic changes in the restrictions on Federal support for research involving fetal tissue and human embryos. How is HHS implementing these changes?

ANSWER:

- ▶ We are actively working to implement responsibly the changes in these areas which were initiated by President Clinton's Executive Order lifting the ban on Federal funding of research using human fetal tissue. This lifting of the ban was later reinforced and codified by the Congress in the NIH Revitalization Act of 1993.

Fetal Tissue

- ▶ After the ban on Federal funding of fetal tissue research was lifted in the first weeks of this Administration, we published interim guidelines on the conduct of fetal tissue research in the *Federal Register* last March.
- ▶ On January 4, the National Institute on Neurological Disorders and Stroke (NINDS) announced funding for clinical research using fetal tissue from elective abortions. The announcement denotes the first Federal support for fetal tissue research in five years.
 - NINDS announced funding of \$4.5 million for three institutions to study the effects of implanting fetal tissue into the brains of patients with Parkinson's disease.

Embryo Research

- ▶ Because the moral and ethical issues surrounding human embryo research are so profound, in January, NIH convened a 19-member interdisciplinary panel of experts in basic and clinical research, ethics/theology, law, social sciences, and public policy issues to make recommendations to the NIH Director's Advisory Committee.
 - We expect this panel will make recommendations on what areas of human embryo research are acceptable, which are unacceptable, and which need further study.
 - This panel should have a report to the Advisory Committee by July, 1994.

KEY INFORMATION:

Fetal Tissue Transplantation Research

- ▶ On January 22, 1993 President Clinton issued a directive to the Secretary of HHS ending the five-year moratorium on Federal funding of therapeutic transplantation research with human fetal tissue derived from induced abortions (the Secretary formally revoked the moratorium on February 1).
- ▶ In March, NIH published interim guidelines on fetal tissue research in the *Federal Register*. These have since been superseded by the requirements and safeguards enacted by the NIH Revitalization Act of 1993.
 - These provisions deal with the informed consent of the donor, researcher and recipient, and the purchase and/or solicitation of fetal tissue for research.
 - NIH published a subsequent *Federal Register* notice informing the community of the enactment of these statutory provisions, and the withdrawal of the Interim Guidelines.

Fetal Tissue Banks

- ▶ As part of the Bush Administration's strategy to maintain the ban on Federal funding of research on fetal tissue obtained from induced abortions, PHS funded fetal tissue banks to attempt to ensure the availability of fetal tissue from spontaneous abortions and ectopic pregnancies for researchers.
- ▶ On September 30, 1992, the National Institute of Child Health and Human Development (NICHD) made five fetal tissue bank grants for six month periods. Total funding was \$1.5 million, with \$750,000 coming from the National Institute on Child Health and Human Development (NICHD), and \$710,000 from other PHS agencies. Funding for the last six months of FY 1993 had not been identified. The original intention at the time was to fund these five grantees for a total of two years.
- ▶ Three distinct functions of these grants were identified:
 - research on the epidemiology of spontaneous abortion and ectopic pregnancy, and assessment of how often useful (i.e., non-infected and genetically normal) fetal tissue could be obtained from these sources for potential use in transplantation research;
 - research on processing fetal cells; and
 - establishment of a distribution network to supply fetal cells to investigators for human transplantation.

- ▶ When President Clinton lifted the ban, NIH/PHS re-evaluated the need for continuing the fetal tissue bank grants.
- After consultation with experts from the scientific community, NICHD recommended that only the research on the epidemiology and assessment of using fetal tissue from spontaneous abortions and ectopic pregnancies function should be continued.
- NIH continued funding these modified grants through for an additional \$726,000 through the end of FY 1993, and plans to fund them at \$1.4 million in FY 1994 and 1995.

Human Embryo Research

- ▶ Human embryo research involves research to improve the success of in vitro fertilization (IVF), as well as research on human embryos not targeted to IVF, but directed to study of pre-embryo metabolism, development and malformation.
- ▶ Until recently, Federal regulations required research involving in vitro fertilization (IVF) to be approved by an Ethics Advisory Board (EAB). Because there has been no EAB in place since 1980, Federal funding of IVF research was not possible.
- ▶ The NIH Revitalization Act nullified the requirement for EAB review and approval of IVF research proposals, and IVF proposals may now be considered for funding through NIH's existing Advisory Committee structure. NIH has received a number of applications for support in this area.
- ▶ Given the profound moral and ethical issues raised by the use of human embryos in research, NIH/PHS have decided to develop guidelines for Federal funding of human embryo research.
- ▶ In January, NIH finalized a 19-member interdisciplinary panel as a subcommittee to the Advisory Committee to the NIH Director. The first meeting was held February 2-3, 1994, and 4 additional meetings are scheduled for March 14, April 11, May 4, and June 21.
 - The panel will recommend guidelines for Federal support of human embryo research including the identification of areas of research that: are unacceptable; warrant additional review; and are acceptable for Federal support.
 - The panel is composed of an overall chair, two chairs for science and policy, and 16 additional individuals with relevant expertise in basic and clinical research, ethics/theology, law, social sciences, and public policy issues.
 - The current timetable calls for the panel to present a report and recommendations to the Advisory Committee in July, 1994.

- ▶ NIH has received approximately 40 applications for research involving the human embryo, which are being held pending the implementation of the guidelines.
- ▶ Specific dollar amounts have not been budgeted for human embryo research for FY 1994 or 1995. NIH says that once guidelines are in place, scientific merit and programmatic priorities will determine how much work is supported in this area.

HHS FACT SHEET

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mifepristone (RU-486): Brief Overview

May 16, 1994

Contact: FDA Press Office
(301) 443-1130

On Jan. 22, 1993, in one of his first official acts, President Clinton issued a memorandum directing HHS Secretary Donna E. Shalala to assess initiatives to promote the testing and licensing of mifepristone (RU-486) in the United States.

During early 1993, Secretary Shalala and FDA Commissioner David Kessler communicated with senior Roussel Uclaf officials to begin efforts to pave the way for bringing RU-486 into the American marketplace.

In April 1993, representatives of FDA, Roussel Uclaf and the Population Council, a not-for-profit organization, met to discuss U.S. clinical trials and licensing of RU-486. Over the last year, the parties continued their negotiations, culminating in the donation announced today. Roussel Uclaf will transfer, without remuneration, its United States patent rights to mifepristone to the Population Council. In turn, the Population Council will take the necessary steps to bring RU-486 to the American market.

Mifepristone was developed by the French firm Roussel Uclaf. The drug has been marketed for use to non-surgically terminate pregnancy in France, the United Kingdom and Sweden. There are several investigative trials underway with FDA for other uses of the drug, including contraception, labor induction, Cushing's syndrome, endometriosis, meningioma and breast cancer.

It must be recognized that termination of a pregnancy is not a simple medical procedure, whether it is done surgically or through a medical regimen. In France, the United Kingdom and Sweden, where RU-486 has been administered to approximately 150,000 women, the procedure requires several visits to a medical facility, a precise dosing scheme using two different drugs, and close monitoring to care for women who may experience excessive bleeding or other complications. Any use of mifepristone in the United States would have to follow the same type of strict distribution and use conditions.

HHS NEWS

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOR IMMEDIATE RELEASE
Monday, May 16, 1994

Contact: Victor Zonana
(202) 690-6343

ROUSSEL UCLAF DONATES U.S. PATENT RIGHTS FOR RU-486 TO POPULATION COUNCIL

HHS Secretary Donna E. Shalala announced today that French pharmaceutical company Roussel Uclaf, at the encouragement of the Clinton administration, is donating, without remuneration, its United States patent rights for mifepristone (RU-486) to the Population Council, Inc., a not-for-profit corporation.

RU-486 has been marketed for non-surgical termination of pregnancies in France, the United Kingdom and Sweden. The drug is also under study for labor induction, contraception, Cushing's syndrome, endometriosis, meningioma and breast cancer.

"We strongly believe that women in America should have access to the full range of safe and effective alternatives to surgical abortion," Shalala said. "The donation announced today is a big step in that direction."

On Jan. 22, 1993, President Clinton signed a Presidential Memorandum directing the Department of Health and Human Services to assess initiatives to promote the testing and licensing of RU-486 in the United States.

- More -

- 2 -

Shalala commended Roussel Uclaf and the Population Council for coming to closure after months of complex negotiations amid repeated urging from the Clinton administration.

Shalala emphasized, however, that the donation does not mean RU-486 has been approved for use in the United States. The Population Council must conduct clinical trials, identify a manufacturer and submit a new drug application to the Food and Drug Administration.

"The FDA will do all it can to quickly evaluate mifepristone," said Shalala. "FDA's decision will be based solely on the scientific and medical evidence as to the safety and efficacy of the drug. That is our responsibility to the women of America."

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Relations with Faith Communities: Positive Developments

The recently completed survey of executive branch departments and agencies turned up a wide range of positive and productive relations with religious groups and faith communities. These activities fall into a number of different categories, including:

- o contacts in the normal course of business;
- o consultations on specific legislative and regulatory initiatives;
- o consultations to address structural problems in the relationship with faith communities;
- o formal conferences organized by departments to assess and strengthen these relations;
- o speeches and appearances by senior department officials at annual religious conventions and other meetings;
- o community outreach and service activities in cooperation with religious groups;
- o designation of formal offices and liaisons to monitor developments and take responsibility for relations with religious communities.

In addition, some departments have consulted with academic, policy, and public opinion experts to explore the effects of specific issues and modes of public presentation on the response of faith communities to the administration.

In my judgment, HUD and Education have made the most systematic efforts to explore and strengthen relations with religious groups. We may want to consider whether other departments should be asked to study and, where appropriate, adopt the HUD or Education models.

For reference, I attach memos from

- o Bruce Katz (HUD)
- o Kevin Sullivan (Education)
- o Tom Collier (Interior)
- o Michael Vandenberg (EPA)

- o Kris Balderston (Labor)
- o Suzan Johnson (ONDCP, AIDS Czar)
- o Veterans Affairs
- o General Services Administration



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

August 2, 1994

MEMORANDUM TO: William Galston
Deputy Assistant to the President

FROM: Bruce Katz
Chief of Staff *Bruce Katz*

SUBJECT: HUD Involvement with the Religious Community

The religious community in this country has long been a source of hope, determination and inspiration working in and throughout communities across this country. It has served as a catalyst -- consistently investing in people and communities -- even when individuals and governments could not or would not. Examples in this regard abound and these examples prove that religious institutions can and do have a major impact on housing, jobs, and other critical social concerns.

Across America, the religious community is embracing entire communities beyond the sanctuary walls by providing affordable housing, building shopping centers, schools, franchises and by sponsoring innovative youth programs and investment cooperatives. Much of this religious community activity is assisted by HUD programs and directly forwards HUD's five priorities: reducing homelessness; revitalizing public housing; expanding affordable housing and homeownership; ensuring fair housing; and empowering communities:

In Minneapolis, Elim Baptist Church has run a supportive housing program for the homeless for six years. With HUD assistance, they rent multifamily units and buy single family homes to place homeless families.

In Queens, New York, the Allen African Methodist Episcopal Church, led by the Rev. ---and Congressman---Floyd Flake, has built a senior citizens housing project with HUD Section 202 assistance, established a school and clinics, and used CDBG funds to assist the purchase and rehabilitation of more than 15 storefronts, bringing new businesses and jobs to that community.

In Brooklyn, the East Brooklyn Congregations are using HUD Nehemiah Housing program funds to provide affordable homeownership opportunities for low income families.

In Newark, Father William Lindner has developed New Communities Corporation into one the most effective community empowerment organizations in the country. New Communities develops affordable housing and job creating commercial developments, operates daycare centers and job training programs, and recently received a \$21M HOPE I grant to transform abandoned public housing units into affordable homeownership units.

HUD-Religious Community Conference

HUD has sought to capture the commitment, leadership and enthusiasm of the religious community and build upon the active, ongoing relationship between the Department and the religious community. On June 22, Secretary Cisneros convened a meeting of more than 75 religious and church leaders from around the country to discuss ways to facilitate the partnership between HUD and the religious community. A list of attendees is attached.

Religious community leaders educated HUD staff on which HUD programs worked well in their communities and identified specific obstacles to effective use of HUD programs by Religious Institutions. Specific actions taken following this conference include:

Revision of HOME Regulations: In response to concerns identified at the conference, HUD will publish a revision this month of its HOME program regulations to facilitate participation in the program by wholly secular entities established by primarily religious organizations.

Review of Section 202/811 Elderly and Disabled Housing Applications. The 202/811 programs have consistently been a resource for churches and church-sponsored groups to build affordable housing for the elderly and the disabled. The current (FY 94) NOFA includes \$1 billion in available funding for the 202 program and \$345 million in funding for the 811 program. Several churches have applied under this competitive NOFA. We expect the awards to be made in late August.

Homeless: Religious Community leaders are increasingly involved in providing services to homeless persons and families. HUD committed to consulting with program providers as it revises its programs in response to Congressional enactment of proposed consolidated homeless assistance programs.

Commitment to Continued Cooperation: HUD agreed to create four Task Forces composed of HUD staff and Religious Community leaders to continue work on issues identified at the Conference. HUD also agreed to host regional meetings with religious community leaders; to publish a report capturing the success stories of community development efforts and to explore other mechanisms for formalizing future relationships between HUD and the Religious Community.

Appointment of HUD-Religious Community Liaisons

In April, Secretary Cisneros created a specific liaison for HUD-Religious Community issues within the Department's Office of Special Actions and the assigned Anna Forbes Towns as the liaison. Anna will serve not only as a point of contact for the religious community for programs within HUD, but will also represent the Secretary and the Department at outside events involving the religious community.

On October 1, 1994, Dr. Suzan Johnson Cook, will join the Department on a half-time basis to work on HUD-Religious Community Issues as well. Dr. Cook currently serves as a White House Fellow assigned to the White House Domestic Policy Council. Suzan Johnson Cook is also Senior Pastor at Mariner's Temple Baptist Church in New York.

Rainbow Coalition National Crusade

HUD and Secretary Cisneros have been working with the Rainbow National Reclaim our Youth Crusade, founded by the Reverend Jesse L. Jackson. The Crusade is a project of the Citizenship Education Fund, designed to use coalition building and community organizing to address the crisis of youth violence in the United States. The goal of the Crusade is to organize coalitions of churches, judges, educators, parents, elected officials, government employees, corporations and others to implement and administer violence prevention initiatives.

HUD has been working with the Crusade to help them plan a training session for representatives from 25 cities. The training session would help participants facilitate the community organizing and coalition building process in their local communities.

Secretarial Speeches

Secretary Cisneros has delivered speeches to two major gatherings of religious community leaders. In April, the Secretary addressed the Progressive National Baptist Convention at the Harvard Divinity School in Cambridge, Massachusetts. In June, the Secretary travelled to Hampton, Virginia to address the 80th Annual Hampton University Ministers' Conference.

Areas of Controversy

The Office of Fair Housing and Equal Opportunity (FHEO) administratively enforces the Fair Housing Act ("the Act"), which prohibits discrimination in housing and residential real estate related to transactions based on race, color, religion, sex, national origin, familial status or handicap.

The Act expressly prohibits discriminatory advertising. Specifically, the Act prohibits any individual who is engaged in the sale or rental of a dwelling from making, printing, or publishing any notice, statement, or advertisement that indicates a preference, limitation, or discrimination based on race, color, religion, sex, national origin, familial status or handicap.

For some years, beginning in the previous Administration, the Office of Investigations, in FHEO, has investigated several cases involving telephone directory advertising. Most of these cases were based on information received by the Department regarding discriminatory advertising in telephone directories.

One of these cases was resolved last fall with an agreement that the directory company would undertake a systemic review and revision of its advertising policies and practices and provide training for its staff on an overall non-discrimination policy, as well as other provisions, including a substantial money payment. The parties agreed to keep the terms of this agreement confidential. During the discussions with the company, U.S. West, various provisions of existing Department guidance on non-discriminatory advertising were discussed with the company.

Resolution Of the Issue

The company developed a policy, based on information provided by HUD in November of 1993, addressing the use of religious names and symbols in directory advertising. The policy in essence states that in display advertising, use of names of entities with religious overtones must be counterbalanced with inclusion in the ad of language such as "all faiths welcome without preference." The policy also states that references to religion in ad copy or use of religious symbols in ads should be excluded from the ad copy. The company has indicated to us that they wish to revise their position on use of religious symbols -- to allow them in display advertising with the "all faiths welcome" language.

Conclusion

To the extent there is continued confusion regarding the line between free exercise of religion and the establishment clause of the Constitution, HUD is continuing to review its opinions so that its role will be clearly supportive of religion while being respectful of the mandates of the First Amendment.

Attachment

HUD Religious Community Leaders Conference June 22, 1994

List of Attendees

Bishop John Hurst Adams
Senior Bishop
African Methodist Episcopal Church
400 Arbor Lake Dr.
Suite B300
Columbia, SC 29223

Mr. Jeff Ballabon
Counsel to Senator John Danforth
249 Russell Senate Office Building
Washington, DC 20510

Dr. Lula Ballton
Executive Director
West Angeles Community Development Corp.
West Angeles Church of God in Christ
3045 South Crenshaw Boulevard
Los Angeles, CA 90016

Dr. Michael Battle
Executive Secretary
Hampton University Ministers' Conference
Office of the Chaplain
Hampton University
Hampton, VA 23668

Ms. Sondra Townsend-Browne
Deputy Director
National Federal of Community
Development Credit Unions
120 Wall Street, 10 FL.
New York, NY 10005-3902

Rev. Dr. Calvin Butts, III
Pastor
Abyssinian Baptist Church
132 W. 138th St.
New York, NY 10030

Mr. Steve Callahan
Campaign for Human Development
United States Catholic Conference
3211 Fourth Street, N.E.
Washington, DC 20017-1194

Dr. Louise Cole
Executive Director
Interfaith Coalition for Andrew
Recovery Effort, Inc. (ICARE)
111 Southwest 5th Avenue, Suite 104
Miami, FL 33130

Ms. Mary Cooper
National Council of Churches in DC
110 Maryland Avenue, NE
Washington, DC 20002

Rev. Luis Cortes
Executive Director
Nueva Esperanza, Inc.
2530-36 N. 2nd Street
Philadelphia, PA 19133

Ms. Lillian Curley
Organization for a New Equality
4480 King Street
Alexandria, VA 22302

Ms. Shannon Daley
Religious Affairs Coordinator
Children's Defense Fund
25 E St., NW
Washington, DC 20001

Rev. Audrey Daniel
Program Director of the Philanthropy
in the Black Church
Council on Foundations
1828 L Street, NW, Suite 300
Washington, DC 20036

Ms. Angela Davis
Executive Director
National Rainbow Coalition
1700 K St., NW
Washington, DC 20007

Rev. Stan Davis, Jr.
Executive Director
The National Conference on Christians
and Jews
360 North Michigan Avenue
Chicago, IL 60601

Mr. Blaine DeNye
Vice President, Board of Directors
Trinity United Church of Christ
1067 West 97th Street
Chicago, IL 60643-1578

Rev. Dr. James M. Dunn
Executive Director
Baptist Joint Committee on Public
Affairs
200 Maryland Avenue, N.E.
Washington, DC 20002

Ms. Carter Echols
Executive Director
Samaritan Ministry of
Greater Washington
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UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

July 28, 1994

MEMORANDUM TO BILL GALSTON
THRU: BILLY WEBSTER
CHIEF OF STAFF
FROM: KEVIN SULLIVAN
RE: EDUCATION DEPARTMENT AND THE RELIGIOUS COMMUNITY

CO-OPERATIVE ACTIVITIES

1. Assistant Secretary of Education Tom Payzant briefed members of the Interfaith Alliance on GOALS 2000 on July 14th.

2. On July 25th The Secretary and the Deputy met with seven teachers, all of whom have been honored as either a "State Teacher of the Year" or a "National Teacher of the Year." These teachers are self-identified "Christians" and or "people of faith" and two have been featured on the cover of James Dobson's "Focus on the Family" magazine dedicated to teachers.

The teachers support GOALS 2000 and are deeply offended by Dobson's six page letter attacking GOALS 2000. At the same time, they are all deeply concerned about the increasing rift between the Christian community and the larger political society.

The teachers gave the Secretary an overview of what they are hearing in their respective communities. Patricia Ann Baltz, the 1993 California and 1993 Disney Teacher of the Year, stated that many parents are simply "afraid", that there is a pervasive fear about how changes in education and what their children are being taught.

All the teachers indicated that there is an enormous gulf in the language used by religious-minded parents and teachers. Some of parents view the use of "technology" and "writing portfolios" as a potential invasion of family privacy and a new civil rights issue.

The teachers agreed to act as "bridges" to the Christian community and work with us to set up a series of meetings with conservative Christian leaders who are concerned about federal education policy. We have tentatively scheduled a first meeting for the Secretary next week in Kentucky where conservatives have begun to attack KERA as a stalking horse for Goals 2000 and a federal take over of local education.

3. The meeting with the teachers was immediately followed by a larger meeting with representatives of mainline religious organizations (see attachment). The seven teachers also participated in this meeting as well. The purpose of this meeting was to describe our "Family Involvement Initiative" and to enlist the help of the wider religious community in this initiative. The Secretary and the Deputy led the meeting.

The meeting was described as a "breakthrough" meeting by one of the representatives even though there was some sense that the Establishment Clause of the First Amendment may create significant problems at the program level.

There was a general agreement, following the lead of Sister Lourdes Sheehan of the U.S. Catholic Conference, that these religious organizations would support our efforts and be willing to meet again. James Smith, representing the Southern Baptist Convention, was the only representative of a religious faith who did not speak at the meeting.

4. Terry Peterson, the Secretary's Counselor, myself and other staff members met with Gary Beckner, the Exec. Director of the new "Association of American Educators," that was started this year and recently received favorable notice as an alternative to the NEA by James Dobson in his "Focus on the Family" letter attacking GOALS 2000.

Mr. Beckner defined himself as a "Christian" and pro-public education and seeks to identify his organization as a trade association for teachers who care about values education. He believes that conservative minded teachers aren't at the table when decisions are made and they need to be represented by something other than the NEA. He indicated his willingness to act as a bridge to conservative Christian groups.

5. Mike Cohen and Kevin Sullivan met with Leslie Lenkowsky, the President of the Hudson Institute, who suggested that the Institute would be like to sponsor a day long dialogue with conservative intellectuals and religious thinkers early next year to find points of connection.

We indicated we would be interested in such a dialogue but at a lower level of involvement without the Secretary at this time, and that for such a meeting to work it had to be a serious, low-key effort without political fireworks.

Agudath Israel of America

Mr. Abba Cohen
Director, Washington Office
1730 Rhode Island Avenue, NW, Suite 411
Washington, DC 20036

Agudath Israel is the nation's largest grassroots Orthodox Jewish movement, with 19 divisions and tens of thousands of members across the country. It represents the interests of approximately 550 elementary and secondary schools under the umbrella of the National Society for Hebrew Day Schools, serving a population of 120,000 students.

Association of Christian Schools International

Dr. John C. Holmes
Director for Government Affairs
1023 15th Street, NW, Suite 500A
Washington, DC 20005

ACSI is the largest evangelical Christian school group with 2,463 schools and 461,511 students.

American Association of Christian Schools

Mr. Martin Hoyt
Legislative Office
P.O. Box 15304
Washington, DC 20003

This fundamentalist Christian group has 1,252 schools and 175,000 schools nationwide. Secretary Riley met with AACCS President Dr. Carl Herbster.

Presbyterian Churches USA

Ms. Bernadine McRipley
100 Witherspoon Street
Louisville, KY 40202-1396

Southern Baptist Convention

Mr. James A. Smith
Director, Government Relations
400 North Capitol Street, NW
Washington, DC 20001

List of Religious Representatives
Attending 3:30 Meeting

United States Catholic Conference

Mr. Fred Brigham
representing Sister Lourdes Sheehan
Secretary for Education
3211 4th Street, NW
Washington, DC 20017

Mr. Kenneth Dupre
Director, Office of Catholic School Parent Organizations
3211 4th Street, NW
Washington, DC 20017

USCC represents the Catholic Bishops of the United States and, in so doing, represents the Catholic Schools throughout the country. Catholic schools compose approximately 35% of all private schools and educate approximately 54% of all private school children. USCC has approximately 20 state affiliates.

National Catholic Educational Association

Sister Catherine McNamee
President
1077 30th Street, NW, Suite 100
Washington, DC 20007-3852

NCEA is a membership organization representing private schools, their teachers, and parents. Statistics above relate to NCEA. In addition, NCEA represents members in religious education (separate from Catholic schools).

Lutheran Church Missouri Synod (DID NOT ATTEND)

Ms. Elizabeth Fluegel
Interim Director
Office of Government Affairs
5 Thomas Circle, NW, 5th Floor
Washington, DC 20005-4153

LCMS is the Largest religious school system after Catholic education. There are over 2,000 schools serving over 250,000 students.

100-24-34 12-16-77 OFFICE OF SECRETARY
Shiloh Baptist Church, Washington, DC

Rev. Justus Reeves
Minister of Church Education

National Association of Evangelicals

Mr. Forest Montgomery
Office of Public Affairs
1023 15th Street, NW
Suite 500
Washington, DC 20005



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

MEMORANDUM

July 29, 1994

To: Christine Varney

From: Tom Collier

Regarding: Department of the Interior and the Religious community

The Religious Community and the Environment

There is a faction of the Christian religious right that abhors environmentalism and conservation as anathema to God's having granted man dominion over the earth and its resources. The argument would be that we need not worry about saving trees or critters because the Lord will send more, and because we are to be master over the earth. Therefore, protection for endangered species, in this theologic view, could be considered a sin against God: it violates His directive for human dominion.

In the more mainstream world, however, there is support for environmental protection among national spiritual leaders. Many leaders and individuals in traditional religions understand the nexus between environmental health (clean air, water, soil, etc.) and human health. Many human problems such as starvation and disease are directly linked to loss of tillable soils, cutting of forests and air and water pollution. Many religious leaders understand that the care and nurturing of the environment are necessary for a healthy human flock.

There is a loosely-organized Religious Coalition for the Environment for whom the White House organized a day-long meeting this past spring: Secretary Babbitt spoke to them and was very warmly received. This group may hold some promise for expanding grassroots support for the Administration's environmental agenda--also as a counterweight to the anti-environmental wing of the Christian right. (In the pro-choice community, the Religious Coalition for Abortion Rights began humbly, but has become a critical tool to keep the right from "owning" the issue on moral grounds.)

Our Issues and the Mainstream Religious Community

Except for Native American issues and their generally positive link with the Native American spiritual community, our issues do not have a hard link with organized religious institutions; one exception being the U.S. Fish and Wildlife Service's Eagle Permit Program. Recently the White House and the Service via Presidential Executive Order and Director's Order established new policies and procedures for distributing eagle carcasses, feathers, and parts to Native Americans for religious purposes. The Director of the Service authorizes and requires employees, through

the Eagle Act, to salvage, transport and ship available eagles to a central repository for distribution to Native Americans. The new orders ensure that all known eagle carcasses are promptly shipped to a repository; that the repository be relocated to a more central location; that the highest priority for eagle carcasses is Native American religious purposes; and that the permitting process be simplified. The President's Executive Order also expanded the prompt collection and shipping of eagle carcasses to include other federal agencies.

There are other links between our natural resource policies in the mountain and coastal West--for better or for worse at the moment. In the Pacific Northwest, for example, the Catholic Archbishop spoke at the President's Forest Conference about the human elements in the logging dispute. The Archbishop was then unsatisfied with the President's Forest Plan, but was supportive of the economic assistance package to offer help to displaced timber workers and their families and communities.

For the most part, however, the Western religious community is a battlefield yet to be occupied by either side. In the mountain states, there is a risk that the wise-use opponents of grazing and mining reform will take to the pulpits in the continuing partisan attacks on these policies. As we move into the election season we can expect such partisan rhetoric to intensify, and the "church as town hall" will become attractive.

We have an opportunity to tie our conservation efforts to some basic tenets embraced by many traditional religions. Humankind as a responsible steward of the earth's living and non-living resources is not a concept developed by the Administration or the environmental movement. It is, rather, deeply rooted in religious values. For instance, the Secretary's call to citizens to "live more lightly on the land" is a modern day analogy to biblical instructions that farmers' fields lie fallow for a time. Similarly, the Endangered Species Act is friendly to the values embodied in the Noah's Ark tale: God said to save two of all the beasts, not just the cuddly ones. Concern about so-called takings legislation has stirred up some religious opposition, to our benefit, out of fears that under total freedom of private property, a pornography dealer could set up shop next to a church.

On the Horizon

Senator Inouye's bill S. 2269, the "Native American Free Exercise of Religion Act," is an important component of our efforts to protect the rights of Indians to practice their traditional religions. The bill is intended to ensure that Federal land managers will consult with tribes to prevent conflicts with traditional sacred sites. The bill would also protect the rights of Indian prisoners and the religious use of peyote. The Departments of the Interior and Justice testified in strong support of the concept and intent of the legislation. The Administration testified that there are concerns about the definition of "Indian Tribe" in the bill and that any final legislation must be limited to Federally-recognized tribes. The Senate Committee on Indian Affairs is scheduled to do a markup of the bill Monday, August 1. Prospects of passage of the entire package appear dim this year.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM FOR LAURIE LABUDA, THE WHITE HOUSE

FROM: Michael P. Vandenberg
Chief of Staff

SUBJECT: EPA Interaction with the Religious Community

This memo responds to the request from Bill Galston for information on EPA's relationship with the religious community.

1. EPA Activities During the Past Year

On June 16, 1994, Administrator Browner and other top Administration officials participated in a meeting of the National Religious Partnership for the Environment (NRPE) sponsored by the White House. The meeting was designed to open lines of communication with the religious community on key environmental issues. The NRPE represents a potentially large constituency for environmental protection efforts.

Aside from the Administrator's address to the NRPE gathering, other top EPA staff also have met with religious organizations throughout the year to discuss the Administration's environmental priorities. For example, EPA's Assistant Administrator for Solid Waste and Emergency Response, Elliot Laws, spoke to the National Council of the Churches of Christ in December, 1993, about contaminated waste issues impacting low-income communities.

2. Issues of Concern to the Religious Community

Environmental issues do not tend to be particularly controversial among religious constituencies. Some in the religious community have been involved with the emerging environmental justice movement, which seeks to protect low-income and minority populations from bearing a disproportionate share of the pollution burden in the U.S. Environmental justice issues are often sensitive. EPA has taken a number of steps to work with the religious community in the area of environmental justice and is holding discussions with NRPE about potential cooperative projects to enhance community involvement at Superfund sites and to identify and reduce environmental hazards in the Mississippi Delta, an area of concern to environmental justice advocates.



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TO: Steve Silverman
FROM: Kris Balderston
DATE: August 3, 1994
RE: DOL Interactions with Religious Organizations

You requested information on DOL contacts and interactions with religious groups and organizations.

Based upon the information we have gathered so far, the Department's interactions with religious entities seem to fall into three categories:

1. "Course of business" interactions with religious groups as employers. Several Department agencies enforce laws and regulations with which employers must comply: the Wage and Hour Division of the Employment Standards Administration; the Occupational Safety and Health Administration; the Pension Welfare Benefits Administration, to name three. Religious groups as employers are subject to some of these regulations and exempt from others. DOL agencies may have contact with such groups in their capacities as employers, either as the subject of enforcement actions or investigations or providing them with assistance in determining whether they are exempt.
2. Outreach to religious groups on specific Department initiatives. The Department frequently speaks to and consults with outside groups - corporations, unions, community based organizations, as well as religious organizations - concerning our various initiatives, such as School-to-Work, the Reemployment Act, and our efforts to address the problems of low wage workers and farm workers. For example, a Deputy Assistant Secretary for Employment and Training spoke to the U.S. Catholic Conference on the Reemployment Act.
3. Groups that receive DOL program funding. Religious groups or individuals may apply for and receive Department funding for DOL-related programs, provided that they meet the necessary qualifications and, in the case of competitive grants, present superior proposals. Such funding may be direct or through state or local organizations. For example, Focus:HOPE Center for Advanced Technologies in Detroit, Michigan, which is run by Father William Cunningham, receives Department funding, as does Opportunities Industrialization Centers of America (OIC), run by the Reverend Leon Sullivan. (Both organizations provide employment and training services to urban populations. Focus:HOPE was featured at the What Works conference in March - Father Cunningham was on President Clinton's panel at the conference.)
4. Civil Rights Organizations. The Department is making an effort to reach out to Civil Rights organizations and leaders on a variety of issues, in particular to get their input on employment and training issues that affect disadvantaged and urban communities. Religious groups and individuals active in civil rights are among those with whom we are in contact. The Reverend Leon Sullivan is an example in this category as well.

A quick survey of Department agencies turned up no specific instances of extraordinary contacts or incidents - positive or negative - with religious organizations. Basically, the Department interacts with such organizations as it does with a host of other community and social service organizations.

Please let us know if you require additional information.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-Jul-1994 10:34am

TO: William A. Galston

FROM: Suzan D. Johnson
Domestic Policy Council

SUBJECT: President & Religious Community

Bill: I wanted to update you on the various conferences that I have worked on throughout the year with the religious community and the Administration.

Dr. Lee Brown, ONDCP, hosted various religious leaders this past March to begin a conversation about a national dialogue with the religious community around drug prevention. There were about fifty attendees, and a committee was formed to work with Arthur Houghton who is Dr. Brown's contact, for a possible summit in 1995.

There were also several prayer breakfasts that were closed to me, with about 12 or so ministers at a time. Flo MacAfee can share more with you. In this arena, it would be helpful to the President to use his in-house "ministerial connection" to help with the formation of these events.

I also worked with Secretary Cisneros's Special Action office to host a religious leaders roundtable and work session to see ways that HUD and the religious community can partner together for communities, focusing on HUD's five major areas of concentration.

Finally, Christine Gebbe hosted several African-American clergy on the subject of AIDS for a one-day conference. This was as a result of the Black Leadership Commission on AIDS conference that she and I attended last October for the President, in conjunction with the National Baptist Convention's annual session.

Both HUD and the White House sent myself and Anna Forbes Townes to the Hampton Ministers' Conference this past June. It is the largest gathering of African-American clergy in the world (7000) and would be a mistake for Pres. Clinton to miss next year. Secretary Cisneros attended it.

P.S. My church, which will be 200 years old next year is the oldest Baptist Church in Manhattan and the only large church headed by an African-American female. All boroughs of New York are represented. It would be a wonderful opportunity for President Clinton to get a cross-section in one room. Wednesdays at 12 noon are preferable because you have everyone there from Blue Collar workers to Wall Streeters and a significant population of the NYC Police Dept. who are supportive of his community policing.

Let me know if there is any other way I can be helpful.

08/03/94 11:40



08/03/94 12:07

804 728 3179

CHAPLAIN CENTER

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002

**Department of Veterans Affairs (VA)
Veterans Health Administration (VHA)
National VA Chaplain Center**

White Paper on Activities that Affect the Religious Community

Purpose: To respond to a White House request for information on programs and activities that support the President's desire to preserve and enhance his relationship with the religious community.

Background: The National Department of Veterans Affairs Chaplain Center in Hampton was established as a Center of Excellence in 1992. An early goal of the National Center was to expand the outreach of the department with the religious communities who provide clergypersons as chaplains for the Department of Veterans Affairs. Several goals were established that impact the religious community: VA/Department of Defense Sharing, VA/Religious Community Sharing and Participation in National Meetings.

Current Status:

VA/DOD Sharing. The National Center initiated dialogue with the Chaplain Corps of the Army, Navy and Air Force out of which has been developed the Pastoral Care Residency Program to provide training for VA and DOD chaplains as well as potential candidates from the community at large. The Hampton Roads Chaplain Prep Center now has five Navy chaplains and one VA chaplain currently in training in the Hampton Roads area. Dialogue continues with the Army and Air Force Chief's offices to expand this program nationwide.

VA/Religious Community Sharing. In August 1993, the National Center hosted an intensive three-day consultation with 20 clergy leaders from the national faith group communities who provide clergypersons as chaplains for the VA. A second consultation is scheduled in August 1994. Through this consultation the departments affirmative action/diversity recruitment goals are reinforced as part of the total commitment to excellence.

Through the relationship with the endorsing community the National Center has supported interface with the major veterans service organizations to explore mutuality of goals including volunteer recruitment and support of National Health Care Reform.

Through our Chaplain Service at Portland Oregon VA Medical Center, a clinical ethics residency has been established under the preceptorship of the Chief. Primary recipients of this training are the clergy of the greater Northwest area.

Chaplains at most of our local VA Medical Centers are active participants in inter-faith clergy associations and many host at least one of the meetings annually in addition to providing an annual clergy seminar at the facility. This in turn enables the local VA Medical Center to utilize the resources of the religious community for referrals.

National Meetings: The staff of the national center actively participates in national meetings within the religious communities in order to support recruitment goals and resource sharing. This includes:

— **DIALOGUE '94/Congress on Ministry in Specialized Settings** (May 1994) an international meeting of over 3,000 pastoral care providers, administrators and educators

— **Military Chaplains Association Annual Institute** (April 1993, 1994)
Annual Black Ministers Conference (June 1993/1994) in Hampton, Virginia, with an attendance in excess of 6,000

— **National Catholic War Veterans Convention** (August 1992, 1993)

— **National Jewish War Veterans Convention** (August 1992, 1993, 1994).

The Director, Chaplain Service participated with additional religious leaders and others in a conference on the human side of downsizing at the Federal Quality Institute (May 1994)

August 2, 1994

MEMO TO Christine Varney
Cabinet Secretary

FROM: General Services Administration

SUBJECT: Religious Right

RESPONSE TO QUESTION 1

GSA's community relations activities are varied in scope. Highlighted below are those activities that we engage in with communities of faith.

o Senior Citizen's Counseling and Delivery Service

GSA adopted the Senior Citizens Counseling and Delivery Service in 1989. This organization is the District's lead agency for aging services in Ward 8. The mission of the SCC&DS is to respond to the economical, physical, mental and emotional well-being of senior citizens in the District of Columbia. The SCC&DS is located in the Rehoboth Baptist Church in southeast Washington. Rehoboth is instrumental in assisting the SCC&DS with their mission.

GSA provides support to the SCC&DS by donating clothing and non-perishable contributions, serving meals to foster grandparents, providing support and miscellaneous services, assisting with physical improvements of their facility and serving on Boards and Advisory Committees to help address the concerns of senior citizens and build better relationships in the community.

o Adoption of the Gates Family

In 1993, the Greater Mt. Calvary Baptist Church (located in northeast Washington) encouraged GSA to expand our community relations base beyond community organizations and strive to reach the people directly. In doing so, the Office of the Chief Financial Officer initiated the adoption of a family who needed assistance and could benefit from the support of GSA. The Gates family was selected from the Mt. Calvary Baptist Church.

o Mt. Carmel House

The Mt. Carmel House is a Catholic organization that provides support to individuals and families in need.

GSA has provided thanksgiving baskets to this organization. This organization maintains a list of families with specific needs.

o St. Ann's Infant and Maternity Home

St. Ann's is a Catholic organization founded by the Daughters of Charity. It is a home for babies and young children who are in crisis because of mistreatment, neglect, abandonment, homelessness, family emergency or parental incarceration. In addition, St. Ann's is also a home to pregnant adolescents who have nowhere else to turn. St. Ann's teaches these young women parenting and independent living skills, provides them with educational opportunities, and child care for their babies.

GSA employees provide support to St. Ann's Infant and Maternity in the following ways:

- Conduct fund-raising activities such as bake sales, baby showers, etc. to raise funds to donate to the Home.
- Sponsor clothing and book drives for residents of St. Ann's.
- Host special events for the mothers and children at St. Ann's.
- Provide donations of baby clothes, baby items, toys, books and games.
- Organize and update St. Ann's small library.
- Make personal visits to St. Ann's. (last year St. Ann's reported approximately 300 visiting hours for GSA employees).

RESPONSE TO QUESTION 2

There are no regulations, administrative or legislative issue that we deal with as it relates to religious or faith communities.

When implementing community relations projects on behalf of GSA we act in accordance with existing Public Laws, Executive Orders, the Federal Personnel Manual and internal GSA Orders and correspondence from General Counsel.

This information applies when implementing all community relations initiatives.

LEAD US NOT INTO TEMPTATION

A Christian Case Against School Prayer

JOE LOCONTE

If God truly answers prayers, then politicians, lawmakers, and religious activists may soon have Him working overtime: Speaker-elect of the U.S. House of Representatives Newt Gingrich promises a constitutional amendment allowing voluntary, student-led prayer in public school; President Clinton says "there is room" for such prayer in public education; over the last 18 months, school prayer initiatives have passed or appeared in at least 10 state legislatures.

Not everyone, of course, is ready to invoke a hearty Amen. Strict church-state separationists cite constitutional objections, while religious minorities and secularists worry about coercive prayers in class. But more surprisingly, a growing number of conservative, evangelical Christians are raising deep concerns about the difficulties that even student-led prayer creates in matters of faith, conscience and civility. And the doubts and criticisms are coming from some of the most influential quarters of this faith community—including academics, seminary leaders, and legal scholars and activists. "It's a diversion," says Steven McFarland, director of the Christian Legal Society's Center for Law and Religious Freedom. "It's a diversion of our legal energies, it's a diversion of our spiritual focus, and it anesthetizes the churches."

NEW WAVE OF SUPPORT

Ever since the Supreme Court declared prayer in the public schools unconstitutional, religious conservatives have been longing—and lobbying—for its return. In the 1970s, school prayer was one of the issues that helped propel conservative Christians into national politics. One evangelical Protestant leader called the Court's ban on prayer "the darkest hour in the history of the nation." By 1980, invigorated evangelicals helped elect Ronald Reagan on a platform endorsing a constitutional amendment to restore voluntary school prayer. Such bills were proposed, but never cleared Congress, and by the mid-1980s, states were limited to passing moment-of-silence laws.

Then came the 1992 U.S. Fifth Circuit Court of Appeals decision allowing "non-sectarian" student-led prayers at graduation ceremonies. The Supreme Court declined to review the ruling, and several lower federal courts have issued conflicting decisions in similar cases.

Since then, attempts to reintroduce either school

prayers or a "moment of quiet reflection" have hit a new crescendo. At least six states—Maryland, Virginia, Georgia, Mississippi, Tennessee, and Alabama—now allow prayer or quiet reflection in class. Pennsylvania, South Carolina, Florida, and Oklahoma have considered similar laws. Gingrich has anointed Representative Ernest J. Istook Jr., (R-OK) to oversee hearings on school prayer in all 50 states, anticipating a floor vote by the fourth of July.

Student prayer has always been popular with the majority of Americans: At least 75 percent consistently favor returning prayer to the schools. What is new about the latest surge in interest is the growing support from liberal politicians and black urban leaders and clergy. Prayer legislation recently was supported by the majority of Democratic council members in the District of Columbia, including Mayor-elect Marion Barry. Democrats like Florida state Representative Beryl Burke and Georgia state Senator David Scott have pushed similar measures.

THE CASE FOR PRAYER

One of the primary arguments for school prayer is historical: American society always has been religious, and public prayer seems an appropriate reflection of the nation's emphasis on faith and religious freedom.

The modern exclusion of prayer from public schools, say proponents, reveals a deep-seated and historically inappropriate hostility to religious belief. "Right now there's almost a total absence of religion in the schools," says Robert Dugan, director of the public affairs office for the National Association of Evangelicals. Court rulings that remove the Ten Commandments from school walls, textbooks that delete the religious motivations of the American Founders, prohibitions against graduation prayers—all are seen as attempts to purge the public schools of America's religious roots. "We need an honest look again at the role of faith in our history," Dugan says.

A second argument by prayer advocates is theological: Schools and other public institutions have a responsibility to acknowledge the Deity, because the denial of God in civic life carries profound social consequences. Evangelicals draw from the New Testament letter of Romans,

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Demonstrators in front of the Supreme Court. Prayer advocates argue that American society has always been deeply religious, and public prayer is an appropriate reflection of our nation's emphasis on faith and religious freedom.

which describes the moral decay that accompanies rejection of God and his moral law. School prayer "reminds you that the state is not the final power, but that there is a God above the state, and that is a very useful thing for young people to be reminded of," says Harold O.J. Brown, director of the Rockford Institute's Center on Religion and Society.

A third rationale for school prayer amounts to plea for civil order: It could help slow the social chaos and spiritual decay that are infecting youth culture. "With all the student unrest and violence in school, we need a little calming influence," said Bill Kron, father of two students from Wingfield High School in Jackson, Mississippi, where prayers were recently read over the intercom. "If we can stop and pray a little, the situation might be better."

EVER-PRESENT DISSENT

The historical argument for school prayer is at once compelling and problematic. The religious accent that typified much of public education up until the 1960s grew out of a larger cultural consensus—a generalized, moralistic Protestantism. Expressed in everything from public nativity scenes to presidential benedictions, this Christian ethos formed the basis for the nation's public or civil religion. "A moderate form of civil religion emerged in America as a form of social compromise between two instinctively perceived extremes," writes cultural historian Os Guinness. "On the one hand, the dangers of a

state church, and on the other the dangers of a public life without any ideals at all."

In the 19th century, Protestant evangelicals eagerly backed the establishment of state-run public schools—with teacher-led prayers and Bible readings—largely as a way to nurture Protestant values in public life. Religious historians like Sydney Mead even claim that public schools in America took over some of the basic responsibilities traditionally assumed by an established church.

Though non-denominational in content, many of the religious practices in public education were considered either inadequate or offensive to Catholic and Jewish audiences. Protestant hymns and use of the King James Bible were especially irksome to Catholics, who soon voted with their feet: By the 1880s, the Catholic parochial school was the single most important educational institution in the Catholic community. By 1900, there were more than 3,800 such schools. Though Jews mostly sent their children to public schools, they were deeply troubled by the Protestant overtones in classrooms—including prayers in the name of Christ and readings from the New Testament.

"I remember from my childhood the Jews and others whose consciences were bruised by the way we Christians presupposed a civil religion, with a pretty strong Christian tone to it," says Richard Mouw, president of Fuller Theological Seminary in Pasadena, California. Thus, even in a society permeated by a vague brand of Protestant values, public school prayers always had created problems for, and protests by, religious minorities.

CONSCIENCE AND COERCION

The theological basis for school prayer, that disbelief in God carries with it social consequences, finds widespread agreement. "Christianity is quite crucial to the morality on which constitutional and democratic government depends," says Glenn Tinder, retired University of Massachusetts professor of political science. Conservative Catholics such as former Education Secretary William Bennett, along with political liberals such as Yale law professor Stephen Carter, echo evangelicals who link social stability with belief in God.

However, many of these same evangelicals doubt the ability, and the propriety, of school prayers enlisted in this way. Their concern is not with religious activities ruled constitutional, such as students meeting on school grounds for private prayer and Bible study, or student benedictions at graduation ceremonies. Their focus is on formal, ongoing, public prayers—even when voluntary and led by students.

Most of the state laws don't go as far as the intercom prayer in Mississippi; they tend to confine organized praying to "school events" and to hours outside the regular school day. Some, however, could allow for daily, school-wide prayers modeled on Wingfield's: "Almighty God, we ask that you bless our parents, teacher and country throughout the day. In your name, we pray. Amen." That prayer, even more tame than the New York Board of Regents prayer rejected by the Court in 1962, was thrown out by the school's superintendent. It is too early to tell if the constitutional amendment sought by congressional conservatives would permit similar, student-initiated prayers.

**"WHEN YOU PRAY, GO INTO
YOUR ROOM, CLOSE THE DOOR
AND PRAY TO YOUR FATHER,
WHO IS UNSEEN."
— MATTHEW 6:6**

Many religious conservatives, however, agree with the High Court's ruling banning state-sponsored school prayer, and argue that student-led prayers can have a coercive effect in the unique environment of public education.

Critics fear that if regular, organized public prayers are allowed in school, the trappings of an enforced public religion could return to the classroom: A student recites a prayer, approved by a school official; the prayer is delivered before the class, or over the public address system to the entire school; a school official designates who reads the prayer; attendance is required; the students, all minors, are asked to participate or remain respectfully silent. "Religious expression and dominance in culture must be from the bottom up, not the top down," says Richard Land, executive director the Christian Life Commission, the religious liberty agency of the Southern Baptist Convention. "And even then there must

be extreme sensitivity on the part of the dominant majority that they don't trample the rights of religious minorities."

Some prayer opponents point to the acutely peer-conscious climate of the classroom. With organized prayer, students would be asked either to acknowledge or ignore what is essentially an act of worship among the faithful. It's one thing for members of Congress to begin a legislative session with prayer or for the Supreme Court to open with "God save the United States and this honorable court." But it's quite another thing for a minor, who has no choice but to be in school, who is there without her parents, who perhaps already is having trouble fitting in.

Michael McConnell, a University of Chicago law professor and an evangelical who has argued religious liberty cases before the Supreme Court, sees mostly trouble with classroom prayer. "School prayer is a very bad idea from an evangelical point of view," he says. "We should fight the notion that secularism is neutral, but that doesn't mean Christians have a right to dominate the message that's communicated in the public schools."

THE MAJORITARIAN IMPULSE

Many prayer advocates simply disagree. Defenders of school-wide public prayers, such as Mississippi activist Bobby Clanton, argue that the majority of their communities are conservative Christians, and they should have the right to decide whether and how to pray in the public schools. "We're tired of yielding to a tiny minority," Clanton told the *New York Times*. "What about our rights?"

This is known as the majoritarian argument: We've got the numbers and we can control the levers of power. In the case of Wingfield High, 490 students voted to have the prayer read over the intercom; 96 voted against it. In the South, where a Protestant ethos still dominates many communities, the majoritarian argument seems plausible. "People assume that Protestant consensus," says Nathan Hatch, vice president for graduate studies and research at the University of Notre Dame. "They assume a prayer that wouldn't offend them."

There is much to be said for communities helping to shape the curricula and moral climate of their public schools; however, when it comes to matters of faith, the majoritarian impulse ignores the lessons of church history. Martin Luther's proclamation before the Roman Church—"to go against conscience is neither right nor safe"—laid the groundwork for the Protestant insistence on religious liberty and freedom of conscience. Many of America's Protestant churches, of course, began as persecuted rebels challenging the culturally dominant Catholics or Anglicans. "The same parents who press for prayer in the South would be outraged by Buddhist meditation in Hawaii or readings from the Book of Mormon in Utah," says Os Guinness. "For them to argue like European Anglicans [with their established church] is an exercise in historical amnesia."

A majority-prayer rationale also fails to face the profound cultural and religious diversity that characterizes national life. There are at least 1,200 organized, distinct religious groups in America, many of them outside the Judeo-Christian tradition; self-proclaimed secularists make up perhaps 10 percent of the population, with



UPI/Bettmann

Many religious conservatives argue that even student-led school prayer can have a coercive effect in the unique environment of public education.

growing numbers of Muslims, Hindus, and New Age adherents. Public schools are increasingly becoming flashpoints for such diversity.

"Many evangelicals don't realize that we are deeply pluralistic and that you can't turn the clock back," says Hatch, a leading evangelical historian of American Christianity. "In South Bend, a block from where we go to church, they've just built a mosque. That would have been unheard of even 10 years ago." Princeton Sociologist Robert Wuthnow, in his book *Christianity in the 21st Century*, summarizes the religious scene this way: "If there is one feature of contemporary culture that we can be sure will become even more pronounced in the future, that feature is its diversity."

Finally, the majoritarian argument strikes at the very nature of religious commitment. After four decades of teaching and study on the relationship of Christianity to society, Tinder concludes: "What Christianity seeks above all else is faith, and faith has to be free." This is so because faith is the most intimate of matters, concerned not with personal preference but with the moral dictates of conscience. And the consciences of society's most vulnerable members—its children—require special protection, particularly in a setting as volatile and influential as public education.

William Penn, religious dissenter and political statesman, was one of the first Protestants in America to grasp the importance of safeguarding personal religious conviction. During his imprisonment in London's Newgate Prison for defying the Anglican Church, circa 1671, he

wrote: "Imposition, restraint, and persecution for matters relating to conscience directly invade the divine prerogative," he said, "and divest the Almighty of a due, proper to none besides Himself."

Evangelicals wary of school prayer argue that majoritarian politics, when applied to matters of faith, are inherently manipulative. To coerce conscience—the home of religious experience—is to invade a realm reserved solely for an individual and his God. Perhaps this is one reason why Jesus, when instructing his followers about heartfelt prayer, told them: "When you pray, go into your room, close the door and pray to your Father, who is unseen." (Matthew 6:6)

HOLLOW FAITH

There seem to be two ways that school prayer supporters can hope to avoid offending the consciences of various faith communities: construct a prayer devoid of controversial theology, or allow each and every faith group to offer its own prayer. Both, critics say, contain numbing contradictions.

The one-size-fits-all approach to prayer invites at least two errors. The first involves the hollowing out of faith. One of the most distinctive features of conservative Jews and Christians is their belief in a God who is both personal and purposeful, one who is both merciful and just—a God who can be described, known, and worshipped. A gray, soul-less, generally accepted prayer could not possibly admit most of the divine attributes considered basic to Jewish and Christian believers.

"I don't know how a generic, civil, utilitarian prayer is able to not offend anybody who's serious about his own faith. If you get something that would not offend, then it has to be offensive," says Mark Noll, evangelical professor of history at Wheaton College in Wheaton, Illinois. Os Guinness, in *The American Hour: A Time of Reckoning and the Once and Future Role of Faith*, argues that deepening pluralism makes nonsense of the notion of a universally inclusive faith. "For Christians who take their faith seriously, such a lowest-common-denominator deity is too vague to be useful, too broad to be anything but misleading." Prayers to such a deity, concludes Tinder, are "almost bound to be unitarian, not trinitarian."

Evangelical Christians—who historically have paid excruciating attention to the content of their faith—ought to be among the most wary of promoting generic prayers in public education. Theology matters, because hardly anything influences the depth of a Christian's commitment more than how he or she thinks about God. Michael Cromartie, director of the Evangelical Studies Project at the Ethics and Public Policy Center, describes the effect of such prayers in blunt terms: "Too much pabulum confuses the brain."

THE GOVERNMENT HAND

The second error introduced by universalistic prayers is the eventual injection of the state in matters of faith. Richard Land of the Christian Life Commission and others argue that it's difficult to escape the ultimate logic of prayers regularly uttered in class or over a public address system: They carry an implicit state endorsement; it's as though the government were teaching students how to pray. Who, for example, will decide whether a prayer is publicly acceptable? It will not be the students;

"I THINK OUR SOCIETY WILL NOT SURVIVE UNLESS THERE IS A BROAD-BASED RELIGIOUS COMMITMENT, BUT IT IS NOT THE RESPONSIBILITY OF GOVERNMENT TO PROMOTE IT."—RICHARD LAND

it will be the state. Teachers or administrators will have to approve the prayers, perhaps even help write them, as did a team of lawyers for the prayer approved by the N.Y. State Board of Regents. "We better get out of the business of believing that government has some appropriate role in promoting 'God words' before that precedent is turned upon our consciences," says the Christian Legal Society's Steve McFarland. "When you ask the government to engage in symbolic speech in the form of prayer, it necessarily compromises the religious integrity of the message."

Even a school-prayer advocate like Harold Brown, who teaches theology and ethics at Trinity Evangelical Divinity School in Deerfield, Illinois, agrees that classroom

prayers will inevitably entangle the state in religion. Brown expects a reasonable church-state compromise to result: "We'll have to lock heads on this and reach a *modus vivendi*."

However, if "student-led" prayers become a routine part of public education, they could revive a mutated version of civil religion in the schools. Many evangelicals view civil religion as a threat to religious freedom, because in its worst forms it allows the government to establish its own brand of "orthodox" religion, by which it judges other expressions of faith. If school prayer proposals move in that direction, large numbers of religious conservatives will revolt.

"I think our society will not survive unless there is a broad-based religious commitment, but it is not the responsibility of the government to promote it," says Richard Land, whose 14 million-member Southern Baptist Convention represents the largest Protestant church in America. "Anything that allows the state to sponsor prayer, we're going to oppose. This is not an issue that is compromisable for Baptists," he says. Robert Booth Fowler, political science professor at the University of Wisconsin and author of several books on religion and politics, is equally pessimistic. "There's no way that the other religious groups outside the Christian community are going to stand for this," he says. "And you can count on no active support from the Catholic Church."

HERE COMES MOTHER EARTH

The other strategy for allowing school prayer without offending religious minorities is to permit children from any and every faith group to recite their own sectarian prayers. Supporters say this ecumenical approach would promote understanding and tolerance of differing religious views. Critics say it is a prescription for theological vertigo.

Think of it: one day a prayer is offered to Mary, the mother of Jesus; another day to Gaia, mother of the earth. That's not as far-fetched as some argue—"not with the plurality of kids I'm dealing with," says Bill Muir, senior vice president of Youth for Christ, a Christian student outreach group in 225 cities. It is estimated that scores of new religious or quasi-religious sects appear, if only briefly, on the nation's social landscape each year. And Muir says he expects to see more and more signs of their influence in schools.

New-Age and feminist theologies, for example, already have crept into the churches themselves. At a recent religious conference in Minneapolis, participants from some of the country's largest Protestant churches prayed: "Our maker, Sophia, we are women in your image." A few years ago, the dean of the Cathedral of Saint John the Divine in New York City commissioned the composition of a choral mass entitled "Missa Gaia." Evangelicals fear that it's just a matter of time before similar prayers find their way into the classroom. Says McFarland: "In Southern California it could be a prayer to Shirley MacLaine for all I know."

It's one thing to teach a course on world religions in the public schools; the context is academic, factual and impersonal. It is quite another to ask children to join in the prayers of religious believers of other faiths; the

setting is emotive, subjective and intensely personal. "It sends the message to children that one prayer is as good as another," says the University of Chicago's McConnell. That's simply another way of reinforcing—on a grand public scale—cultural and religious relativism. It similarly could undermine the religious instruction children receive at home or in church.

RELIGIOUS HOSTILITY

None of the arguments against school prayer address the broad indifference and even hostility to religious belief in public education. "The main problem in the public schools and public universities is that what has been a central part of the human story—religion—is the one part that is missing," Fowler says. The conservative American Center for Law and Justice has collected at least 200 cases of anti-religious bias in public schools over the last year:

- A second-grade girl in a Minneapolis school chats with a friend about God on the playground, but is interrupted by her teacher and told she cannot continue;
- A seventh-grade teacher in West York, Pa. instructs students to deliver an oral essay about one of their heroes, living or dead. A girl is told that her hero, Jesus Christ, is not a suitable subject;
- Students at the University of Virginia are denied funds for a newspaper because of its religious content, while other student newspapers receive full funding.

The anxiety over religion displayed by school boards, administrators and teachers unquestionably has been fueled by numerous—and contradictory—court decisions on church-state cases since the 1960s. Many of the rulings, evangelicals argue, ignore the constitutional protection of religious expression and attempt to use earlier decisions to sanitize the public schools of any trace of faith. "Why are people nervous talking about their most basic beliefs?" asks Wheaton's Mark Noll, author or editor of numerous books on American Christianity. "The jurisprudence has moved properly in the direction of prohibiting coercion, but improperly in restricting conversation." Ironically, Justice Arthur Goldberg—who voted in the 1963 *Abington School District v. Schempp* decision to ban school Bible readings—warned that the decision must not lead to a "brooding and pervasive devotion to the secular," which he called unconstitutional. There is growing agreement among religious liberals and conservatives that this is precisely the situation that now exists in public education.

CIVIC ORDER

Religious conservatives are likewise supported by behavioral trends when they claim, in making a civil argument for classroom prayer, that secular education is doing little to arrest the pathologies afflicting young people. Since 1960, teen suicides rates have tripled, pregnancy rates among unmarried teens have nearly doubled, and juveniles are the fastest-growing segment of the criminal population. On any given day, one in five kids carry a weapon to school. Too many classrooms are indeed hot-houses of delinquency and despair. All true.

However, many religious conservatives say their evan-



Archive Photos

Student textbooks often omit references to significant religious figures, such as Samuel Hopkins, who chastised the Continental Congress in 1776 for not granting constitutional freedoms to blacks.

gelical brethren are mistaken when they insist that the recovery of school prayer will help slow or reverse these trends. "If we are thinking that the tide of modernity can be rolled back by a prayer over the intercom, then we've taken leave of our senses," says David Wells, evangelical theologian at Gordon Conwell Theological Seminary in South Hamilton, Massachusetts. "If you're using it as a means to address social ills, it's not a solution," says Corwin Smidt, political science professor at Calvin College in Grand Rapids, Michigan. School prayer was not the glue that held together a moral or religious consensus in society; neither will its return lead to spiritual or cultural renewal. Fowler recalls his own experience in reciting classroom prayers: "I don't think it played much of a concrete, practical role in anybody's life."

More importantly, religious conservatives ought to be the first to raise objections when spiritual disciplines like prayer are reduced to public exercises to help ward off social ills. As these observers warn, evangelicals must not allow their faith to be used as a social policeman; the result will be the corruption and counterfeiting of their religious convictions. "I've never seen kids involved in a ritual prayer, a legislated prayer where it became a deeply moving or growing experience," says Muir, who has been working in junior high and high schools for 25 years. Ironically, one of the historic traits of evangelicals is their insistence that prayer without heartfelt faith in faith's Author never rises above the ceiling.

The cultural, theological, and civil arguments for school prayer thus all encounter perilous difficulties—both practical and moral. On the one hand, America's growing cultural pluralism makes school prayer an anachronistic proposition; it assumes a religious consensus that almost all evangelicals admit no longer exists. In such an environment, children of minority faiths or of no faith will endure the subtle intimidation of a majority-written benediction.

On the other hand, religious conservatives may find their children's religious education undercut by the symbolic power of prayer that is either diluted or unorthodox. Even supporters admit that rote prayers run the risk of trivializing faith and religious commitment—a criticism long made by evangelicals against Catholics, Angli-

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cans, and other strongly liturgical traditions. As Guinness puts it: "You're faced with a very simple dichotomy: we either secularize or we scandalize."

The combination of America's supreme commitment to freedom of conscience and its increasingly diverse culture makes school prayer a hazardous object of political strategists. "Once you admit this pluralism, solutions become very complicated, and complicated solutions don't wash politically," Hatch says. "What washes in populist politics are simple, clear answers and this issue defies that." Wells, author of *No Place for Truth: Whatever Happened to Evangelical Theology*, says the evangelical attachment to school prayer is the result of "intellectual laziness" in applying biblical principles to public policy issues. "We have betrayed ourselves by looking for the silver bullet, the one thing that's going to fix the whole sorry scheme—and there just isn't one."

What the difficulties suggest is that school prayer is no longer an acceptable or effective dimension of public education—if it ever really was. This is not to say that isolated or spontaneous instances of prayer, such as at graduation ceremonies or following the news of an illness or accident, are inappropriate. But prayer, in any organized, public, and ongoing form is simply unworkable in what is becoming a post-Christian nation. Moreover, as McFarland and other evangelicals conclude, prayer proposals distract religious conservatives from more effective avenues of influence.

Religious believers, they say, ought to be using the legal tools already open to them to soften intolerance of public expressions of faith. One approach is to reintroduce the religious dimension of American life in school curricula. Several important studies have documented how school textbooks deliberately exclude religious references to some of the nation's most significant figures and political and social movements. The 1985 analysis by Paul Vitz for the National Institute of Education was echoed by studies from the liberal People for the American Way and Americans United for the Separation of Church and State.

Public school children never hear, for example, about

evangelical ministers like Samuel Hopkins, who chastised all members of the Continental Congress in 1776 for "oppressing and tyrannizing over many thousands of poor blacks, who have as good a claim to liberty as themselves." They're told that Benjamin Franklin was a deist who scorned traditional religion, but they don't learn that this same Franklin proposed that the seal of the American republic be a picture of Moses with his rod held over the Red Sea. They don't learn that evangelical William Booth founded one of the most comprehensive and effective outreach programs to the nation's urban dwellers: the Salvation Army. "We need to teach good, accurate history," Tinder says, "and good, accurate history would bring out the fact that religion has been exceedingly important in America from the beginning."

No Supreme Court decisions in church-state cases prohibit the teaching of religion in the schools. In *Abington v. Schempp*, the Court insisted that "nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment." The court's guidelines specifically allow public schools to sponsor the study of religion, but not the practice of religion. Even a spokesman for People for the American Way, a group deeply suspicious of public expressions of religion, admits: "You can't have an accurate portrayal of history and leave out religion."

If religious conservatives want young people to appreciate the profound role of faith in the lives of so many Americans, they need to help ensure that their stories are fairly taught throughout the curricula. For these neglected stories, these parables of faith-in-action, produce the stuff that world views are made of.

EQUAL ACCESS

Secondly, religious conservatives must make full and effective use of the 1984 Equal Access Act (EAA), which requires that schools grant religious student groups the same privileges as nonreligious groups. True, there are more than 12,000 Bible clubs now meeting in the public

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schools, but thousands of school districts remain without them. Meanwhile, religious freedom attorneys are certain that countless students are unaware of their legal rights to school facilities and resources—and are quickly intimidated by overzealous teachers, administrators and ACLU lawyers.

Moreover, the act is insufficient in its scope: It only applies to secondary schools and only allows student religious clubs to meet before or after school. In many districts, students cannot distribute religious literature on



"I thought this was supposed to be a moment of silence."

school grounds or discuss their faith over the lunch hour. However, even ACLU lawyers, who were closely involved in crafting the EAA, have occasionally sided with religious students' free speech rights. The access issue could become a crucial area of common ground for religious conservatives and strict separationists.

Until the EAA and curricula reform are applied more vigorously, prayer opponents argue, the larger concerns about public hostility to religion will not subside. "The prayer issue would virtually evaporate if the schools were doing a good job in these other areas," says Charles Haynes, visiting scholar at the First Amendment Center at Vanderbilt University. Haynes has developed school curricula that teaches U.S. religious history and explores ways to publicly accommodate the nation's religious diversity. After introducing the material in culturally diverse school districts in California, New York, Utah, and New Mexico, he says that prayer supporters and opponents reveal at least one thing in common: They want public schools to take conscience seriously—whether it relates to sex education, homosexual themes in literature, or religious expressions in the classroom. "What people really want is something much more important than any prayer amendment that I've seen."

Evangelicals who support school prayer acknowledge the crucial opportunities that both curricula reform and the EAA offer religious believers. Dugan says that effective use of the access law "could have far greater an impact on the country spiritually than student prayers." Tom Minnery, vice president of public policy of Focus on the Family, says "that's where we think the fight still is."

BLUNTING THE EDGES

If this is true, then the evangelical devotion to school prayer is indeed misplaced. Vacuous prayers can hardly undo prejudices against faith, nor strengthen the already faithful. Instead, such prayers likely would blunt the edges of some of Christianity's harder truth claims. "It could undercut a radical recognition of our own sinfulness and our need for redemption," Cromartie says. And that sort of recognition can only be stirred at the human level by lives marked by integrity and grace. It can never be imposed from without.

"Christian civility takes human freedom seriously," writes Mouw in *Uncommon Decency: Christian Civility in an Uncivil World*. "I may want people to believe as I do about some basic matters—but what I want is for them to choose to see things that way."

file religion

RELIGIOUS BREAKFAST GUEST LIST

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LANGUAGE ON RELIGION AND AMERICA

Rabbi David Saperstein and Edward Rehfeld

From the words of the Declaration of Independence -- "We are endowed by our Creator with certain inalienable rights" -- religion has consistently transformed America for the better. Just as it is impossible to imagine the abolitionist movement, the labor movement, or the civil rights movement without religion, so we would be foolhardy and arrogant to address our current social and political dilemmas without this same moral guidance. For while politicians can and should enact just and fair *laws*, only religious leaders can change peoples' *hearts*. We political leaders can work to rebuild our cities, to protect our citizens from crime, and to provide a vital safety net, but religious leaders play an indispensable role in calling people to the strong moral values without which any great nation is doomed.

None of America's guarantees to its people is more precious than the First Amendment's protection of religious freedom that has allowed religious values, observance, and practice to flourish among our people with a diversity and strength that is unmatched anywhere in the Western world where there are established or government supported religions. These protections have allowed religion's rich moral guidance to flow into and elevate our political life even while prohibiting the state from dictating our personal relationships with God.

Eroding these protections by changing the First Amendment for the first time in 206 years to allow for organized prayer in public school will diminish us rather than strengthen us, and will plunge this nation into a divisive debate when we most need unity. Far more helpful would be a campaign to educate parents and public school teachers and principals about the broad array of activities related to religion in which children can already participate in school.

So long as it isn't organized by school officials and doesn't interfere with other children's rights, students *can and do* voluntarily pray whenever and however they want. Students *can and do* say grace over lunch. Student-formed religious clubs *can and do* meet on school grounds before or after school when other clubs meet. Teachers *can and do* teach *about* religion's magnificent contributions to this nation's history, values, music, and art. Indeed, the current state of prayer in public schools beautifully illustrates the First Amendment's genius. For while the First Amendment *allows* our children to pray on their own, without interfering with other children's rights, it *prevents* government from dictating when, where, or how they can or must pray.

Reciting brief organized prayers will not teach our children to live ethical, moral lives guided by the universal values *all* religions and our nation hold dear -- peace, justice, dignity, commitment, love of humanity, and abhorrence of violence. These are values that take time and, sometimes, hard work to inculcate in our children. While our churches, synagogues, mosques, and above all, our families, must play the primary role, character education in our schools, rooted not in any specific religious theology, but in our nation's faith-based civic values, also plays an invaluable role in restoring a sense of morality and ethics to our communal life.

So as I invite all religious people to join me in working to build a better tomorrow, I want to stress the importance of the First Amendment's ground rules. This invitation is not, cannot, and will never be an invitation to use the levers of government to dictate religious practices and beliefs. That would be, and is, deeply un-American. Rather, this invitation rests on this government's commitment to protect your freedom as religious people, so that the inspiration of our varied religious beliefs may radiate throughout American life.

LANGUAGE ON RELIGION AND AMERICA

Leonard Fein and David Saperstein

I come now to the thorny question of the role that religion plays in our life as a nation. Plainly, this is a matter of great interest and of much passion to very many of us, and because it is, we need to talk with one another about it at considerable length and with as much candor as we can muster. This evening, I can only touch on what seem to me the central building blocks of the classic American understanding.

First: The history of the United States cannot be understood without acknowledging the impact of our religious faith. It was that faith that informed the abolitionists; it was that faith that informed the civil rights movement; it is that faith that sustains our tradition of compassion and, indeed, our commitment to justice for all. Here in this land, perhaps more than anywhere in all of history, we know that we are all equally God's children.

Second: The strength of America's religious commitment cannot be separated from our common understanding that religion is here protected from any intrusion by government. Religion can and should flourish -- but if there is anything that liberals and conservatives, Republicans and Democrats, ought to be able to agree upon, it is that it is not the business of the state to tell people when to pray or what to say. We respect religious belief, and we defend religious freedom -- and it is no coincidence that religious belief and observance are here more deeply rooted than in any of the Western democracies where the separation of church and state is not so zealously protected.

Third: It is a mark of our maturity that Americans can pray whenever they choose to pray, in whatever language or accent they choose, in whatever tradition they select. That goes for all Americans, including specifically our children. In our public schools, many American youngsters can and do say grace at lunch; can and do pray quietly before, after, and yes, during the school day; can and do study about religion's contribution to America. But no, the government does not and cannot and should not say, whether explicitly or implicitly, "Now is the time for prayer." That is for parents to say to their children, if, as I hope, they so desire. And I would like to believe that all those who argue that government these days has too many regulations, that government is too heavy-handed, would not want to see that heavy hand imposed on our religious behavior, would prefer here, more than anywhere else, to reinforce the importance of the family.

Fourth and finally: We depend, as a nation, on a vigorous and rich religious life. We turn to religion not only for comfort but for inspiration. We turn to religion as the principal source of our values. And if there is a role for government, as I believe there is, in defending the highest religious values, that role, I am convinced, is plain: We who serve in government, in all its branches, must show in our own behavior that those values are not merely slogans, not merely idle sentiments, but that they are the lodestones by which we set our course, by which we live. I would feel far more comfortable with our debate regarding how the school day should begin if I were more confident that we ourselves live according to the values we seek to transmit to our children. Most simply put: The greatest contribution that we in Washington can make to the dissemination of religious values throughout the land is for us to demonstrate how, beyond lip service, they challenge us, shape us, and at every turn inform what we do.

file

INCC1/4/95

For Immediate Release

**Statement from The Rev. Dr. Joan Brown Campbell
General Secretary
The National Council of the Churches of Christ in the USA
and Ms. Joyce Sohl
Deputy General Secretary, Women's Division
United Methodist Church
January 4, 1995**

Whether in private or in public, calling the First Lady of the United States of America a "bitch" is unacceptable. Whatever happened to the old fashioned virtues of civility, decency, humility, mercy and respect? These are the values that make for a harmonious society where children grow up learning to live in peace with their neighbor. Disrespect for the First Lady is not just a personal affront, it is surely that, but it erodes the potential for a civil society and releases a mean spirit among us. One wonders, in the light of such epithets, what role respect and dignity will play in Mr. Gingrich's "Contract with America".

For many women Hillary Clinton is a positive role model. A woman of faith, passionate about her concern for the well-being of all of America's children. She is intelligent, articulate, forceful, tender, compassionate and nurturing. To call her a "bitch" is to call into question all women who carry leadership responsibilities in a male-dominated world. Hillary Clinton is plowing new ground and for that many of us are grateful.

The Speaker of the House needs to make his respect for the First Lady clear and unequivocal. To criticize substance is profoundly American. To call names is beneath his dignity.

TOWARDS THE YEAR 2000: Equipping the Churches for Ecumenical Ministry

OVERVIEW

*In spite of all the dangers and difficulties of the world,
we are not moved to despair,
but to joy in the promises of the Triune God,
Created by God, saved by Christ,
we rejoice in the power of the Holy Spirit,
the Spirit of freedom and truth,
the Spirit at work in history,
the Spirit which continually opens the future before us.
Come, Holy Spirit, have mercy on us,
renew and empower us to be your witnesses to the world!*

-- Delegates' Statement
Seventh Assembly, WCC
Canberra, Australia, 1991

Vaclav Havel, poet and now President of the Czech Republic, describes the deeper social reality of our times:

The worst of it all is that we live in a spoiled moral environment. We have become morally ill, because we are used to saying one thing and thinking another. We have learned not to believe in anything, not to care about each other, and to worry only about ourselves. The concepts of love and friendship and mercy and humility and forgiveness have lost their depth and dimension. And for many they represent only some sort of psychological curiosity, or they appear as long lost wanderers from far-away times, somewhat ludicrous in the era of computers and spaceships.

Hillary Rodham Clinton, an active United Methodist lay person, also spoke recently of a world needing to be made anew:

There is a sleeping sickness of the soul, a sense that somehow economic growth and prosperity, political democracy and freedom are not enough --that we lack at some core level meaning in our individual lives and meaning collectively, that sense that our lives are part of some greater effort, that we are connected to one another, that community means that we have a place where we belong no matter who we are.

~~over~~

28th District • New York

News Release

Congresswoman **Louise Slaughter**

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3120 FEDERAL BUILDING, 100 STATE STREET • ROCHESTER, NY 14614



FOR IMMEDIATE RELEASE:
Wednesday January 4, 1995

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202-225-3615

CONGRESSWOMAN SLAUGHTER CALLS ON SPEAKER GINGRICH TO APOLOGIZE TO FIRST LADY HILLARY CLINTON

WASHINGTON, D.C. -- In response to Speaker Newt Gingrich's characterization of the First Lady as "a bitch," revealed yesterday by CBS News, Congresswoman Louise Slaughter (D-NY) called on Speaker Gingrich to apologize to Hillary Rodham Clinton.

"Mr. Gingrich owes the First Lady an apology, and the women of America an explanation," said Slaughter.

"'Bitch' is a disgusting and degrading characterization, and certainly not one that should be used to describe the First Lady.

"It is an insult to every American woman, and a disgrace to the traditions of both the Presidency and the Speaker," said Slaughter. "I cannot imagine any other Speaker in the history of the House of Representatives describing the President's wife in such a manner."

"Hillary Rodham Clinton is not only our First Lady, she is a well respected legal professional, who is listed as one of the top 100 lawyers in the country," said Slaughter. "She is widely recognized for her compassion, and one of the most down-to-earth people I have ever known.

"I ask the new Speaker, what it is that makes Hillary Rodham Clinton a 'bitch'? Is it her intelligence? Her competence? Her compassion?

"This is a disappointing and disturbing way to start the new Congress," said Slaughter. "Mr. Gingrich should apologize immediately to the First Lady."

(July 21 Draft)

JY1 file
religion
liberty

MEMORANDUM FOR ALL HEADS OF AGENCIES

SUBJECT: Religious Exercise and Religious Expression in the Federal Workplace

Religious freedom is central to the American system of liberty. Our nation's founders erected the twin pillars of this freedom, guaranteeing the free exercise of religion and prohibiting the establishment of religion by the state, in the very First Amendment to the Constitution. Throughout our history, men and women have come to this nation to escape religious persecution and secure this precious freedom. They and others have built a nation in which religious practices and religious institutions have thrived -- exactly because each individual has been able to choose for himself or herself whether and, if so, how to worship.

In the four years I have served as President, nothing has given me greater joy than the efforts of this Administration, in tandem with a broad coalition of individuals and organizations, to support freedom of religion. In 1993, I was proud to reaffirm the rightful and historic place of religion throughout our society when I signed the Religious Freedom Restoration Act, which continues to protect the exercise of religion from being inappropriately burdened by federal agencies, entities, and institutions. In 1995, I was similarly proud to protect appropriate religious expression in the public schools when I directed the Secretary of Education to issue guidance to public school districts on the extent of permissible prayer and other speech of a religious character.

Today I focus on the federal workplace, directing all heads of federal agencies to comply with Guidelines on Religious Exercise and Religious Expression in the Federal Workplace to be distributed today by the Office of Personnel Management. All civilian executive branch agencies, officials, and employees must follow these Guidelines carefully. Strict adherence to these Guidelines will ensure that federal employers will respect the rights of those who engage in religious practices or espouse religious beliefs, as well as those who reject religion altogether. In particular, it establishes the following principles:

First, federal employers shall permit employees to engage in personal religious expression (as they must permit other constitutionally valued expression) to the greatest extent possible, consistent with interests in workplace efficiency and requirements of law. Of course, work is for work, and an agency may restrict any speech that truly interferes with its ability to perform public services. In addition, the agency may have a legal obligation to restrict certain forms of speech that intrude unduly on the legitimate rights of others. But when an agency allows

non-religious speech, because that speech does not impinge on these interests, the government also usually must allow otherwise similar speech of a religious nature. The one exception to this principle of neutrality -- an exception mandated by the Establishment Clause -- is when religious speech would lead a reasonable observer to conclude that the government is endorsing religion. Subject to this exception, an agency may not typically subject religious speech to greater restrictions than other speech entitled to full constitutional protection, and therefore should allow much of this speech to go forward.

Second, federal employers may not discriminate in employment on the basis of religion. This means that an agency may not hire or refuse to hire, promote or refuse to promote, or otherwise favor or disfavor a potential, current, or former employee because of his or her religion or religious beliefs. It means that an agency, or any supervisor within the agency, may not coerce an employee to participate in religious activities (or to refrain from participating in otherwise permissible religious activities) by offering better (or threatening worse) employment conditions. And it means that an agency shall prevent any supervisor or any employee from engaging in religious harassment or creating, through the use of intimidation or pervasive or severe ridicule or insult, a religiously hostile environment.

Third, an agency must reasonably accommodate employees' religious practices. The need for accommodation arises in many circumstances -- for example, when work schedules interfere with Sabbath or other religious holiday observances or when work rules prevent an employee from wearing religiously compelled dress. Once again, governmental interests in workplace efficiency may be at stake in such cases. But an agency, as specified in greater detail in the Guidelines, must always accommodate an employee's religious practice in the absence of non-speculative costs and may need to accommodate even when doing so will impose some hardship.

All of these principles are related. All are but variants or applications of a single rule of neutrality and fairness -- that federal employers shall treat employees with the same respect and consideration, regardless of their religious beliefs. Whether by allowing religious speech, preventing religious coercion or harassment, or making accommodations to religious practice, the government must act to ensure that the federal workplace is generous to followers of all religions, as well as to followers of none. The Guidelines will advance this goal. Although they doubtless will leave unresolved many difficult questions, arising from specific factual contexts and circumstances, they will clarify the obligations and appropriate commitments of the government, acting as an employer, to protect and enhance religious freedoms.

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First Lady Hillary Rodham Clinton
Honorary Chair

File
Religion

Soul
to
Soul:



*Women, Religion,
& the
21st Century*



February 26 - March 1, 1998

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DRAFT

DRAFT

April 30, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLES F.C. RUFF

SUBJECT: RELIGIOUS EXPRESSION IN THE FEDERAL WORKPLACE

We are preparing to put into final form a Presidential Memorandum and accompanying Guidelines addressing the issue of religious expression in the federal workplace. These documents reflect the principles that led to your issuance of guidelines on religious expression in the public schools two years ago. Before the documents are presented to you for approval, however, we wanted to solicit your reactions on the substance of the proposal and the process we have followed.

I. BACKGROUND

For the past year the Counsel's Office, in conjunction with representatives from the Christian Legal Society, People for the American Way, the American Jewish Congress and the Department of Justice, has worked on developing guidelines governing religious expression in the federal workplace. Representatives from the National Catholic Conference, the National Council of Churches, the Baptist Joint Committee on Public Affairs, the Union of American Hebrew Congregations, the National Association of Evangelicals, the Equal Opportunity Commission, and the Office of Personnel Management have also, from time to time, been involved in these discussions.

The idea for this project originated with the Steve MacFarlane of the Christian Legal Society, Marc Stern of the American Jewish Congress, and Eliot Minberg of People for the American Way in response to the 1995 proposed EEOC guidelines addressing harassment in the workplace. The sections of the proposed EEOC guidelines addressing religious harassment were controversial and generated wide-ranging opposition from religious groups who believed that the EEOC guidelines might be construed by employers as prohibiting all religious activity in the workplace. MacFarlane, Stern, and Minberg believed that a set of guidelines dealing with religious expression in the workplace could be drafted which would be acceptable to most, if not all, religious organizations.

Accordingly, MacFarlane, Stern, and Minberg drafted a set of proposed

guidelines which they circulated to various religious groups in the hopes that these guidelines could be issued as the product of a broad alliance of religious organizations. The Counsel's Office, however, suggested that it might be possible to issue the guidelines as a joint project of the White House and the religious groups if the guidelines were modified to meet certain objections and if they were narrowed to apply only to the federal workplace. The religious groups agreed and a draft entitled "Guidelines on Religious Exercise and Religious Expression in the Federal Workplace" was completed earlier this month. In its final form, the draft sets forth general principles and offers hypothetical examples illustrating the appropriate application of the principle involved.

The federal agencies that have been involved in the process, the Department of Justice, the Office of Personnel Management and the Equal Employment Opportunity Commission have signed off as to the basic propriety of issuing of the Guidelines. DOJ has also signed off on the constitutionality and legal validity of the principles and hypotheticals set forth in the Guidelines. DOJ and OPM, however, have raised policy objections to the Guidelines. These objections are discussed in Section V. below.

II. RELIGIOUS EXPRESSION IN THE WORKPLACE - GENERAL PRINCIPLES

The basic principle underlying the guidelines is that religious expression in the federal workplace should be entitled to the same level of protection accorded non-religious expression. For example, if a federal employee is allowed to display a poster with a non-religious message in her office, she should be allowed to display a poster with a religious message. Similarly, if employees are allowed to use space for non-religious meetings they should be allowed to use the same space for religious meetings.

The Guidelines also reflect that special restriction upon religious speech may be required in some circumstances. This would occur when an employee's private speech is perceived as an official endorsement of religion, thus violating Establishment Clause prescriptions, or when the religious speech in question constitutes religious harassment or is coercive. The Guidelines also make clear that religious speech, like non-religious speech, can be restricted when it unduly interferes with workplace efficiency.

III. RESOLUTION OF ISSUES ARISING UNDER THE GUIDELINES

The Guidelines state that they are not intended to create any new right, benefit, or responsibility enforceable by any party against the United States, its agencies, its officers, or any person. Rather persons with questions regarding interpretations of the Guidelines are directed to bring those questions to the Office of the General Counsel in their department or agency. There are no other

enforcement provisions.

IV. PROPOSED ISSUANCE OF THE GUIDELINES

The Guidelines would be distributed by OPM as an attachment to a Presidential Memorandum announcing your support for the principles contained in the Guidelines and directing the heads of all agencies to comply with its provisions. The religious groups envision an announcement ceremony similar to the one surrounding the issuance of guidelines addressing religious expression in the public schools.

V. AGENCY OBJECTIONS

As noted previously, DOJ and OPM have raised policy objections to the Guidelines. Specifically, both agencies have questioned the need for the issuance of the Guidelines on grounds that accommodating religious expression has not been a significant problem in the federal workplace and issuing the Guidelines, accordingly may raise more problems than it solves. OPM is additionally concerned with the potential impact of some of the hypotheticals contained in the document. Of particular concern to OPM is the Guidelines' use of controversial and potentially divisive examples of expression, such as religious proselytization or the advocacy of pro-life positions, as illustrations of what is legally permissible. The agency argues that these illustrations may be read by federal personnel, including supervisors, as an active invitation to engage in the potentially divisive conduct (rather than as a mere illustration of their rights to engage in that conduct) with the result being a dramatic increase in divisive expression in the federal workplace and a subsequent harm to federal workplace morale. For similar reasons, OPM also objects to the hypothetical which indicates that an applicant for federal employment can not be compelled to take a religiously objectionable oath as a condition of employment. OPM asserts that this example may actively encourage persons to avoid the oath requirement.

There are, however, strong counter arguments to DOJ's and OPM's positions. First, while it may be true that accommodation of religious expression in the federal workplace has not yet been a significant problem, these issues will likely become more common as religious organizations direct their attention to workplace issues. As noted in Section I, guidelines on religious expression in the workplace would have been issued and disseminated by religious organizations with, or without, our participation. The process leading to the development of these Guidelines thus has arguably only allowed us to get out front on a difficult issue.

Second, OPM's objection to the use of hypotheticals involving controversial religious expression may be descriptively accurate but it misses the fundamental point that examples involving controversial expression are absolutely necessary to illustrate the first amendment principle at stake. The principle that is at the heart

of the Guidelines is that speech may not proscribed simply because it might be found offensive. This principle, by definition, can not be demonstrated by examples using non-controversial speech. OPM is correct that offensive speech or proselytization by supervisors raises a special set of concerns, particularly when the activity approaches coercion or harassment, but the Guidelines recognize the specific problems associated with the speech of supervisors and address them directly.

Finally, OPM's objection to the loyalty oath hypothetical may be addressed on a number of counts. First, the conclusion that this hypothetical will encourage persons to avoid the oath requirement seems unlikely as a practical matter. Second, the right to forego loyalty oaths on religious grounds is protected under the Religious Freedom Restoration Act if not the constitution and the argument as to why people should not be informed of their rights is not readily apparent. Third, the religious groups have made clear that any changes in the existing document could easily lead to an unraveling of the agreement as a whole.