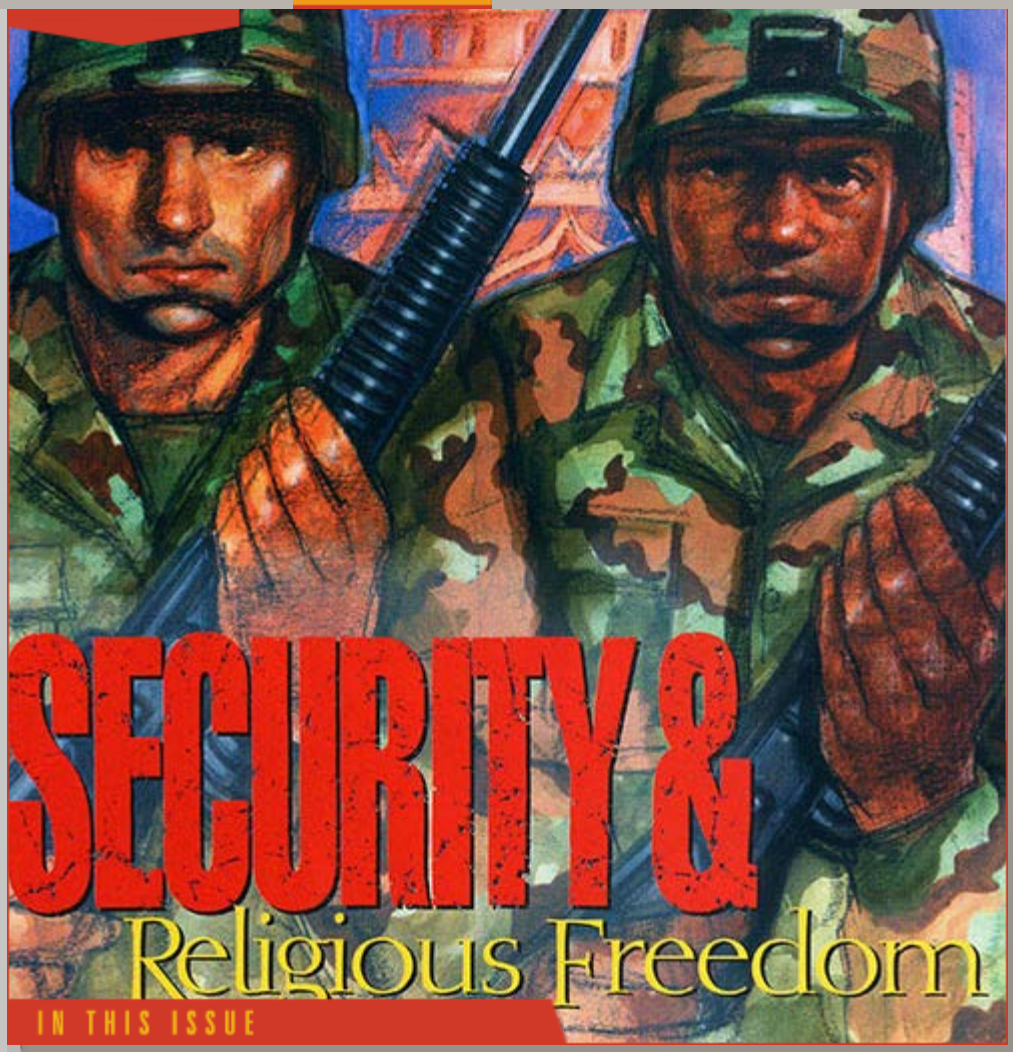
A MAGAZINE OF RELIGIOUS FREEDOM

LIBERTY



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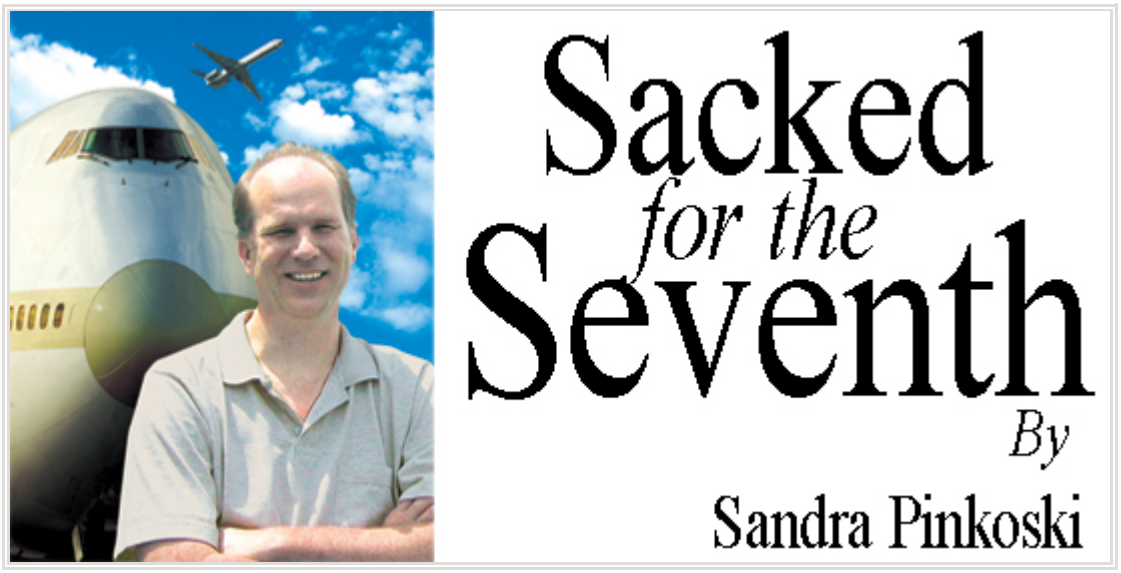
JANUARY / FEBRUARY 2003

Sacked For The Seventh

In The United States Of America We Often Use Slogans Such As "Truth, Justice, And The American Way" (Last Phrase In The Opener For The 1950s Television Show) And "With Liberty And Justice For All" (The Closing Phrase Of The Pledge Of Allegiance). These I



PRINTABLE VERSION

In the United States of America we often use slogans such as "truth, justice, and the American way" (last phrase in the opener for the 1950s television show *Superman*) and "with liberty and justice for all" (the closing phrase of the Pledge of Allegiance). These idealistic phrases can lull us into believing religious injustice happens primarily in developing countries—certainly not here in the "land of the free." But the "land of the free" became the "home of the brave" for a former Pueblo, Colorado, air traffic controller when he was fired for adhering to his religious convictions and found himself defending them in federal court. It all began in 1990 when Don Reed, whose study of the Bible convinced him that the fourth commandment prohibits work from sunset on Fridays until sunset on Saturdays (Exodus 20:8-11), began setting that day aside for worship and rest. In 1995 Reed's employers told him they could no longer accommodate his absence during Sabbath hours, as a result of what they termed "critical short staffing."

The reason for staffing being so short in May of 1995 is explained in an article he wrote shortly after he was fired: "Since Hof [his supervisor] was not able to eliminate this controller [Reed] via any performance issue, he would have to force him to choose between his continued employment—his career—and his religious faith. So, after eliminating two employees and having another hardshipped out, Hof then approved the transfer of two more controllers to take facility staffing down to seven. This was two below the minimum required staffing of nine. The Pueblo Memorial Airport had previously been authorized 14 controllers and was now down to seven."

About the short staffing situation, Larry Halpern, a fellow controller at Pueblo who represented Reed for the National Air Traffic Controllers Association (NATCA) in 1995, said, "Pilots who depend on the Pueblo facility for proficiency and training, including many military units, will be forced to go elsewhere or forgo any meaningful flying experience until the staffing situation can be resolved."

"Why in the world, when you have problems staffing a facility," wrote Reed in his article, "would you fire someone whose job performance is satisfactory in every way? Whatever dispute the FAA has with any individual controller ought to be resolved in a manner consistent with sound management principles as it relates to the agency's primary mission, which is the safe, orderly and efficient flow of air traffic in and around the nation's airports and through the national airspace system."

Two previous control tower managers had no problem with Reed's request for Sabbath hours off, but a third manager, George Hof, called Reed's convictions a "scam." Under such hostile working conditions, the inevitable happened that summer—he was scheduled to work six Saturdays. When he didn't show up on each of the Saturdays involved, Reed was subsequently fired. He had been working in

the Pueblo control tower for more than five years.

Reed persevered in pleading his case and, after many disappointments, finally sued in Denver's U.S. district court in 1998. His case was brought before a jury on July 10, 2001.

Testimony from Reed included various solutions that both he and his union local had submitted to his employers regarding the Sabbath difficulty. These included swapping shifts, working extra comp time, rearranging his own schedule and volunteering to work every Sunday and every holiday—all of which were rejected.

Closing arguments on the four-day trial were heard on July 16 and on July 17—coincidentally, Reed's forty-fifth birthday. The jury of two women and six men unanimously decided in Reed's favor. He was awarded damages, back pay, and front pay amounting to $ 2.25 million.

"It was never my intention to go to court," Reed told Liberty magazine firmly. "This was a situation that was resolvable, but they [FAA] refused to see it—they just never got it—they left me no other choice."

Reed was awarded $ 248,356 in back pay, $ 508,088 in future lost pay, and $ 1.5 million in compensatory damages for emotional pain and suffering. At this point you're probably not feeling too sorry for Reed; but here's where it gets interesting. In 1991 Congress enacted a law "prohibiting" punitive damages and "limiting" compensatory damages against the federal government to $ 300,000.

"This means," Reed said, "that the award for damages—$ 1.5 million—was immediately reduced by $ 1.2 million. What is even more outrageous is that the jury was prohibited from knowing about this $ 300,000 limit. Had they known, they would probably have awarded more in either the back pay or future pay areas. The remaining amount awarded will be taxed at approximately 50 percent, which means the final amount will be down in the vicinity of $ 500,000." Reed added, "So who really won? The government—the object of the suit—gets most of it."

Reed said that even now, after judgment has been handed down, the FAA continues to insist that they are in the right regarding the issue, though it is not known at the time of this writing whether the FAA will appeal. "But how is this any different than Tim McVeigh or any common criminal who refuses to admit guilt or show any signs of remorse once all the evidence has been heard and a verdict has been rendered?" Reed asked. "Will the United States government not hold accountable their own managers, whom they have empowered to conduct the affairs of this nation's business, when they so sorely abuse that power?" In light of the possibility of appeal, Reed commented that the jury's decision is "not so much the end of the matter as it is the 'vindication' for us in this case and for all those who have a 'sincerely held belief.'"

"This case is a chance," Reed said, "for the nation to see that we are, in America, free to hold our beliefs and to worship our Creator, as opposed to 'just doing what we're told and keeping our mouth shut.' We are told how we are to treat our employers," Reed said, referring to Colossians 3:22, "but it's just sad that they [FAA] pushed the issue this far.

"I don't want people to think this is all about me—it's not. It's about lifting up the name of Jesus and glorifying the Father and His commandments, which are not burdensome," Reed concluded.

An interesting element of this case is that the lawyers arguing the case for Reed will not receive a penny for their work. The Denver firm of Isaacson, Rosenbaum, Woods, and Levy agreed to argue the case free of charge for the American Civil Liberties Union (ACLU), which originally filed the suit. If the presiding U.S. district judge Hon. Edward Nottingham awards attorneys' fees, they will be given to the ACLU and used for other civil liberty cases. According to Reed's attorneys, fees are estimated to be in excess of $ 100,000.

The Seventh-day Adventist Church's news network (ANN) picked up the story and on July 24, 2001, published the following: "Mitchell Tyner, an associate general counsel for the Adventist Church worldwide, welcomed the jury's verdict, saying that employees should rarely be forced to choose between their faith and their job, and only when accommodation would cause genuine hardship to the employer.

"Each year, Tyner participates in as many as 30 lawsuits involving on-the-job religious discrimination, usually related to

Sabbathkeeping. He says the scope of the problem is much larger than most people realize.

"Every day, on average, two or three Seventh-day Adventist Church members in the United States lose their jobs or are denied jobs because employers will not accommodate Sabbath observance, says Tyner. 'Free exercise of religion is a fundamental legal principle, but in practice, legal protection for people of faith in the workplace is simply not adequate.'

"He cautions that even when an employee wins a jury verdict, employment cases have the second highest reversal rate of any type of case, and that large damage awards are often subject to remittitur, or subsequent reduction by the court.

"Tyner, who has twice litigated religious discrimination cases against the FAA, says the Adventist Church will file an amicus brief in support of Reed should the FAA appeal the outcome of the case."

Currently Reed, father of four, works with AT&T Broadband in Pueblo, Colorado. "He's been with AT&T for a little more than a year now," Reed's wife, Robin, stated. "AT&T has never given him any trouble about taking Sabbath hours off," she said.

Former members of the Worldwide Church of God and the United Church of God, Reed and his wife now worship with fellow "like-minded" believers in various seventh-day Sabbathkeeping "home" churches in Colorado.

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Sex, Lies & Ethics

Hardball Litigation Tactics Are Neither New Nor Particularly Newsworthy—except When The Aggressive Litigant Claims To Represent God On Earth. That Scenario Has Driven The Recent Spate Of Articles Commenting On The Catholic Church's Increasingly Ba

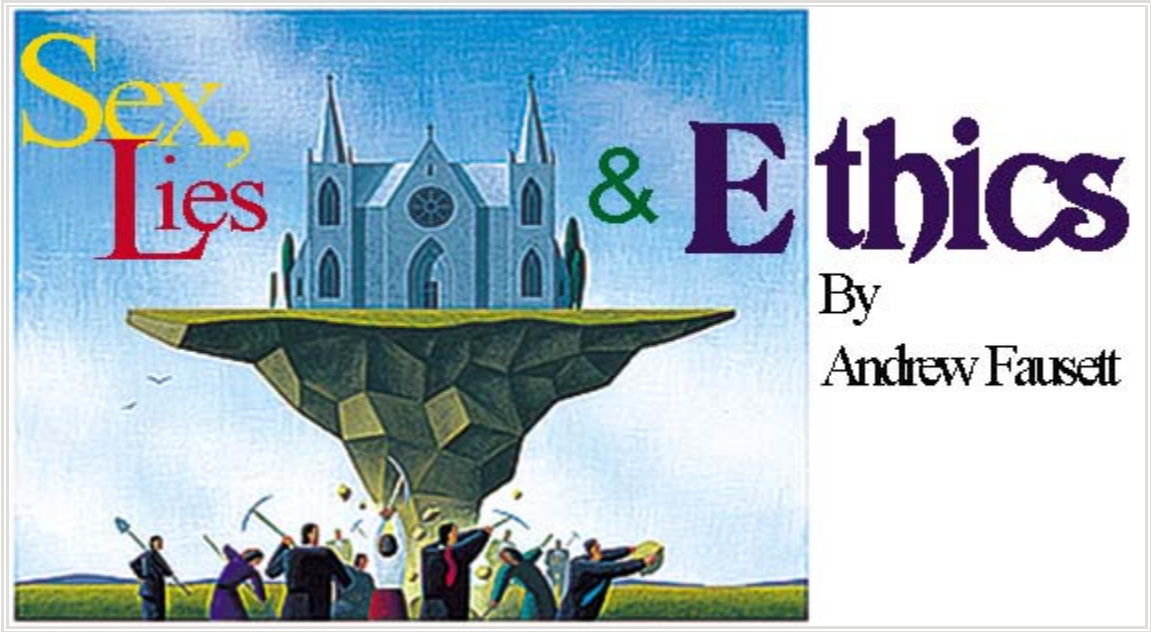

Illustration by Scott Roberts

PRINTABLE VERSION

Hardball litigation tactics are neither new nor particularly newsworthy—except when the aggressive litigant claims to represent God on earth. That scenario has driven the recent spate of articles commenting on the Catholic Church's increasingly bare-knuckle legal response to those accusing priests of sexual abuse. Church lawyers have repeatedly counterclaimed against the parents of child victims.[1] They countersued a single mother who, seeking a male role model for her boys, allowed them to spend the night at the parish sacristan's apartment.[2] They have moved to reveal the names of pseudonymous plaintiffs in a tactic that appears to have no other purpose than intimidation.[3] They have asked graphic questions regarding the intimate details of sexual abuse, as well as detailed questions about victims' intimate relations with their wives.[4] They have even accused the plaintiffs themselves of contributing to their own victimization.[5] This accusation seems to have become a standard tactic. One advocate for the victims of priest abuse said the church's approach puts victims of abuse in a position in which "you have to rationalize why it's not your fault."[6]

Maybe these litigation tactics are driven more by the insurance companies who are paying the legal bills than by the church itself.[7] Still, in the public mind the church is responsible for the legal tactics used. But isn't the church just exercising its right to defend itself and its resources as any responsible corporation or government entity would? The church's litigation counsel seem to think so. They note that their legal tactics are in self-defense and are all within established ethical guidelines.[8] But the ethical guidelines themselves suggest that the manner in which litigation advantages are pursued should take into account the peculiar "interests" of each client. Rule 1.3 of the American Bar Association's Model Rules of Professional Conduct (1999) mandates that a lawyer in a civil suit act with "reasonable diligence" and "zeal" in representing a client. At the same time, Rule 1.3 clarifies that a lawyer need not press every conceivable legal advantage. The lawyer has "professional discretion" in pursuing litigation options so as to act in the "interests of the client." It is not in a client's interests to pursue short-term legal advantages that will cause significant harm to the client's long-term interests. Aggressive litigation tactics on behalf of churches may create such long-term harm and thus may violate the ethical guidelines themselves. The reason for this lies in the unique nature of religious institutions.

Churches are different from other institutions in society, such as businesses or government entities, in the manner in which they draw

support from a community. Businesses have a product or a commercial service that serves as their basis of support and income. Government entities have the power to directly tax the populace to support their operations. But the church's "product" is truth claims, and they depend on the persuasiveness and integrity of their proclamations and actions in regard to these claims to persuade people to support them.

While community goodwill is important to all institutions, it is much more so for churches. Much of the public will still buy and use razor blades, sweatshirts, radios, etc., even if some of the public are unhappy with the labor or environment or employment practices of the businesses that make these items. The government will still be able to collect taxes even if the populace is disgruntled at its policies and practices—revolutions tend to be few and far in between. But if churches act, or are perceived to act, in a manner that betrays the truths they proclaim, they are at risk of losing the only basis—claims to moral truth and integrity—on which they persuade people to support them. For churches, community goodwill is not one asset among many on their balance sheets, as it is for some businesses. Rather, in the long run at least, community goodwill is a church's only real asset.

Litigation carried out on behalf of a religious institution should reflect the heightened importance of community goodwill toward such institutions. Most people understand that institutions, even religious ones, need to defend themselves in today's litigious society. A fair, even if vigorous, defense typically incites no feelings of outrage in observers. But lawyers for religious institutions have an ethical, even sacred, obligation to avoid tactics that undermine the moral authority of the churches they represent. Thus, questions or actions intended to merely harass, intimidate, bully, and embarrass should be forsworn. Personal and sensitive information that has no reasonable relation to issues in the case should not be sought. Parents whose only error was to place their trust in an institution that claims to speak for God should not be countersued. Ideally, these types of cases would be handled through mediation, which allows for more conciliatory resolutions.

To its credit, the Catholic Church appears to have cooperated in mediation when possible.[9] Other religious institutions would be wise to follow this alternate path in dealing with similar issues. The temptations and conflicts inherent in litigation can often lead to tactics that cast a church in a very poor light. As one judge put it, even while ruling in favor of the Catholic Church: "Even though the church was within its legal rights to vigorously defend itself, it seems to me that the church's position in this litigation is at odds with its stance as a moral force in society. . . . From where I sit, playing legal hardball doesn't seem quite right."[10]

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[1] See "Impact: Interview with Jeffrey Anderson and Pete Hutchins," Fox News's The O'Reilly Factor, Apr. 20, 2002; Michael Powell and Lois Romano, "Roman Catholic Church Shifts Legal Strategy: Aggressive Litigation Replaces Quiet Settlements," Washington Post, Apr. 14, 2002, p. A1.

[2] Ibid.

[3] See Adam Liptak, "Religion and the Law: Insurance Companies Often Dictate Legal Strategies Used by Diocese," New York Times, Apr. 14, 2002 (quoting one lawyer who believed these motions were made only as an intimidation tactic).

[4] See Nancy Phillips, "Clergy-Abuse Plaintiffs Forced to Answer Intimate Questions," Philadelphia Inquirer, May 20, 2002, p A1.

[5] See Jennifer Levitz, "Arduous Process Begins in Suits Against Diocese," Providence Journal-Bulletin, May 15, 2002, p A1.

[6] Levitz, p. A1.

[7] Liptak.

[8] Ibid. (quoting the spokesperson for one diocese as saying, "There is no inconsistency between a church of compassion and the church's right . . . to defend itself").

[9] See Tom Mashberg, "Abuse-Case Lawyers Push to Settle With Church," Boston Herald, May 1, 2002, p 1.

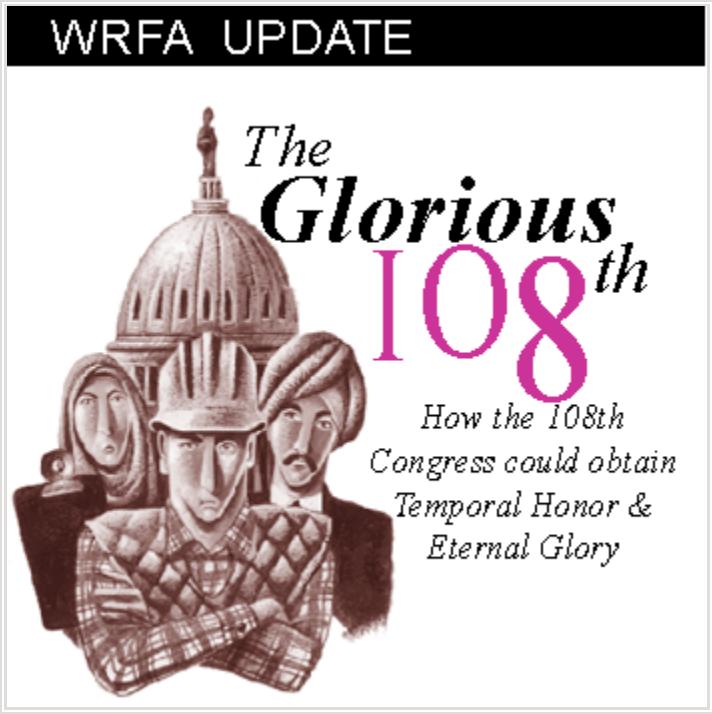
[10] Phillips, p A1.

JANUARY / FEBRUARY 2003

The Glorious 108th

The Beginning Of A New Congress Is Somewhat Like The Birth Of A New Baby. Like A Child, The New Congress Is Born With The Burden Of History Sitting Fairly Across Its Shoulders, It Has Much Of The DNA Of The Preceding Congress, And It Operates In Much The

BY: JAMES D. STANDISH



By James Standish
Illustration by Ralph Butler

PRINTABLE VERSION

The beginning of a new Congress is somewhat like the birth of a new baby. Like a child, the new Congress is born with the burden of history sitting fairly across its shoulders, it has much of the DNA of the preceding Congress, and it operates in much the same environment as its predecessors. Yet like a child, there is always hope that a new Congress will throw off the shackles of the unfortunate aspects of its family history and transcend the difficult circumstances it is born into, and go on to achieve true greatness. To achieve this greatness, the Congress must focus on the substance of greatness; the protection and expansion of freedom of conscience.

There is not an elected member who opposes "freedom of conscience." But freedom of conscience needs more than aspirational statements and a lot more than vague congressional puffery. It requires hard, courageous and sometimes costly decisions. The fate of the 108th will hang on whether the courageous prevail. In concrete terms, the 108th will achieve greatness if it: n enacts meaningful protection for people of faith in the American workplace. It is incontrovertible that current law provides minimal incentives for employer's to accommodate the religious practices of their employees even when it is well within their capacity to do so. A broad coalition of 44 different Christian, Jewish, Muslim, and Sikh organizations have banded together to push for the passage of the Workplace Religious Freedom Act, which embodies the necessary legislative reform. It is time for Congress to get the job done. n makes the fundamental human right to freedom of belief the cornerstone of American foreign policy. Experiments with foreign policy expediency have resulted in the complexities we face today. Not only did the U.S. arm Iraq and the Taliban, but it also supported the shah's repressive regime in Iran that predicated the reactionary revolution. Today, America continues to arm and prop up regimes that subjugate their population and deny them the fundamental right to freedom of belief.

These nations include some of our "best friends" like Saudi Arabia, one of the world's most intolerant nations. In addition, the U.S. is soft-pedaling the suppression of freedom of conscience in some nations like Turkmenistan in order to further short term goals. True greatness comes through dedication to principle, not through following the failed path of realpolitik. There is much this Congress can do to ensure that American power is exercised in a way consistent with the wishes of a freedom-loving people. n resists the temptation to use religion for political gain. Faith is, by its definition, sacred. Using the sacred to advance political agendas is not merely reprehensible, it is sacrilegious. Politicians must "take the high road." In two short years we will know whether the 108th Congress has lounged into the history books of mediocrity or risen to the challenge of greatness. The "Glorious 108th" is here, if we want it.

James D. Standish is executive director of the North American Religious Liberty Association. He writes from Washington, D.C

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French - Anti-Sect Policy Shifting?

France Has Been The Leader Of A Very Restrictive Policy Against Sects And Cults For Several Years. One Man Has Illustrated This Better Than Anyone Else: Alain Vivien!

BY: JOHN GRAZ

By John Graz

France has been the leader of a very restrictive policy against sects and cults for several years. One man has illustrated this better than anyone else: Alain Vivien!
He was already the anti-sect leader when I interviewed him in the 1980s for Conscience et Liberte.#1 At that time he was neither in favor of new legislation, nor encouraging the abuse of the generic term sect. He recognized the danger of equating religious minorities with dangerous sects.2
Vivien eventually became vice president of the National Assembly and deputy foreign minister. After the tragedies of Waco and the suicides of the adepts of the Solar Temple, Vivien, with the support of the government, came back on the French scene as "Mr. Anti-Sects." The French Parliament encouraged a
strong policy to protect citizens from dangerous cults. A list was published, and an annual report followed it. In 1998 a new step was taken with the establishment of the Interministerial Mission to Fight Against Sects. Vivien was chosen as president. The peak of this policy was reached with the anti-sect law of June 2001. It made possible the dissolution of a sect as if it were a terrorist organization. Many nongovernmental organizations (NGOs) reacted against this new law.3# European Union members were divided, and America denounced the policy as opposed to religious freedom. China and Russia appreciated this opportunity to justify their own restrictions against religious minorities. Countries in South America and Eastern Europe were tempted to follow the French model. But in one year things have changed, and the question "Is the French anti-sect policy shifting?" is now appropriate. Five factors may have tempted France to look at a new approach to the sect issue.

September 11

brought a new threat to all democratic societies. The priority became the fight against terrorism, and more precisely, Islamic terrorists. France has its radical Islamist activists, and they were not listed as members of a sect, but attended meetings in mosques.

A New Government

The second factor was the defeat of Prime Minister Lionel Jospin at the presidential election. A new center-right government was chosen by President Jacques Chirac. This political coalition is more open to the influence of religious authorities. Some elements were actually opposed to the law of June 2001.

The International Opposition

The third factor is the persistent opposition from NGOs and from the American government. The anti-sect policy in France was clearly condemned in Washington and displayed at the level of most international institutions, such as the United Nations and the Organization for Security and Cooperation in Europe (OSCE). The beautiful image of France, the land of human rights, was darkened by its "persecution" of religious groups.

An Unconvincing Message

France did not sell its anti-sect message well. Friendly European countries such as Portugal, Spain, Italy, and Switzerland did not accept the radicalism of the French. The opposition was still more evident with the Northern European countries. The French model did receive a mitigated welcome in the Eastern European countries.

The Ideological Sound

The fifth factor was the ideological sound of the anti-sect activists. From the beginning the ideological dimension appeared crystal clear: anti-religious pluralism, reduction of religious phenomena, bias, anti-Americanism, etc.#4 The anti-sect leaders had problems making people believe they were only interested in defending human rights, honest citizens, and the republic. They built a repressive system that affected many honest citizens' right to have a religion of their choice. Media support of this policy made potential suspects guilty before being judged.

There are some positive signs that the policy is changing. One is the answer that the French delegation gave to the Americans during the OSCE meeting in Warsaw.#5 According to them, the law authorizing the dissolution of association will be implemented "under very restrictive conditions, and as a last resort." The list of sects from 1995 is a "parliamentary working document." "It has no legal value." For now the Interministerial Mission to Fight Against Sects has no president. Alain Vivien resigned June 18, 2002.6# It's too early to say that the new French government has a totally new policy. They will probably follow more moderate and balanced European Union policy. There is no advantage for France to appear as the world anti-sect leader; something that sounds like an anti-religious freedom leader.

John Graz is secretary-general of the International Religious Liberty Association. He writes from Silver Spring, Maryland.

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[1] A. Vivien, "Les Sectes en France," Conscience et Libert

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Render Unto Caesar

Religion Squared Off With Consumerism In Cypress, California, Last May When The Cypress City Council Voted Unanimously To Seize, Through Use Of The City's Power Of Eminent Domain, 18 Acres Of Land Owned By The Cottonwood Christian Center In Order To Build

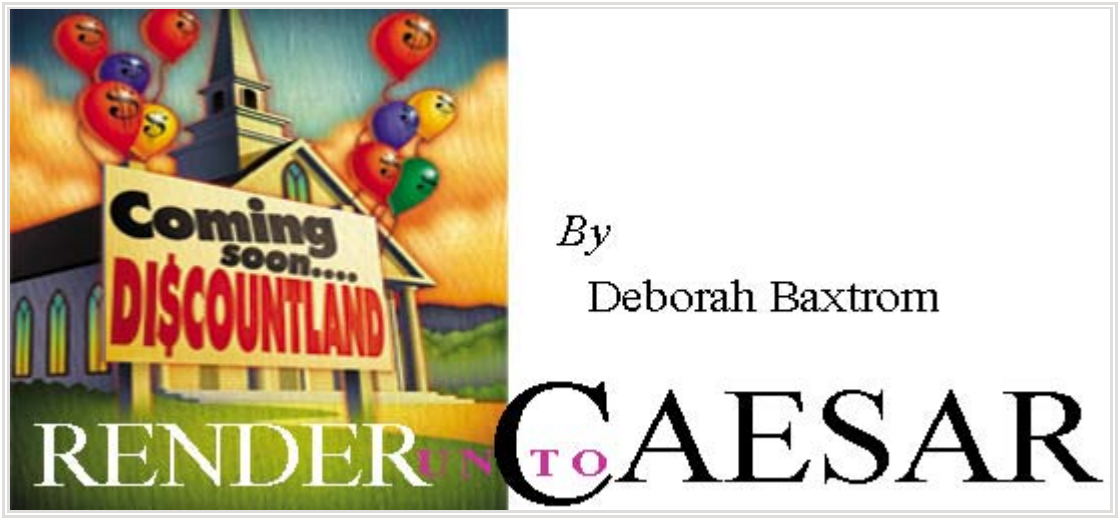


Illustration by Jack Slattery

PRINTABLE VERSION

Religion squared off with consumerism in Cypress, California, last May when the Cypress City Council voted unanimously to seize, through use of the city's power of eminent domain, 18 acres of land owned by the Cottonwood Christian Center in order to build a Costco discount store.

"The city is trying to feed its voracious appetite for property taxes," said Patrick Korten, a vice president of the Becket Fund for Religious Liberty, an organization helping to represent Cottonwood in the case. "If they get away with it, it would signal to other cities that they can prevent a church from expanding if they want to . . . it would essentially void the Religious Land Use and Institutionalized Persons Act." The federal RLUIPA was passed in 2000 to protect churches from discriminatory zoning and land-use policies.

This "mean" case began in 1997, shortly after Cottonwood outgrew its current facilities—the church started out with 50 members in 1983 and grew to 650 by 1989, when it relocated to Los Alamitos, California. Since that time its membership has soared to 4,000, and the church is bursting at the seams. Cottonwood supports a weekly international television program and many local community services. Its current auditorium seats only 700 people, so it must hold two services on Saturday and four on Sunday to oblige its numerous members and guests. Under the circumstances it's not surprising that Cottonwood was seeking to build a new home.

The church purchased the land in 1999, planning to build a new campus to accommodate its members and hundreds of guests, as well as facilities for classes, activities, and community services. Cottonwood paid million for the acreage, funded solely through tithes and donations, after negotiating with four different owners for six separate tracts of land.

Prior to Cottonwood's interest, the land had sat vacant for almost a decade, yet the Cypress City Council made no attempt to develop it until the church purchased the property, located near a racetrack in the affluent southern California community of 47,000. From the outset Cottonwood kept the city informed of its intent to build a new facility; but, according to the church, the city did not inform Cottonwood that it had a project of its own in the works—a revenue-generating shopping plaza. In October 2000 the church filed an application for a Conditional Use Permit, anticipating little difficulty, but the city rejected its application, stating that Cottonwood had not submitted a Preliminary Design Review (which was listed as "optional" on the application).

The day after rejecting Cottonwood's application, the city informed the church that it was adopting a moratorium on all new permit applications in the redevelopment area of which Cottonwood's land was a part. The moratorium lasted about a year. During this time the

city conferred with commercial developers, including Costco.

"The city looked at the planning process and the conceptual plans for what the church was proposing," said Cottonwood spokesperson Mary Urashima. "[The council] never told them they [were] talking to a developer of the shopping center until they got the letters of participation."

According to the church, the Cypress City Council eventually admitted that it had improperly rejected Cottonwood's application for a Conditional Use Permit. However, at about the same time it accepted a development proposal from Costco to place a retail outlet on the property—property that it did not yet own.

"[The council's] actions certainly bring into question whether they have been negotiating in good faith or whether it's all been a ploy for public perception," said Jon Curtis, a Cottonwood attorney. "Throwing out a church for a retail use solely because of sales tax and property taxes that would be accumulated is basically . . . discriminating against the religious organization. It's the purest form of discrimination." David Belmer, Cypress's community development director, disagreed. "[The council has] a fiduciary responsibility to manage the city such that it has sufficient revenues to provide the services our residents have come to expect," Belmer insisted.

"Does this action threaten every church in Cypress? Absolutely not," Belmer continued. "Does this action mean there is going to be some rampant move to condemn church property throughout our city, the state, and the country? I'm hoping that most reasonable people will find that idea far-fetched. This is a strategic piece of property in a key project area in our city, and our interest predates Cottonwood's interest. That's our story and we're sticking to it."

Pastor Bayless Conley, however, felt that his church was singled out for discriminatory treatment. "Considering we are only 18 acres in a 300-acre redevelopment zone—and we are the only one being asked to move—the process felt imbalanced," Conley told CNSNews.com.

Cottonwood offered to give up its corner of prime land if it could be allowed to build on an adjacent property, but the Cypress City Council declared the church's plan "unresponsive," and deemed Costco's plan "responsive," thereby accepting the shopping center project and effectively shutting out the church.

In January 2002 Cottonwood Christian Center filed a lawsuit against the city of Cypress, arguing that the city was discriminating against the church and was in violation of RLUIPA, the First Amendment, California redevelopment laws, and the equal protection clause of the California Environmental Quality Act.

The city council went ahead with its development plans in spite of the lawsuit and in June voted 4-0 (with one member abstaining) to proceed with eminent domain action against Cottonwood. This marked the first time a city had voted to use eminent domain to take church property since the passage of RLUIPA. As part of the eminent domain action, Cypress informed Cottonwood that it would pay the church .6 million for its property.

It was at this point that the already controversial issue blew up in the faces of Cypress city officials, who probably never expected their actions to cause a national uproar. Newspaper editorials appeared, first locally, then nationally, denouncing the council's actions as arrogant and uninformed.

The Los Angeles Times reported that "An Oklahoma firm . . . sent 50,000 glossy mailers lambasting Cypress officials, and legal

organizations in Washington, D.C., and Colorado are drafting motions on behalf of the church."

The Wall Street Journal offered its opinion, stating: "The powers of eminent domain are tricky enough when exercised for highways, schools or other public uses. But when invoked on behalf of a private business it represents the worst form of political collusion. Our advice to Cottonwood is not to turn the other cheek."

A number of California assembly members sent letters to the Cypress City Council, strongly urging them to change their position. Republican assembly member Ken Maddox wrote (on behalf of himself and five other

Republican assembly members): "By choosing a big box retail center over church property, the city is sending a message that material wealth is more important than the spiritual and moral well-being of a community. This hostility toward religious expression is disturbing, considering the positive contribution churches make to a city."

Some Cottonwood church members were instrumental in damaging their own cause. On one such occasion the Orange County Register reported that 30 supporters of the city council were confronted by 500 church members outside a city hall meeting. The newspaper recounted that church supporters were "jeering and waving signs reading 'Jesus or Hell' and 'Thou Shall Not Covet God's Property.'" Such actions on the part of a number of church members engendered among the residents of Cypress some sympathy for the city council.

"There is no comparison between the benefits of a Costco and the cost of a church," said one longtime Cypress resident. "My neighbors and I have been watching this go on for two years, and we're tired of this big church trying to bully the city by busing its members in from all around the county to harass our city council. Given the behavior of the church, we're not seeing its spiritual value. I'm not sure we want them in town."

"I think the average person doesn't understand the law of eminent domain," said another local. "So when a powerful church . . . says Cypress is stealing a church's land, it's very confusing for many residents. If this is the kind of neighbor it's going to be . . . don't want them in Cypress at all."

However, a third resident, who has lived in Cypress for 15 years, had a different view. "We're in all the newspapers," she said. "I hear everyone talking about what our city has done and I'm thinking: 'There are five ignorant people on my council, and how the heck do I get them off?'"

"Sometimes you have to make some difficult decisions, and you have to get down to the bottom line," said council member Anna Peircy. "We've never denied that it is a great church. The problem is a land-use issue."

A land-use issue it may be, but in August Judge David O. Carter issued a preliminary injunction against the city of Cypress, making it clear in his statements that he strongly disagreed with Peircy's assessment.

"There is strong evidence that [the city's] actions are not neutral, but instead specifically aimed at discriminating against Cottonwood's religious uses," Judge Carter wrote. "For nearly a decade, the Cottonwood property sat vacant. Once Cottonwood purchased the land, however, the city became a bundle of activity. . . . Why had the city, so complacent before Cottonwood purchased the property, suddenly burst into action? . . . [The activity suggests that the city was simply trying to keep Cottonwood out of the city, or at least from the use of its own land.]

"Preventing a church from building a worship site fundamentally inhibits its ability to practice its religion," Judge Carter continued. "Churches are central to the religious exercise of most religions. If Cottonwood could not build a church, it could not exist."

Carter also pointed out that even if the city did have compelling reasons to burden Cottonwood's religious exercise, "they must do so in the least restrictive means. . . . The city has done the equivalent of using a sledgehammer to kill an ant."

How about the city's argument that giving the land to Costco would provide better-funded public services? Judge Carter wrote, "If revenue generation were a compelling state interest, municipalities could exclude all religious institutions from their cities."

Even in the face of the preliminary injunction the Cypress City Council and its attorneys have not admitted defeat. The council issued a press release stating that in granting the preliminary injunction that stopped Cypress from taking Cottonwood's land, the judge has only maintained the status quo until the final case can be decided in March 2003.

However, the preliminary injunction gives Cottonwood and its supporters a solid reason for optimism.

Kevin J. Hasson, president of the Becket Fund, stated, "The reason there are so few cases like this is that most cities know better than to seize a house of worship's property. Cypress made a big mistake, and we hope that cities across the country learn from their mistake."

Pastor Conley, for his part, is simply ready to move on to what he views as more important matters. "This is wonderful news for

Cottonwood," said Conley. "We are one step closer to being a blessing to the community, which is what we've wanted all along."

JANUARY / FEBRUARY 2005

Sabbath Laws And Early Church

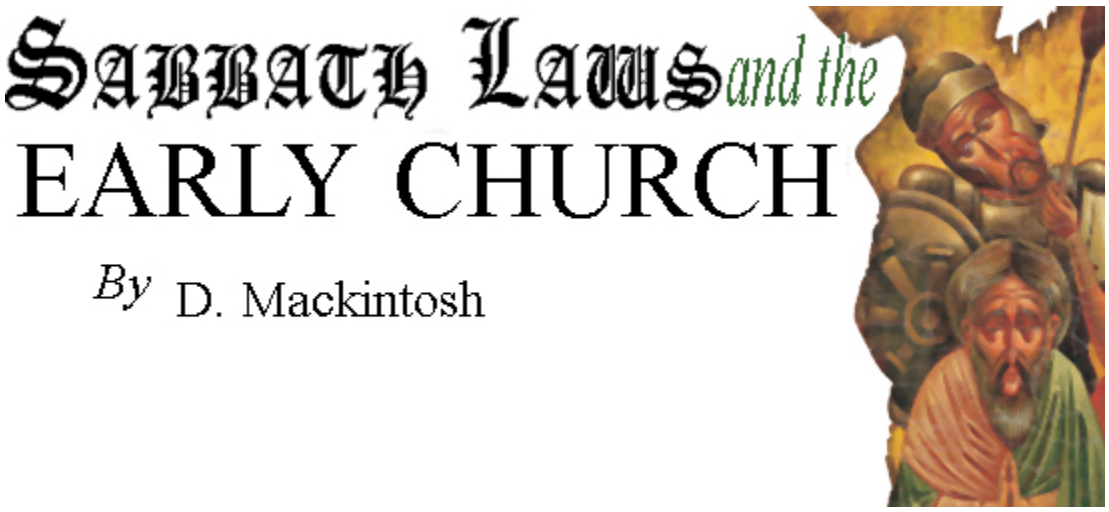


Illustration by Ralph Butler

PRINTABLE VERSION

In A.D. 135, at the end of the Jewish rebellion against Roman domination, the emperor Hadrian passed laws forbidding circumcision, the keeping of the Sabbath, and the study or teaching of the Torah. Though aimed at the Jews, these laws affected the course of the young Christian church to a greater degree than many realize.

Because Jewish Christians refused to join in the war against Rome, Bar Kochba, the self-proclaimed messiah of the Jews, persecuted them. Thus these Christians found themselves treated unmercifully by fellow Jews and at the same time rejected by the Romans because of their illicit religion. Many Christians perished during the conflict in which more than a million Jews lost their lives.

Hadrian had thought at first to quell the rebellion with the troops in his immediate command, but it was not easy to bring the Jews to their knees, and therefore he called in other Roman legions. First the Syrian standing army entered the conflict, then the legions from Egypt, and finally the army based in Britain under Julius Severus. This time Hadrian didn't send the usual message back to Rome that all was well among the troops, for they too suffered many casualties.

Hadrian determined that the Jews would not rebel again. Though he rebuilt a city on the site of Jerusalem, he forbade any Jew to enter it. Instead of a temple to Jehovah, Hadrian erected a temple to Jupiter. In ridicule of the Jews, Hadrian had a sculpture of a boar positioned over the gate of the city on the way out to Bethlehem. And he passed oppressive laws against Jewish customs and religion.

Though Jews were forbidden to enter Jerusalem, Christians were allowed in. A Gentile named Marcus was appointed bishop, according to Eusebius. But the mother church of Jerusalem was no more. The new church never filled the place of the older body of believers.

Shortly after the war, which lasted from A.D. 132 to 135, some among the Christians murmured that, in allowing the utter defeat of the Jews, God had shown His displeasure not only with them but with all things Jewish. Many of these Christians migrated to Rome shortly after the war. Valentinus, a well-educated Gnostic Christian, came to Rome about this time, hoping to be made bishop. Then there was Marcion, a wealthy shipowner from Pontus, son of a bishop. Upon arriving in Rome, Marcion came under the influence of Cerdo, who ran a school in which the anti-Jewish teachings of Gnosticism were taught. Gnostic leaders openly proclaimed that all things Jewish should be discarded. In fact, they went so far as to say that the God of the Old Testament was not the Father of Jesus, but an inferior god!

One can easily imagine how difficult it must have been for Jewish Christians to evangelize. How could they invite their Gentile friends to church on Sabbath when it was against the law to keep the Sabbath?

THERE IS NO DOUBT THAT THE VARIOUS ATTITUDES OF CHRISTIANS RELATING TO THE SABBATH LAWS OF ROME DURING THE SECOND AND THIRD CENTURIES PAVED THE WAY FOR HE MORE DRASTIC CHANGES THAT TOOK PLACE IN THE FOURTH CENTURY.

After A.D. 135 many Christians found it necessary to meet secretly in smaller groups. When Justin (Justin Martyr) was on trial (A.D. 165), the prefect, Rusticus, asked him, "Where do you assemble?" Justin's reply is revealing: "Where each one chooses and can: for do you fancy that we all meet in the very same place? Not so; because the God of the Christians is not circumscribed by place; but being invisible, fills heaven and earth, and everywhere is worshiped and glorified by the faithful."[1]

Antonius Pius, who succeeded Hadrian, relaxed the laws of his predecessor, permitting Jews to circumcise their sons, but he prohibited proselytizing by any Christians who still believed they ought to keep the Sabbath. Though these laws were not administered evenly throughout the empire, the anti-Sabbath laws were not relaxed. How then did the Christians cope with this situation?

Some Gentile Christians became Gnostics or accepted enough of their teachings to reject most things considered Jewish, including the keeping of the Sabbath. Says Gibbon: "The Gnostics were distinguished as the most polite, the most learned, and the most wealthy of the Christian name."

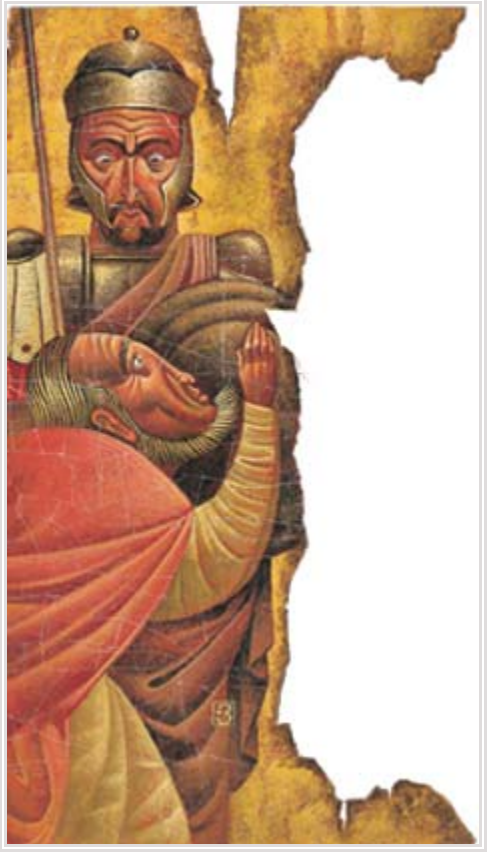
Justin, who gives us the first clear picture of a Christian worship service on a Sunday, argues, however, that Christians keeping the Sabbath, as the Jews did, should not be rejected; and that other Christians should be willing to associate with them in worship. The allegorizing influence of the Gnostics comes through in the following counsel from Justin:

"If there is any perjured person or a thief among you, let him cease to be so; if any adulterer, let him repent; then he has kept the sweet and true sabbaths of God. If any one has impure hands, let him wash and be pure."[2]

The Romans, avid hunters of the wild boar, had long ridiculed the Jews for being idle one day a week and for not eating pork.

Irenaeus, A.D. 120-202, bishop of Lyons, France, acknowledged that Christ did not do away with the law of the Sabbath. He emphasized, however, that Jesus said, "It is lawful to do good on the Sabbath" (Matt. 12:12, NKJV).* It followed, then, that humanity need not be idle on the Sabbath: "And therefore the Lord reproved those who unjustly blamed Him for having healed upon the Sabbath-days. For He did not make void, but fulfilled the law. . . . And again, the law did not forbid those who were hungry on the Sabbath-days to take food lying ready at hand: it did, however, forbid them to reap and to gather into barns."[3]

Indeed, Irenaeus says further, "Nor will he be commanded to leave idle one day of rest, who is constantly keeping the Sabbath, that is, giving homage to God in the temple of God, which is man's body, and all times doing the works of justice. For I desire mercy, He says, and not sacrifice, and the knowledge of God more than holocausts." [4]



That early Christians recognized a difference between the Jewish manner of Sabbathkeeping and that of the Christian is also demonstrated in an earlier statement by Ignatius. He wrote about the "divine prophets" as "no longer sabbatizing, but living according to the Lord's life."[5]

By reading the context in the preceding paragraph one can readily see that it was the "divine prophets" of Old Testament times of whom Ignatius spoke. They were "living according to the Lord's life." Hence, Ignatius believed the "divine prophets" and the teachings of Jesus were in harmony.

Returning to the period after Hadrian, we find an interesting statement by Clement of Alexandria written near the end of the second century that indicates he did not believe it was necessary to be idle on the Sabbath, but that one could keep busy "doing good." He wrote: "For the teacher of him who speaks and of him who hears is one—who waters both the mind and the word. Thus the Lord did not hinder from doing good while keeping the Sabbath; but allowed us to communicate of those divine mysteries, and of that holy light to those who are able to receive them."

Tertullian (A.D. 160?-230?), who lived in Carthage and wrote during the third century, made a similar statement to that of Irenaeus, only he explains more plainly what he means when he says it is lawful to do good on the Sabbath. He condemns those, such as Marcion, who were trying to get everyone to fast on the Sabbath. Then he speaks of Christ bestowing "the privilege of not fasting on the Sabbath-day" and adds, "In short, He would have then and there put an end to the Sabbath, nay, to the Creator Himself, if He had commanded His disciples to fast on the Sabbath-day, contrary to the intention of the Scripture and of the Creator's will."[6]

After this Tertullian says Christ maintained "the honour of the Sabbath as a day which is to be free from gloom rather than from work."

He then explains what he means this way: "For when it says of the Sabbath-day, 'In it thou shalt not do any work of thine,' by the word thine it restricts the prohibition to human work—which everyone performs in his own employment or business—and not to divine work."[7]

Origen (A.D. 186?-254?), who studied under Clement in Alexandria, and then led out in the school there at Alexandria when it became necessary for Clement to flee from the city, also indicated he believed it unnecessary to keep the Sabbath in the strict manner of the Jews. The statement I refer to is found in Origen's Homily 23 on Numbers, chapter 4. Here it is, as translated by Prof. Frank H. Yost:

"After the festival of the unceasing sacrifice [the crucifixion] is put the second festival of the Sabbath, and it is fitting for whoever is righteous among the saints to keep also the festival of the Sabbath. Which is, indeed, the festival of the Sabbath, except that concerning which the Apostle said, 'There remaineth therefore a sabbatismus, that is, a keeping of the Sabbath, to the people of God [Hebrews 4:9]'? Forsaking therefore the Judaic observance of the Sabbath, let us see what sort of observance of the Sabbath is expected of the Christian. On the day of the Sabbath nothing of worldly acts ought to be performed. If therefore you cease from all worldly works, and do nothing mundane, but are free for spiritual works, you come to the church, offer the ear for divine readings and discussions and thoughts of heavenly things, give attention to the future life, keep before your eyes the coming judgment, do not regard present and visible things but the invisible and the future: this is the observance of the Christian Sabbath."[8]

Possibly I should caution those who may want to read the writings of Origen that in reading this early scholar it is well to remember that, as Albert Henry Newman says, Origen believed "that every passage of Scripture has three senses, the literal, the moral, and the spiritual."[9]

Careful research has thus revealed that during the second and third centuries various prominent leaders of the Christian communities endeavored, by being busy doing "divine work" on the Sabbath, to cope with Roman laws against Sabbathkeeping. Justin lived in Rome and became a martyr around A.D. 165. Irenaeus was bishop of Lyons, in France. He succeeded Pothinus, who was martyred about A.D. 177. Pothinus was in his nineties when abused and martyred. Tertullian, Clement, and Origen were in different parts of Africa. It is therefore quite evident that the idea of being able to keep the Sabbath without actually being "idle," as were the Jews, was rather widespread among Christians. These men, as all other Christians, faced the constant possibility that because of some adverse event the pagans would rise up against them, accusing the Christians of causing the gods to become angry. Thus, Christian leaders did what they could to demonstrate by their lives that they were upright, noble citizens.

However, there is no doubt that the various attitudes of Christians relating to the Sabbath laws of Rome during the second and third centuries paved the way for the more drastic changes that took place in the fourth century, especially during the reign of Constantine.

Reflecting on the above, one might well ask. "Just how would I relate to Sabbath laws or Sunday laws or anti-Sabbath laws if they should be passed by our legislators today?"

Sometime after Constantine passed the world's first Sunday law in A.D. 321, and well after the Council of Laodicea, possibly even in the next century, someone rewrote the Epistles of Ignatius, enlarging upon what Ignatius had written. In this longer version of the Epistle to the Magnesians we read:

"Let us therefore no longer keep the Sabbath after the Jewish manner, and rejoice in days of idleness; for 'he that does not work, let him not eat.' For say the [holy] oracles, 'In the sweat of thy face shalt thou eat thy bread.' But let every one of you keep the Sabbath after a spiritual manner, rejoicing in meditation on the law, not in relaxation of the body, admiring the workmanship of God, and not eating things prepared the day before, nor using lukewarm drinks, and walking within a prescribed space, nor finding delight in dancing and plaudits which have no sense in them. And after the observance of the Sabbath, let every friend of Christ keep the Lord's Day as a festival, the resurrection-day, the queen and chief of all the days [of the week]."[10]

Here we find the idea of not being "idle" one day during the week continued well after Constantine's Sunday law, at least in some places. Sunday was not thought of as a Sabbath, but as a "festival." It was as a festival that Sunday entered into the early church programs and became known as the "Lord's day." Under the stress of anti-Sabbath laws, the time came when some, at least, kept the Sabbath "spiritually," or only in the heart, and the following day, Sunday, they openly celebrated the resurrection of Christ in a festival manner–(not as a Sabbath or rest day). Thus we can see how the laws passed by Hadrian and his successors greatly affected the early church. The areas affected most were those of Rome and Alexandria (where Gnosticism flourished during the second and third centuries), as the following quotation indicates:

"The people of Constantinople, and almost everywhere, assemble together on the Sabbath, as well as on the first day of the week, which custom is never observed at Rome or at Alexandria."[11] "Although almost all churches throughout the world celebrate the sacred mysteries on the sabbath [i.e., Saturday] of every week, yet the Christians of Alexandria and at Rome, on account of some ancient tradition, have ceased to do this."[12]

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Editorial - Just War

Christian Militarism Surely Cannot Derive From The Teachings Of Jesus Christ. Jesus Taught Peace And Nonviolence–and Indeed, A Certain Disinterest In Secular State Matters. At His Arrest His Disciple Peter Seized A Sword And Struck Out At A Temple G

History, as I remember it taught in my high school days, used to be little more than a recitation of wars and battles, with dates attached. I had thought those days long gone, with a more informed recognition of the complexity of human affairs enriching our contemporary view of events. But it seems we are back to basics on Baghdad and the recycling of a medieval rationale of "just war."

What must be remarked upon is the curious fact that this renewed national militarism takes place in the context of a certain fervor in some religious circles to redefine the United States as a "Christian nation" in the consciously structural sense. This, of course, in opposition to a great deal of historical evidence that while the United States was constructed out of an overwhelmingly Christian society, it was quite consciously set up to act apart from religious oversight, control, or coalition.

Christian militarism surely cannot derive from the teachings of Jesus Christ. Jesus taught peace and nonviolence–and indeed, a certain disinterest in secular state matters. At His arrest His disciple Peter seized a sword and struck out at a Temple guard. It is possible to connect Peter's act with figures of speech Jesus used even that same night to underscore the need for action. However, Jesus' response to that act of violence is without ambiguity: "Put your sword back into its place; for all who take the sword will perish by the sword" (Matthew 26:52, RSV).* And later, before Pilate, Jesus gave a hint of the logic behind His pacifism: "My kingship is not of this world; if my kingship were of this world, my servants would fight, that I might not be handed over" (John 18:36, RSV).

To their credit, many church leaders have seen the incipient militarism in invoking a theology of just war for our contemporary struggle with terrorism and Iraq. It was most telling that the same weekend Congress passed enabling legislation for an executive war against Iraq, a group of approximately 50 church leaders publicly demonstrated against it. Unfortunately, at the same time the Christian Coalition's Road to
Victory rally raised the tone of militancy by extended triumphalist rhetoric about defending Israel. As always, that support derives from a particular view of prophecy that does indeed pit us against the "axis of evil" and give moral justification to some for military adventures.
But can any war ever be just in the absolute sense? Is it seemly, or ever acceptable, for Christians to bay for the blood of others—even despots such as Saddam Hussein? After all, "Vengeance is mine," says the Lord. "I will repay."
A little investigation into the history and development of the just war concept is revealing.

Augustine, bishop of Hippo (A.D. 356-430), author of The City of God, is credited with defining the terms of just war. But it was the Roman Catholic theologian Thomas Aquinas (1225-1274) who systematically applied Augustine's view and formulated it into specific criteria for military action. Both Augustine and Aquinas rightly saw that this whole issue could not remove the clear biblical prohibition against an individual acting violently, even if in pursuit of eliminating a wrong. However, a state has higher authority in their view, and if the response to evil and aggression met specific criteria, it would be deemed just, and the individual could participate.

Certainly, theologians so inclined have shown that one can morph the clear Christian call to righteousness and peace into a call to arms against evil. But the real explanation for the development of the just war theory is more to be found in history. A few years ago Pope John Paul II stunned many observers of church history by apologizing for the sack of Constantinople in 1203. A curious remembrance of Christianity hijacked by politics.
The Fourth Crusade, declared by Pope Innocent III, was originally intended for Egypt, then the center of Islamic power. But the need for

funds and a plotting Venetian power soon had the Crusaders in siege of once-great Constantinople, still the center of Eastern Christianity at the time. They did so with the encouragement of the papal legate and the concurrence of Innocent. The motivation then, and the lingering need for an apology, had to do with a power struggle for control of Christianity. Rome, of course, won.

A very interesting article by Stanley Harakas, of the Holy Cross Greek Orthodox School of Theology in Brookline, Massachusetts, examined "patristic sources, Byzantine military manuals, and contemporary Orthodox statements about war," and found that "virtually absent is any mention of a 'just' war, much less a 'good' war." The author concludes that "peace, in its multifarious dimensions, was central to the ecclesial, patristic, canonical, and ethical concerns of Orthodoxy."
(The article quoted first appeared in the Winter 1992 issue of American Orthodoxy.)

But such a view did rapidly develop in the Western Christian church. And it had more to do with justification of expansionary acts than with true theological proof. It had more to do with the presumed primacy and semideification of the pontiff, and, indeed, other rulers, than theological authority. The abrogation of divine authority that lay behind the development of a theology of just war lingered for centuries —indeed, colored the attitude of the American revolutionaries as they reacted to the monarchial demands of England.

The just war rationale was at its most formal during the Crusades, which began by church pronouncement. But it worked its way into the entire system of medieval statehood, whereby the ruler had a divine right that could be directed on earth only by the head of the church. It took the excesses of the French Revolution, the regicide of the English Puritan rebellion, and a novus ordo seclorum in the New World to escape the Western dynamic of divine war.

And when the source of authority for just war is shown to be a usurpation of true Christianity—the theory itself stands as specious. The corrupt and self-serving church leaders of Jesus' time justified their action thus: "It is better that one man die than the whole nation perish." They framed the issue with false logic and a moral relativism that our day knows only too well.
Indeed, stripped of false logic, the just war theory is little more than situation ethics writ large. Can the end justify the means? The Allies of World War II felt that firebombing German cities, with little to gain beyond widespread civilian death and destruction, was justified by German atrocities—today we recognize that we too had been sucked in by the evil spirit of war and killing.

And in the aftermath of Nuremberg and Milosevic we know that the ordinary soldier, the supportive civilian, is not released from moral guilt just because orders come from on high. It is a fearsome thing to live in a world that long ago embraced the principle of mass destruction. But the boundaries of such weaponry are not geographical; they are moral. And it is worth considering that killing on an organized scale, no matter how urgent the need for action, is never just war—it's always just war.

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Letters

A State of Liberty

"This Happy State," by Jim Walker (July/August 2002) presents a factual presentation of the intent of America's founders to keep the authority of the church separate from the authority of the state. But the article ignores the fact that there were Christian ideas behind the American concept of liberty. It was not all the result of the Enlightenment and deism.

The treaty with Tripoli was worded as it was to assure the Bey that the U.S. was not hostile to an Islamic country. The U.S. was composed of people who came from the "Christian" nations of Europe. Those "Christian" nations were often at war with Islam. It was natural to believe that America would be the same. It was not because of any hostility to world Christianity that the words "America is not in any sense founded on the Christian religion" were included in the treaty. It was to convince Tripoli that the American government would not wage war on those that the church labeled heretic.

The founders of two of the original colonies established liberty of conscience. They were Roger Williams in Rhode Island and William Penn in Pennsylvania. Roger Williams was a Christian minister who was persecuted for his strong belief that magistrates (government officials) were out of order when they attempted to enforce the "first table of the law." He wrote much against that idea and for freedom of conscience.

William Penn was a Quaker, not a deist. Quakers were a "third way" of Christians. They were a reaction against the wars over Christian dogma. Their teaching was that Christian qualities matter much more than Christian dogmas. It was Christian teaching of how people should live that was the basis of Penn's government.

The figure that only about 10 percent of the population at the time of the American Revolution were church members does not adequately express the influence of Christian teaching. The union of the state with established churches that existed in most colonies was the cause of low membership. Such Christianity did not fit American society, with its open frontiers and ideas of liberty. Such religion could not meet the needs of the human heart. The Christianity presented in the Great Awakening, 1725-1760, which was grounded in the gospel and the Holy Spirit, had a large influence on the people of America.

David Manzano,
Harriman, Tennessee

The Sabbath Word

Just a quick comment: in your article "Stone Words" (September/October 2002) there is an error. The Ten Commandments, specifically the fourth, does not say "keep holy the Lord's day." You know as well as I that it says to keep holy "the Sabbath of the Lord thy God." Sadly, it seems this is a missed opportunity to remind individuals of the idea of the Sabbath. Instead they are reminded of the false teaching of the "Lord's Day."

Jason and Grace, e-mail

In Marci A. Hamilton's article "Stone Words" (September/October) she cites the "shall nots" of the last six (of the ten) commandments and then says, "The principles expressed in [these] . . . can be found in various aspects in many laws in the United States."

How can there be a man-made law against coveting (a sin of the heart)? Only the original Lawgiver can pass judgment here. In fact, when Christ elaborated on two of the commandments (see Matthew, chapter 5), He indicated that lawbreaking begins in the mind, which only Divinity can read. People can only judge the actions and presume motives on the basis of the facts or on confessions.

It seems to me the Ten Commandments (or Words) are bracketed, first and last, by commands that aim at the spiritual heart and harmonize with the two great commandments cited by Christ to an inquirer: "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. . . . Thou shalt love thy neighbour as thyself. On these two commandments hang all the law and the prophets" (Matthew 22:37-40).

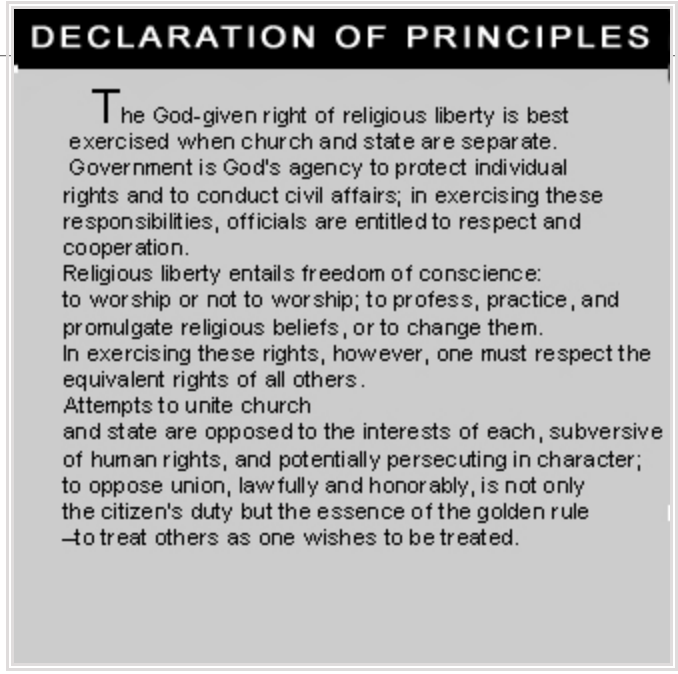
If one truly has no other gods before God in his/her life (the first commandment), and covets nothing forbidden (the tenth commandment), his/her actions will be in harmony with a just government's laws (and with the other eight commandments).

Helen Kelly,
Ridgetop, Tennessee

Commonsense Morality

I appreciated your two fine articles on the Ten Commandments, "Thou Shalt Not" and "Stone Words." It seems to me that the constitutional issues that are decisive regarding the public display of the Ten Commandments are the first four, which deal with humanity's relationship to God, versus the last six, which are civil in nature (people's relationships with people). Does any civil government have the right to be concerned and protect its citizens from harm from one another? Common sense would say Yes it would. Does government have the right to legislate civil morality? Again, common sense would say Yes. Laws against murder are found worldwide, whether you are a believer or a nonbeliever. How about laws against stealing? I do not know of any government or cultural code worldwide that would advocate this type of civil behavior in society. If people are concerned about the morality of the country, I see no constitutional harm in posting the last six commandments as a reminder of how we are to treat our fellow human beings.

Greg Carr,
Meadow Vista, California



Salvation and the State

As a practicing Catholic lawyer, I find your magazine both fascinating and ennobling. However, I do wish to point out that the tenor of some of the articles that I have read over the years seems to be somewhat anti-Catholic. However, that is not always true, as I read with interest your article entitled "A Violation of Faith" in the September/October 2002 edition.

However, there was a statement that you highlighted that was somewhat disconcerting and lacking in historical perspective. It was in the same September/October issue of Liberty on page 7, where you say that the below quoted proposition was contained in the Syllabus of Errors in 1867, two years before the First Vatican Council. "Every man is free to embrace and profess that religion which, guided by the light of reason, he considers to be true." Then you put another quote that said, "The day that this country ceases to be free for irreligion it will cease to be free for religion—except for the sect that can win political power." This was from the Honorable Robert H. Jackson, Zorach v. Clauson, 343 U.S. 306 (1952).

While I don't want to be legalistic, I do wish to quote from the Second Vatican Council's Constitution on the Church, which says: "In fact, those who through no fault of their own, are not aware of the gospel of Christ and of the Church but who, nonetheless, search sincerely for God and with the help of grace attempt to carry out His Will, known through the dictates of their conscience—they too can attain eternal salvation. Nor will divine providence deny the help necessary for salvation for those who have not yet arrived at a clear knowledge and recognition of God and who attempt without divine grace to conduct a good life." That's the current church teaching, and historically, it has been so held since Paul's writing to his churches. It's just that some church leaders have taken a maximalist view from time to time, as have other rigid conceptualists in other Christian sects. There is salvation outside of the Catholic Church, and lots of it.

I do believe that you should first read Crossing the Threshold of Hope by Pope John Paul II. The entire tenor of his and the church's position is one of true ecumenism. I do believe, without being legalistic and quoting passages, that the entire message of that book was that we must have mutual respect for one another and we must live the truth in love as quoted in the Epistle to the Ephesians 4:15. The reason I did not extrapolate quotes from the book is that there is an element in spirituality that indicates that epistemologically; we are dealing not with reason, but with concepts of faith, which often cannot be supported by reason. Because of that fact, I believe that the concepts of Jesus Christ tell us to love our enemies; to turn the other cheek; and not to separate the wheat from the chaff; but instead, to come to understand what agape love is all about and apply it to our relationships with God and other people. Because of that, the discussion that we engage in is often lacking in love and is somewhat triumphalistic. I am glad that the broad spectrum of my church contains liberal, middle-of-the-road, and conservative elements, and every other element that you could possibly conceive in the realm of religiosity. I also am very glad that there are Seventh-day Adventists, Mormons, and Christian Fundamentalists, because as the Holy Spirit works with each of us, I believe that we come to understand what God wants in our lives.

While the Eastern religions may not subscribe to the various Western concepts of God, they present us with an ethical and moral society that has a lot to offer us in terms of guiding us on the path of getting to know our fellow human beings and God in a loving

manner. Ultimately, we must agree with Thomas Aquinas: "We must love them both—those whose opinions we share and those whose opinions we reject. Both have labored in the search for truth, and both have helped us in the finding of it."

Thomas M. Whaling,
Lake Forest, California

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Security & Religious Freedom

The Linkage Of Security And Religious Freedom Is Really Not That New. In The United States The Connection Was First Made In The 1663 Rhode Island Colonial Charter From England. "They Have Ffreely Declared, That It Is Much On Their Hearts . . . To Hold Fo

The linkage of security and religious freedom is really not that new. In the United States the connection was first made in the 1663 Rhode Island Colonial Charter from England. *"They have ffreely declared, that it is much on their hearts . . . to hold forth a livlie experiment, that a most flourishing civill state may stand and best bee maintained . . . with a full libertie in religious concernements; and that true pietye rightly grounded upon gospell principles, will give the best and greatest security to sovereignetye, and will lay in the hearts of men the strongest obligations to true loyaltye."* v It is obvious, in the words of the American forebears that "true pietye rightly grounded" and "greatest security" were absolutely critical to a "flourishing civill state." Religious freedom became the cornerstone of a civil society. That awareness is coming back to us today. Note the words of the International Crisis Group in their March 2001 report on Central Asia: *"Treat religious freedom as a security issue, not just a human rights issue, and advocate unequivocally that regional security can only be assured if religious freedom is guaranteed and the legitimate activities of groups and individuals are not suppressed."* But then came the events of September 11, 2001, a new historical reality that immediately produced the cliché "and the world would never be the same again" (certainly not the American understanding of that world!). At the very least it was time to look at the issue of religious freedom again, albeit in a much more complicated context. What is the status of this issue in the world today? What is its relevance? What will happen to all those single-issue advocates who, in times past, were able to mouth lofty principles without ever considering the realistic process of implementation? Will those of us who tend to view life through the lens of the moral imperative be able to relate to the hard-line, security-conscious realists?

Security has jumped to the top of America's, and I dare say the world's, hierarchy of values. Any organization that seeks to be relevant, to have a seat at the table—public or private—needs to be conversant in national and global security. For the foreseeable future everything else will pale in comparison.

Unfortunately, for most of the human rights community, that nexus point between religious freedom and security has yet to be made. The most troubling and the most legitimate human rights concern is: Will the need for security provide authoritarian leaders the rationale desired for an additional crackdown on the opposition in their country?

Many countries in the world today have legitimate security concerns. Russia is fighting a war in Chechnya. Uzbekistan has seen its own governmental buildings blown up by terrorists. The Chinese are always concerned about security issues on their borders, from Tibet to the northwest Autonomous Region. But now the world is being framed in large categories: "good and evil," "us and them," "those who are for us and those who are against." The world is at war with terrorists and terrorism, and nuance is the first casualty of war!

Would anyone care about Chechnya? Would the world take notice of the numbers of moderate Muslims who are being radicalized by the harsh overreach of Karimov? And the Muslim Uighurs and Tibetan Buddhists, would they be relegated in our collective consciousness to a form of benign neglect? Let's be honest, without the events of September 11 would we ever have experienced the blunt-edged boldness of the Israeli military, as a conflict is allowed to escalate out of control and rational thought?

This is an issue of grave concern. Especially so, if the addressing of this issue from only one side, religious freedom, without any understanding of the legitimate concerns for national security, leaves the human rights activist without an audience.

The second issue that produced an outcry from the human rights establishment was the treatment of Taliban and al-Qaeda prisoners at Guantánamo Bay, Cuba. Raising the voice of principle here was, at the very least, a tactical mistake. Once again, the world was not listening. When it did, it heard the unintended and unfortunate comparison between the cramped quarters for terrorists and the loss of 3,000 innocent lives. Any tendency toward a moral equivalency, regardless of intention, was offensive to all.

A third issue emerged directly from the United States and its October 2001 passage of the Patriot Act. This act gave sweeping power to law enforcement agencies in the United States. The tapping of phones, surveillance of individuals, and prolonged detention for others, even if their terrorist intentions were not easily proven—all allowed under the act—challenged both the letter and the spirit of the American Constitution.

Concerns were voiced immediately from the human rights community. The act, however, was overwhelmingly passed by both the House and Senate. Once again, the pragmatists won out. Security was the issue, and a one-sided presentation of human rights had no chance of carrying the day.

Let's look at a different approach, a strategy that assumes what the Rhode Island Charter of 1663 clearly stated, namely the clear, unambiguous relationship between religious freedom and the security and stability of a nation. First, and most pragmatically, we need to understand that war was declared on 9/11, a war with an enemy that claimed to be working from a religious base. At the very least we need to know that enemy! We need to know the values of that enemy in order to gain victory, to understand that enemy's motivation, and, most important, what the enemy might be planning next. Our security is at stake!

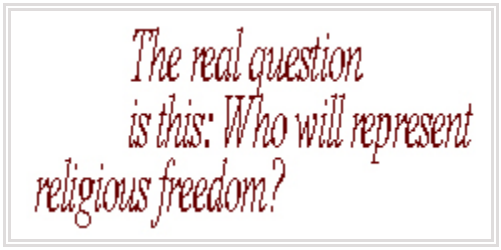
Second, we are still living in a period of "identity conflicts," conflicts begun for a whole host of reasons but ultimately implemented along the lines of a people's primary identity, which in many cases is religion. Such wars suggest that we have to do a much better job of living with our deepest differences. Our inability to do so has been, in times past, one of the major causes of religious persecution around the world.

Third, religious freedom has to be present in order to create a values-based civil society. We can literally locate and track a country on a continuum of human dignity and compassion by how that country deals with religious freedom. When this freedom is at risk, many of the other freedoms—such as speech, association, press, and certainly belief—are also at risk. This cornerstone freedom, especially the treatment of minority faiths, will tell us much about how a country treats its people and, by extension, how secure that country really is.

Fourth, on an individual level, nothing enhances security more than knowing our own faith at its richest and deepest best and, at the same time, knowing enough about our neighbor's faith to show it respect. This is not "easy ecumenism," but rather a deep and thoughtful reflection on why we believe the way we do, while respecting the earnestly held beliefs of our neighbors. The challenge is to know our faith at its deepest point, to know the eternal verities of that faith, the heroes of that faith, to know why, in the words of Pascal, "good men believe it to be true." And then we need to know enough about our neighbor's faith to be truly respectful.

On September 11 we saw the ultimate perversion of religion. A misunderstood faith, an inappropriately applied faith, a truncated or redacted faith—in the hands of a zealot—is very scary indeed. Our global security is put at risk.

Finally, what we now know for sure in the world today is that there are people who are willing to die for their faith, and, unfortunately, there are people who are willing to kill for their religion. We neglect this issue of religious freedom in the context of national and global security at our considerable peril.



In the early 1990s I was president of World Vision, a faith-based relief and development organization. Along with most of the humanitarian world, we were working in Somalia, desperately trying to save the 75 percent of all children under the age of 5 who were in real danger of starving to death. Starvation deaths were mounting as the fighting intensified. In the intervening days before the U.S. military made its way to Baidoa, we needed to do something to protect our staff and continue the humanitarian aid that was so desperately needed in that part of the country. I spent most of a day on the phone with the Joint Chiefs of Staff, working on a plan to protect the aid workers in Baidoa until our military made an on-the-ground appearance there. The plan was so simple: two or three times every day, the Navy would launch F-14 Tomcats from their carriers to fly at supersonic speed low over the city of Baidoa. The mission was eminently successful! The "bad guys" remained totally out of sight!

There are also formalized alliances, the models of which would be useful as we attempt to cement the nexus point between religious freedom and security. In the United States, for example, we are attempting to build a Homeland Security culture. This involves, once again, disparate agencies that are not used to working with one another. One should not underestimate the challenges at hand as this culture evolves into a new reality.

Another model that already exists is the Defense Institute of International Legal Studies in Newport, Rhode Island. This institute teaches courses on the military, civil society, and legal issues. It would not be much of a reach to include religious freedom as a part of this curriculum. Additionally, it would be a major contribution to the rest of the world if such a composite would then be taken to those parts of the world that are having the most difficulty in seeing the wisdom and connecting the relevance of religious freedom and security.

However this is done, the key to such an alliance is the creation of a new culture. The security-conscious realist and those who continue to look at life through the lens of a moral imperative need to be in a room together, beginning to understand each other,

reducing the stereotypes of both people and institutions that have precluded such an alliance in the past. Education and training are going to have to happen quickly, on all sides. But that exercise does not have any chance until this new culture is developed. Such development, for example, is one of the desired outcomes for the Institute for Global Engagement's new online distance-learning master's degree in Global Engagement, a training and education program designed to embrace these new global realities.

On the security side, there will need to be individuals that represent law enforcement and the military, as well as diplomatic personnel—all of whom have accountability, responsibility, and a shared understanding on this issue of security. The real question is this: Who will represent religious freedom? What institutions, nongovernmental organizations, individuals, are prepared to make the case that was so easily assumed back in 1663: that religious freedom, tolerance, respect for human rights, and the dignity of all people are just as much a security force as a tank, a rifle, or a soldier? Who might contribute to the culture of security, of stability, of realistic expectations for every human being? Who can effectively articulate our most precious possessions—our beliefs, our faith, our best instincts, and our highest values? Who will dedicate themselves to a cause that is now bigger than the ability of a single-issue advocate to comprehend? Who might convene such a group?

For starters, let's return to the human rights community, and this time let's include the church. The faith community has produced a body of individuals who have been called out, educated, and trained, who are passionate in their beliefs and certainly dedicated to the common good. Leadership has to emerge from this community, a community that includes the church and all those who believe in human dignity. It is enormously counterproductive to drive a wedge between religious freedom and security. The human rights community, led by the church, is capable of so much more!

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Letters

Enabling Laws?

I am very concerned, not only with the way our government is enacting "religious liberty" laws, but also the way that some are proclaiming these as triumphs of religious liberty.
In an article titled "Religious Freedom Act Passed in South Carolina" this statement is made: "Regardless of the amendment, the act which was passed is still an excellent example of what states need to be doing to pass religious freedom acts."
First, the amendment here spoken of is in itself enough to make one cringe in horror that we are proclaiming this as an "excellent example" for religious freedom acts. The amendment restricts the privileges of prisoners. What of those who might be imprisoned for acts related to a conflict between their faith and the requirements of the state? These people will then be without any protection at all . . . and we hail this as an "excellent example" of religious freedom?
Second, the Religious Freedom Act is in itself a law enabling government to persecute. The act states that government cannot interfere in religious practice unless there is a "compelling public interest."
I find such a law as this horrifying. The Bible teaches repeatedly that the majority is almost without exception wrong, and that only a faithful few, a remnant, will be faithful. What will we do when there is a *compelling public interest* to persecute?
RICK ANGELIN, e-mail

The state RFRAs are the result of a very well-intentioned initiative by a broad coalition of religious groups and civil libertarians to shore up deteriorating application of the First Amendment free exercise clause. Certainly the war on terrorism has shown how easily compelling public interest can be invoked to restrict liberties. Editor.

Respect Not Equality

As Christians we are to respect people as made in the image of God. Within the family we teach our children respect for their "other parent" based on that fundamental truth and that we are told in the Bible to honor our parents. But that does not extend to the embracing of their religion any more than it extends to approving of immorality.
Shall we be tolerant of satanism or White supremacy? Shall we be tolerant of religions that practice human sacrifice or the selling of young women into sexual slavery? Shall we as Christian parents tell our children that their other parent and choice of religion is as valid as ours if these are the tenets of their religion? No serious Christian would do so, intolerant or not.
Each one of us is free to practice our religion within the limits set by the law. This is tolerance. But we are not required to approve of another's religion, even though we allow them that freedom. Tolerance does not mean approval.
There is a higher law than either the popular law of tolerance or the law of this land or any land. If asked by the law to approve of another religion or practice, then as a Christian I have no choice but to obey God. I have a responsibility under God to rear my children in the faith. I also have the responsibility to warn my children of the dangers of false and destructive religions.
DON R. CAMP,
Cove, Oregon

Vouchers Questioned

The Supreme Court's recent declaration that vouchers are constitutional in public schools will merely intensify the conflict. Paul E. Peterson's claim (Liberty, July/August) that more equity (equality?) will result is questionable at best, so we have to be careful. Education data are sometimes unavailable, confusing, or occasionally distorted to support a specific argument; also, the Internet's 150-plus good education sites can baffle newcomers.
Private school pupils are very similar to public school pupils in some ways. But three quarters of private schools interview pupils and/or

their parents for admission, want a record of grades and/or test scores, and require references pertaining to performance at grade level and good behavior. In addition, they reject 17 percent of applicants. No public school has this luxury of selection.

Private schools are more likely to be segregated and have a safe climate, fewer children changing schools, and similar classroom size. But they perform no better academically, as shown on the Iowa Test of Basic Skills.

Private schools are not accountable to the public even though they will now receive more public money. They do not publish their test scores in the local newspaper, as public schools do. Instead, they circulate favorable anecdotes from pleased parents.

With all these advantages—more than equity—private schools should produce far better academic achievement than public schools. They do not.

Peterson omits a great deal of important information in his article. Scandals have been frequent in private schools, involving finances, management, record keeping, and administrative duties, which public schools routinely handle properly. My favorite is the administrator who found voucher funds to buy her mother a nice house.

Nobel Prize-winning economist Milton Friedman is quoted as wanting to stir market competition. But he also said that a free society is undermined by the acceptance of a social responsibility other than to make as much money as possible for stockholders. Instead, most of us believe that public education's purpose is to provide a service to the nation, to teach all children what the nation has found desirable rather than to make money for speculators.

All 21-plus statewide elections have voted down vouchers by a margin of two to one. The only supporters are very conservative Christians who want their prayer and Bible reading in schools, capitalists who want some of the billions spent on education, and political conservatives.

Finally, Peterson is so certain that vouchers will succeed that he circulated his study of their use in New York City, Dayton, and Washington, D.C. His claim that Blacks in the last city did better than public school pupils was widely circulated in the press. The study had not been reviewed by the press, as is typical in good research, before it was distributed to the media. Coworker David Myers pointed out errors—the half of parents who accepted vouchers had higher income and education than public school parents, so they were not comparable. The conservative Olin Foundation had funded other research by Peterson.

Success in public schools is related to such factors as number of parents at home, type of community, state poverty level, access to good reading, homework, and absence from school. All these are beyond the control of schools, but the schools are blamed for failures.

"No Vouchers,"
Jacksonville, Florida

"Faith-based" Not Based on Legislation

As a regular reader of your magazine I have appreciated the various thought-provoking articles challenging state aid for church programs. I realize that much of the debate centers around a definition of what the framers of the first amendment really intended. So I have been following the public debate on the President's Faith-based Initiative very closely.

It seems to me that the FBI initiative is clearly designed to fund overtly spiritual church activity–and presents obvious constitutional dangers. Yes, on occasion statements have been made downplaying that intention; but if so there would be no need to advance beyond the already established charitable choice concept.

So I have watched with interest the efforts to legislate this initiative. Two years ago Congress passed HR 7 with little real debate. Senate passage seemed more troublesome till the so-called CARE Act emerged with bipartisan support. Amazingly the Act did not pass muster in 2002.

It seemed logical for a new effort to breeze through the Senate in 2003. Instead the President established FBI by Executive Order. This short circuiting of the democratic process is breathtaking given the issues involved. I pray that the Judiciary properly examines the issue. It seems our checks are out of balance.

LES MARTINEZ
Silver Spring, Maryland

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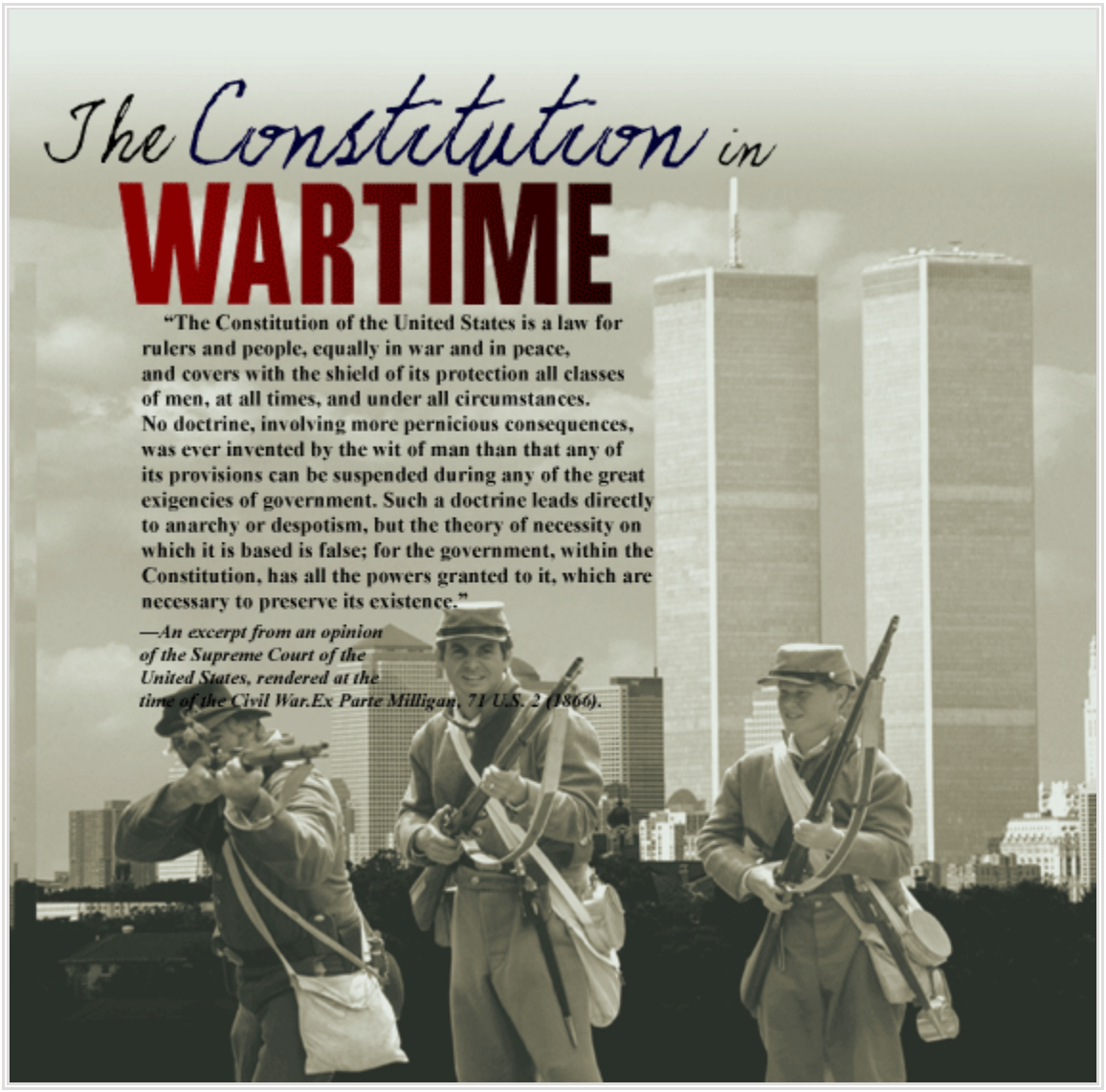
The Constitution In Wartime

An Excerpt From An Opinion Of The Supreme Court Of The United States, Rendered At The Time Of The Civil War.



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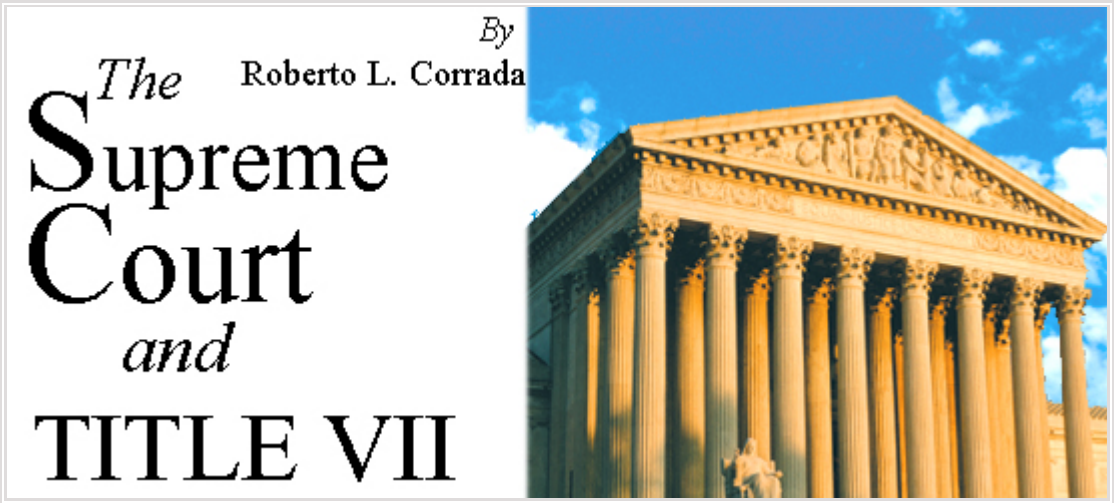
The Supreme Court And Title Vii

In 1995 Don Reed Was Fired As An Air Traffic Controller When His Religious Belief About The Saturday Sabbath Came Into Conflict With The Dictates Of His Employer. For Several Years Reed Had Been Accommodated In His Belief That The Sabbath Should Be Kept S



PRINTABLE VERSION

In 1995 Don Reed was fired as an air traffic controller when his religious belief about the Saturday Sabbath came into conflict with the dictates of his employer. For several years Reed had been accommodated in his belief that the Sabbath should be kept sacred by holding a job that required work only during the workweek and then by arranging job swaps for himself with other willing workers. However, in 1995 the facility experienced an extraordinary amount of transfer activity, and staffing dipped below the number of full-time air traffic controllers required by the collective bargaining agreement at Reed's unionized workplace. Reed worked closely with his union to propose several reasonable accommodations. All were refused by the employer. Reed was then fired, and as a result, staffing went down further. The employer then implemented the accommodations requested by Reed, but only after he was terminated. Don Reed was vindicated when he won a $ 2.25 million verdict in Denver district court, but he won because the jury found disparate treatment, that Reed's employer had treated him differently because of his religion, and in fact, that Reed's boss was biased against him as a result of Reed's religious beliefs and requirements. If Reed had been left to argue only that his employer refused a reasonable accommodation, Reed might not have prevailed. In Reed's case, the employer had no interest in accommodating Reed's religious belief, and, I believe, that's partly because of the message sent by current law.

What is the law surrounding religious conflicts with work requirements, like Don Reed's? Title VII of the Civil Rights Act of 1964 included discrimination on the basis of religion in its prohibitions of conduct by employers. The law was amended, however, in 1972 after an equally divided Supreme Court, in the case of Dewey v. Reynolds Metal Co., upheld a U.S. court of appeals decision questioning the validity of Equal Employment Opportunity Commission (EEOC) regulations requiring employers to act affirmatively to accommodate religious practice.

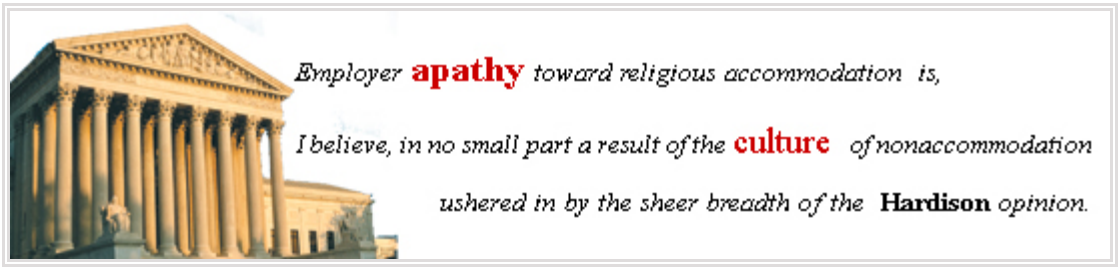
The decision meant that if an employee's religious practice came into conflict with a neutral workplace rule, the employee would have to choose between the edicts of his/her faith and, often, his/her job itself. The current law provides that it is unlawful in employment to discriminate upon the basis of religion, but because of the 1972 amendment to Title VII, it also requires an employer to "reasonably accommodate" employee religious observance and practice unless doing so would place an "undue hardship" on the employer. The amendment was offered by Senator Jennings Randolph, who explained that the primary purpose was to protect Saturday Sabbatarians such as himself from employers who refuse to hire or to continue to employ them because of the rigidity of their religious practice. The amendment was unanimously approved by the Senate on a roll call vote and was accepted by a conference committee whose report was approved by both houses. The 1972 amendment to the Civil Rights Act of 1964 remains the law on the books today, but has been importantly interpreted by two Supreme Court decisions and a significant concurrence in a related Supreme Court case.

Today an employee bringing a Title VII claim for failure to reasonably accommodate his/her religious practice generally must show: (1) that he or she has a sincere religious belief that conflicts with an employment requirement; (2) that the employer had notice of the conflict; and (3) that he or she was disciplined or would otherwise suffer at the hand of the employer for adherence to the religious belief or for failure to comply with the employer's requirement. If an employee can show these things, the burden of proof in the case then shifts to the employer to show that it offered reasonable accommodation or that any accommodation would cause undue hardship.

Since Title VII requires accommodation of religion in the workplace, it is hard to know why employers who are ostensibly unbiased toward a person's religious requirements sometimes go to such great extremes to avoid accommodation. In Don Reed's case, for example, the employer maintained that it was not biased against Reed but that he could not be reasonably accommodated in his job. This, despite the fact that Reed had been accommodated for many years, and that, because of a shortage of air traffic controllers, the facility would have to operate for months with only five controllers, one controller less than Reed. In other words, rather than accommodating Reed only on Saturdays, the employer put itself in the position of having to figure out how to operate without Reed for seven days of the week!

One of the reasons for the employers' extreme actions in these accommodation cases may well be the very tepid protection offered by Title VII, as interpreted, to religious objectors in the American workplace. While on its face the law prohibits discrimination on the basis of religion and provides a strong affirmative obligation to accommodate religious observance or practice, this mandate has been substantially diminished by the United States Supreme Court's decisions in TWA v. Hardison, 432 U.S. 63 (1977) and in Ansonia Board of Education v. Philbrook, 479 U.S. 60 (1986), interpreting the statutory language of the accommodation requirement. The Hardison case presents a pretty typical accommodation scenario. In that case Larry Hardison was hired by TWA in 1967 to work as a clerk in its Kansas City maintenance base, a 24-hour operation. TWA maintenance employees were represented by a union. Hardison was required as a condition of employment to become a union member and to abide by the provisions of the collective bargaining agreement between the union and TWA. The agreement contained a seniority system for deciding which employees should be preferred in bidding for new jobs, vacancies, transfers, vacations, and shift assignments.

Ordinarily a seniority system is a highly efficient and properly discriminating method for establishing work preferences. However, in 1968 Larry Hardison began to study and to practice the religion known as the Worldwide Church of God, one of whose fundamental beliefs was that the Sabbath must be observed by refraining from performing any work from sunset on Friday until sunset on Saturday. The religion also forbade work on certain specified religious holidays. The requirements of Hardison's job came into conflict with his new religious beliefs when Hardison transferred to a better job within TWA that would allow him to work the day shift. He was asked, because of his relatively low seniority, to work on Saturdays when a fellow employee took vacation time. Hardison requested an accommodation for his religious beliefs, but the union was unwilling to modify its seniority system in any way, and TWA was unwilling to operate without a person to fill Hardison's position. He apparently had no choice. He either had to leave his job or violate the strict dictates of his faith. Hardison maintained that Title VII required an accommodation regarding the requirements of the TWA seniority system. Nonetheless, TWA and the union refused to provide an accommodation.



In TWA v. Hardison the Supreme Court found that Title VII does not require employers or unions to bear more than a de minimis cost to reasonably accommodate religious observers, because any greater cost would impose an undue hardship on the conduct of the employer's business. So undue hardship, mentioned earlier, equals only a de minimis burden according to the Supreme Court. In denying Hardison statutory relief, the Court reviewed and rejected three accommodation proposals. Those accommodations included: (1) allowing Hardison to "work a four-day workweek utilizing in his place a supervisor or another worker on duty elsewhere;" (2) filling Hardison's Saturday shift with other available personnel; and (3) arranging for Hardison to swap jobs with another employee for Saturdays. The Court found that each alternative would have imposed an undue hardship on TWA or the union, and therefore, none was required by Title VII, even though the proposal to pay for another employee would have cost TWA only 0 (the total for three months, at which time he would have been eligible for transfer back to his original facility), and arranging a voluntary job swap would have had little appreciable effect on TWA's seniority system.

The Supreme Court's 1977 decision in Hardison has had a negative effect on scores of religious individuals whose beliefs and practices conflict with seniority systems and other workplace policies. Even practices as benign as voluntary job swaps with other workers have been rejected by employers in some cases. Employer apathy toward religious accommodation is, I believe, in no small part, a result of

the culture of nonaccommodation ushered in by the sheer breadth of the Hardison opinion.

Equally as limiting as Hardison, some believe more so, is the Supreme Court's 1986 opinion in Ansonia Board of Education v. Philbrook. In that case, Ron Philbrook, a school- teacher and a member of the Worldwide Church of God, was bound by a collective bargaining agreement that provided only three days of annual leave for mandatory religious holidays but contained an additional provision for three days of annual leave for necessary personal business. When Philbrook proposed using his personal business days for religious observance, the school district refused. Philbrook was forced to take unpaid leave or schedule hospital visits in order to claim medical leave to observe the religious holidays of his faith. The Supreme Court held that once a reasonable accommodation is proffered by an employer, the employer need not implement the accommodation preferred or proposed by the employee, even if it means the employee will suffer financially.

It is important to note that these Supreme Court decisions involved questions of statutory interpretation of Title VII; they were not results expressly compelled by the Constitution, although it's fairly clear that the Supreme Court was guided by constitutional parameters in both cases. The Supreme Court's constitutional establishment clause concerns were more evident in a 1985 religious accommodation case that did not involve Title VII. In Estate of Thornton v. Caldor, 472 U.S. 703 (1985), the Supreme Court struck down as unconstitutional a State of Connecticut law that required employers to absolutely accommodate Sabbath observance. The Court found that the law had a primary effect of advancing religion in that it privileged Sabbath observance. Nonetheless, probably because she saw that the Caldor decision had direct implications for Title VII, Justice O'Connor, in a concurring opinion, commented on how Title VII was distinguishable from the Connecticut law. As O'Connor stated: "Title VII calls for reasonable rather than absolute accommodation and extends that requirement to all religious beliefs and practices rather than protecting only the Sabbath observance. . . . I believe an objective observer would perceive it as an anti-discrimination law rather than an endorsement of religion or a particular religious practice." Since the Court's decisions in Hardison, Caldor, and Philbrook, the Court's establishment clause jurisprudence has softened a bit, making a more proactive accommodation clause, say one enacted by Congress, even more feasible today than in the past, so long as certain principles are adhered to: (1) it must not work a forced hardship on other employees; (2) it must not favor a particular religion or religious practice; and (3) it must not require an absolute accommodation, meaning requiring accommodation regardless of the employer's circumstances. Certainly I believe that the Hardison and Philbrook decisions could be overturned in ways that do not violate the establishment clause. Requiring the employer to bear some cost of accommodation or allowing employees to take all available leave as religious leave should not serve to strain our Constitution.

In sum, the express language of Title VII is sufficiently protective of religious practice in the workplace, allowing those who have religious conflicts with workplace requirements to, like their fellow workers, retain jobs or continue to work in those jobs on the same basic terms as their fellow workers. However, Supreme Court decisions interpreting Title VII have diluted the statutory language, and together send a message to employers and employees alike that requirements of religious conscience are simply not very important compared to the requirements of a job. Imagine the effect on a worker if he is told that he need not, and in some cases cannot, swap shifts with another worker to accommodate religious practice, or worse, the effect on workers as a whole when they are told that necessary personal business cannot include leave for religious observance. Michael Wolf, Bruce Friedman, and Daniel Sutherland, in their 1998 book Religion in the Workplace, have noted that the Supreme Court, in Hardison and Philbrook, has, in effect, "interpreted Title VII to give primary importance to an employer's economic interest; a cost that is an undue hardship when borne by the employer may nevertheless be reasonable when borne by the employee.

*Professor Corrada has written and spoken extensively on the subject of religion in the workplace, most recently at the Pew Forum on Religion and Public Life Conference "Reconciling Obligations: Accommodating Religious Practice on the Job" in Washington, D.C., May 21, 2002. For more by Professor Corrada on this topic, see Roberto L. Corrada, "Religious Accommodation and the National Labor Relations Act," Berkeley Journal of Employment and Labor Law 17 (1996): 185; Roberto L. Corrada, Workplace Religious Freedom Act of 1997, Hearings on S. 1124 Before the Senate Committee on Labor and Human Resources, 105th Congress, 1st Session 50-57 (1997); Roberto L. Corrada, "Proceedings of the 200 Annual Meeting of the Association of American Law Schools Section on the Law and Religion: Religion in the Workplace," Employee Rights and Employment Policy Journal 4 (2000): 89.