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Office of White House Chaplain [1]

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THE WHITE HOUSE

WASHINGTON

January 11, 1991

Dear Mr. Grubbs:

Governor Sununu appreciates very much your letter of December 21 and the proposal of the Fellowship of Legislative Chaplains to establish an office of White House Chaplain. We are giving your offer careful attention and will be in touch with you again to discuss it further with you.

In the meantime, Governor Sununu asked me to thank you for your interest and to pass along his very best wishes for the new year.

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

Mr. Rick Grubbs
Chairman
Fellowship of Legislative Chaplains
9085 SE Morning Street
Hobe Sound, Florida 33455

Governor - Also see
attached correspondence
from John Whitehead

k

**Document Originally
Attached to
Following Page**

THE WHITE HOUSE
WASHINGTON

12/21/90

TO:

Gov. Surunu

FROM:

LEIGH ANN METZGER *Lam*
Special Assistant to the President for
Public Liaison
Room 193 OEOB, Ext. 7142

The attached is for:



Information



Review & Comment



Direct Response



Appropriate Action



Draft Reply



Signature



File



Other



Please Return by _____

Comments:

Re: White House Chaplain Program

Mr. Rick Grubbs has contacted several people this week and told them that he was going to discuss this issue with you -

I wanted you to be aware of it, but I do not recommend action at this time -

Fellowship of Legislative Chaplains



9085 SE Morning Street
Hobe Sound FL 33455
(407) 546-3300

December 21, 1990

Dear Mr. Sununu:

A very merry Christmas to you and your family! I want to thank you for taking time to consider the merits of the attached chaplaincy proposal.

As you can see, the religious community has shown widespread support for this very positive proposal which would allow a volunteer chaplain to serve the White House staff at the pleasure of the President. This chaplain would serve in much the same capacity as our members have served in the legislatures for over 200 years.

I realize that every element of the proposal may not be possible or desirable at this time. I would therefore consider it a privilege to meet with you at your earliest convenience to consider how we might best serve you. I can be reached at the number above and can be in Washington within 24 hours.

Until then I thank you and wish you a happy Holiday!

Sincerely,

Rick Grubbs

Rick Grubbs
Chairman

P.S. You have a very competent liason in Leigh Ann Metzger. She has been very thorough, responsive, and helpful in all of our contacts thus far!

Fellowship of Legislative Chaplains



9085 SE Morning Street
Hobe Sound FL 33455
(407) 546-3300

WHITE HOUSE CHAPLAINCY PROPOSAL

- Interdenominational

- Serving America's Leaders

PROPOSAL CONTENTS

Letter to the President

Roles of the Chaplain

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Draft Executive Order

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Fellowship of Legislative Chaplains



9085 SE Morning Street
Hobe Sound FL 33455
(407) 546-3300

Dear Mr. President:

As Chairman of FLC, which is the professional association for government chaplains, I am pleased to present to you a proposal which will uplift the faith and enrich the family lives of your dedicated staff!

For over 200 years, we have provided prayer, counsel, motivation, and encouragement to state and federal legislators, and their staffs. Now, after months of planning and prayer, in conjunction with national religious leaders and your staff, an executive order has been prepared which would make available to the members of this Administration these same chaplaincy services.

We respectfully request your consideration of the attached proposal to establish the office of White House Chaplain. We believe the chaplaincy will be well received among your staff. In fact, the proposal lists nine areas in which a Chaplain could serve your Administration. It will also symbolize to all Americans, our need to recognize the Almighty and to seek His Wisdom in our national and personal lives.

The chaplaincy will provide for the busy staff of this current Administration and for many future administrations to come, a means whereby those of its number may be helped in their seeking God, the Consciousness of His Presence, the Light of His Guiding, and the Strength of His Love.

We believe your approval of this constitutionally-sound, privately-funded chaplaincy will be a great encouragement to your staff. It will also demonstrate to the American people your recognition of the need for Divine Guidance during the complex era in which we live. We therefore urge your thoughtful and prayerful authorization of this popular Executive Order creating the office of White House Chaplain.

Very Respectfully Yours,

Rick Grubbs
Chairman

ROLES OF THE CHAPLAIN

The job description of the Chaplain would be to serve at the pleasure of the President in whatever capacity he deems appropriate. The following suggested duties, based largely on other current government chaplaincies, serve as a menu from which the President may choose.

1. STAFF PASTOR/COUNSELOR

(a). Family Enrichment

The Chaplain could schedule weekend family life seminars for staff and their families to focus on maintaining a dynamic marriage while working in such a demanding career. Weekend retreats and marriage counseling could also be offered to the staff. If only one marriage were saved from the tragedy of divorce through this ministry of the Chaplain, the program would be considered a success.

(b). Ministry to the Hurting

The Chaplain would regularly visit hospitalized employees and their families on behalf of the President. The Chaplain could also coordinate the sending of flowers and expressions of sympathy to employees experiencing a death in their immediate family or other tragic circumstances.

(c). Individual Counseling

In recent years "Industrial Chaplains" have become part of a growing number of employee benefit packages. This has occurred as industry has realized how periodic chaplain visits to the work site can save company resources. When problems such as emotional burnout or alcohol

dependency are recognized and dealt with effectively, everyone wins.

(d). Pastoral Functions

The Chaplain would provide clergy services such as performing weddings and funerals for those who do not have a pastor or who would like to supplement their ceremony. He would also lead voluntary prayer and Scripture-study groups before working hours or during lunch.

The moral and ethical influence of an effective chaplain's ministry could be felt throughout the Administration. It could help set the tone for a kinder, gentler administration.

2. CHAPLAIN AS PUBLIC PRAYER LEADER

(a). Religious and Patriotic Holidays

Opportunities abound on these occasions for a Presidential envoy to add inspiration to the many public observances both in Washington and throughout the Nation.

(b). Cabinet Meetings

At the pleasure of the President the Chaplain would either offer, or secure a guest minister to offer, a brief (10-30 seconds), uplifting prayer or word of encouragement at the beginning of Cabinet Meetings.

Opening prayer was once standard at all Cabinet Meetings. President Eisenhower received significant positive review from various religious groups for instituting this practice during his Administration.

(c). Grace Before Meals

From staff luncheons to state dinners, opportunities exist for a chaplain to return thanks for the providence of God to our Nation. The Chaplain would also invite guest clergy in for this function. Care would be taken to insure a balanced representation of faiths in all such practices involving outside clergy.

(d). Times of National Crisis

During the first days of the Gulf crisis, the President wisely called for our nation to pray. In an event such as this, the call to prayer could be coordinated by the Chaplain. The Chaplain could not only lead in prayer but could also call upon religious leaders around the country to join in prayer as requested by the President.

3. COORDINATOR OF STAFF CHARITY EFFORTS

The Chaplain could coordinate and promote charitable giving as requested by the Administration. This could include one-time projects, such as relief for victims of tragedy, or ongoing efforts, such as helping the homeless or the United Way. Volunteer service, as well as financial relief, could be coordinated by the chaplain.

The President could also demonstrate his support for various volunteer efforts by commissioning the Chaplain to short term assignments with different charitable agencies on his behalf.

4. PRESIDENTIAL REPRESENTATIVE

(a). Messenger of Condolences

While provisions currently exist for the conveyance of Presidential condolences, the frequency of these expressions could be increased and their effectiveness enhanced, by the inclusion of a clergyman. At the

pleasure of the President, the Chaplain would express the President's sympathy via mail, phone, or personal visit.

On occasion, the Chaplain could accompany other White House officials to funerals to reinforce the President's concern. At other times the availability of the Chaplain to attend such functions in their stead would free other White House personnel for their regular duties.

(b). Envoy to U.S. Troops Abroad

As Commander-in-Chief, one of the President's most weighty responsibilities is to maintain the morale of his troops especially during times of crisis. A personal religious envoy from the President could be a tremendous inspiration to the resolve of these troops.

5. STAFF MOTIVATION / DEVELOPMENT

A well-trained chaplain could motivate clerical and other personnel by being a "goodfinder," noting positive performances and writing notes of encouragement and recognition. He could also conduct specialized training seminars for the staff in professional development areas such as overcoming procrastination or remembering names and faces. The Fellowship of Legislative Chaplains will provide the Chaplain with a cassette and videotape library of motivational material for staff use.

6. RELIGIOUS LIAISON

While the chaplaincy is not to become a "political" post, there may be occasions when it would be appropriate for the Chaplain to assist the Religious Liaison in certain duties. As a clergyman, the Chaplain could address fellow clergy on a minister-to-minister basis.

7. WHITE HOUSE VISITOR PUBLIC RELATIONS

The delight of many Washington tourists is a visit to the White House. During his free moments, the Chaplain would interact with White House guests on a one-to-one basis, extending greetings and answering visitor questions. This would add to the excitement of their White House adventure by allowing them to meet someone "official."

The Chaplain could also conduct special tours for religious leaders, churches, and other religious groups visiting the White House. Special emphasis could be given to the spiritual heritage of the Presidency and the need to pray for our President.

8. COORDINATOR OF SPECIAL RELIGIOUS SERVICES

Special occasions such as religious holidays could lend themselves to special religious services. These services could be geared to meet the needs, as well as the time constraints, of the First Family and their guests.

The White House Chaplain would facilitate such services by the minister of the President's choosing or on a moment's notice administer such a service himself.

9. OTHER ASSIGNED DUTIES

The Chaplain would be available to the President and his staff for any assigned duties which might otherwise "fall through the cracks."

SUGGESTED FINANCIAL ARRANGEMENT

FUNDING OF THE CHAPLAINCY PROGRAM

The chaplaincy would be privately supported by the Fellowship of Legislative Chaplains fund designated for the White House Chaplaincy. The Fellowship is the singular professional association for government chaplains. Funds would never be solicited from White House staff or the general public in any way. A full accounting of all funds would be presented regularly to the White House comptroller and regular audits would be conducted by outside agencies.

The Chaplain would have a preestablished, very moderate income which would never exceed that of his counterparts in the Congress.

FINANCIAL IMPACT OF CHAPLAINCY PROGRAM

In an era of budget deficits and cost-cutting, the Chaplaincy program makes good sense. As a prime example of one of the "Thousand Points of Light" which the President has called for, the Chaplain will help reduce federal spending by providing the President with a volunteer staff member who would save this Administration funds by creating a more welcoming, and thus more creative and productive, workplace.

CONSTITUTIONAL CONCERNS

It should be noted that as recent as 1983, the Supreme Court upheld the practice of government sponsored chaplains, quoting earlier Supreme Court language by Justice Douglas that:

"We are a religious people whose institutions presuppose a Supreme Being."

--Marsh v. Chambers,

463 U.S. 783, 792 (1983)

In upholding the chaplaincy practice, the Court observed that the Federal Government has traditionally sanctioned such programs, noting in fact, that Congress authorized the appointment of its own official, paid chaplain only three days before it reached final agreement on the language of the Bill of Rights. Ibid., at 788.

The Court ruled that chaplaincies had become "part of the fabric of our society" and that they were not an "establishment of religion or a step toward establishment; [but] simply a tolerable acknowledgement of beliefs widely held among the people of this country." Ibid., at 791.

The court concluded their opinion by noting "the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow." The Court found "abundance assurance" that such chaplaincies present "no real threat". Ibid., at 791.

DRAFT EXECUTIVE ORDER

PRESIDENT OF THE UNITED STATES

The White House

Executive Order No. _____ - Establishment of a permanent White House Chaplaincy

February 1, 1991

This order authorizes the establishment of the permanent office of White House Chaplain.

As a moral leader of the free world, the President and his staff must rely on God through prayer for spiritual guidance. Since the days of the founding fathers our legislative leaders have sought this same spiritual guidance with the assistance of a staff chaplain. Other nations of the free world have long had chaplains for their heads of state as well. The time has now come for the American Executive Branch to be afforded a regular staff chaplain.

Because of a favorable climate of recent executive, legislative, and judicial support, it is time to establish a White House Chaplaincy. An example of this favorable climate is the recent legislation by our U.S. Congress declaring 1991 "The International Year of Bible Reading". Also, our Judeo-Christian historical roots confirm this Chaplaincy concept given the example of chaplains found in the Senate, House of Representatives, and Armed Services.

At the pleasure of the President be it hereby authorized that the Chairman of the singular professional association for legislative chaplains, known as the Fellowship of Legislative Chaplains, be recognized as a volunteer White House Chaplain.

The major duty of this Chaplain would be to be available as a spiritual advisor and counselor to all those involved in the Executive Branch of the government. A secondary role would be to perform other pastoral duties as assigned by the President, such as representing the President at religious functions, funerals, and special occasions requiring a public invocation.

This chaplaincy would serve the current White House staff and future Administrations. Having a chaplaincy would acknowledge our hope, faith, and trust in the Almighty God, the Sovereign Protector of these United States of America.

Now, therefore, by virtue of the authority vested in me as President of the United States of America, I hereby establish the Office of White House Chaplain to be effective immediately.

PRESIDENT GEORGE BUSH

PRESIDENT OF THE UNITED STATES

The White House

Executive Order No. _____ - Establishment of a permanent White House Chaplaincy

February 1, 1991

Fact Sheet

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

Section 1. It is important that the needs and general welfare of the staff of the entire Executive Branch be met. This would include meeting the spiritual, emotional, and family needs of the staff.

Section 2. As a moral leader of the free world, the President, along with his staff, must rely on God through prayer for spiritual guidance. A staff chaplain will not only serve as a reminder of this fact but will facilitate prayer and counsel for those who seek such.

Section 3. Popular Executive, Legislative, and Judicial Developments. Executive, legislative, and judicial developments in recent years manifest popular, timely support for establishing a White House Chaplaincy.

(a) On December 7, 1989 President Bush signed into law S.J. 164, proclaiming 1990 "The International Year of Bible Reading." This was followed by the President's example to all Americans as he later publicly read from the Holy Scriptures on the steps of the Capitol.

(b) During the 98th Congress a proposal was made to create a White House Chapel. A Joint Resolution, S.J. 179 (to provide a White House Chapel) was read twice in the United States Senate. It was then referred to the Committee on Governmental Affairs. The Committee then requested Executive Comment from the White House.

(c) As recently as 1983, the Supreme Court upheld the practice of official chaplains in state legislatures, quoting earlier Supreme Court language penned by Justice Douglas that:

"We are a religious people whose institutions presuppose a Supreme Being."

--Marsh v. Chambers

463 U.S. 783, 792 (1983)

In upholding the State Chaplaincy Program, the Supreme Court observed that Congress has traditionally recognized and even funded similar Chaplaincy Programs, noting in fact, that Congress authorized the appointment of a paid Chaplain only three days before it reached final agreement on the language of the Bill of Rights. Ibid., at 788.

Section 4. Judeo-Christian Historical Roots. Because our nation is rooted in Judeo-Christian heritage it is important that the White House have a Chaplaincy Program.

(a) Currently, chaplains are found in the Legislative Branch of

the Federal Government as well as many state legislatures. All 50 state legislatures regularly open with prayer as do many judicial and municipal functions. Police departments, state hospitals, state and federal prisons all employ official chaplains.

(b) The practice of chaplains in our Federal Government found its roots during the heated debates of the Philadelphia Constitutional Convention in 1787. Here, Benjamin Franklin said:

"We have been assured, Sir, in the Sacred Writings, 'except the Lord build the house, they labor in vain that build it'...I, therefore, beg leave to move that, henceforth, prayers imploring the assistance of Heaven and its deliberation be held in our assembly every morning before we proceed with business."

(c) The Presidency as a focal point of the National Faith can be traced to the first official act of a U.S. President. George Washington, in his first inaugural address declared:

"It would be particularly improper to omit in this first official Act, my fervent supplications to that Almighty Being who rules over the Universe....In tendering this homage to the Great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own."

Section 5. Issue of Church State Relations. "Congress shall make no law respecting an establishment of religion..." So reads the First Amendment to the Constitution. Designed not to discourage religion, but to assure an equal freedom to all its various groups, this clause has under the interpretation of the court come to be the basis for

separation of church and state. Only in such fashion did it appear that the various faiths which made up our people could live together in friendliness and understanding. (Excerpt from U.S. Capitol Prayer Chapel Booklet).

Yet prayer was offered at the great Convention which framed our Constitution. By prayer Congress opens all its sessions. Through the ministry of chaplains of the great faiths, the men in our Armed Services are daily strengthened in will and life. Our coinage, our Pledge of Allegiance, many of our postage stamps all witness our faith in Divine Providence. A long and glorious company of our national leaders down through the years have born witness to their personal trust in God. (Ibid).

It is in this same tradition that this White House Chaplaincy will provide recognition of the place of religion in our public life, while enhancing Executive involvement with the religious community. The chaplaincy will provide for the busy staff of this current Administration and for many future administrations to come, a means whereby those of its number may be helped in their seeking God, the Consciousness of His Presence, the Light of His Guiding, and the Strength of His Love.

Section 6. Selection of the Chaplain. In order for the Chaplain to remain politically neutral, it is essential that the selection of the Chaplain be made as apolitical and nonsectarian as possible. Selection of the Chaplain by virtue of office rather than by individual appointment will relieve the President of the inherently awkward task of selecting the Chaplain's religious affiliation. It will also assure the integrity of the selection procedure.

The Chaplaincy program will require a Chaplain with government

chaplaincy experience, a knowledge of church state issues involving chaplaincies, a nondenominational ecclesiastical identity, and a familiarity with the security and confidentiality concerns of such an office. Professional peer recognition would also be desirable.

The most appropriate individual to meet these criteria would be the Chairman of the Fellowship of Legislative Chaplains, the only professional association for government chaplains, and the financial sponsor of the White House chaplaincy. The Fellowship maintains no doctrinal statement for its members. It also maintains a perpetual balance of faiths as reflected in the appointments of chaplains to the legislatures and Congress.

Section 7. Summary. This chaplaincy would serve the current White House staff and future Administrations. Its goal would be to help meet the spiritual needs and strengthen the families of the President and his staff, while providing the President with a clerical representative to the public. Having a chaplaincy would acknowledge our hope, faith, and trust in the Almighty God, the Sovereign Protector of these United States of America.

Section 8. Authorization. Now therefore, by virtue of the authority vested in me as President of the United States of America, I, GEORGE BUSH, do hereby establish the permanent Office of the White House Chaplain to be effective immediately.

PRESIDENT GEORGE BUSH

February 1, 1991

PROFILE OF CURRENT FELLOWSHIP OF
LEGISLATIVE CHAPLAINS CHAIRMAN

Chaplain Rick Grubbs has served as a chaplain for the Jupiter Island, FL Police Dept., the Florida House of Representatives, and the Florida Department of Corrections. He has an M.A. in Counseling, a B.S. in Speech Communications, and an A.A. in Bible.

Chaplain Grubbs regularly preaches and conducts motivational seminars in churches of many different denominations.

He is ordained by the Florida Evangelistic Association, a nondenominational interchurch group. In January 1985 the President spoke at services of the Association's main church, which his mother has visited periodically for several years. This is also Chaplain Grubbs' home church. On that occasion the President commended the Association's ministries and "what [they] stand for."

THE WHITE HOUSE

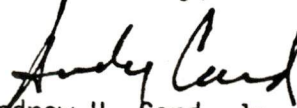
WASHINGTON

January 11, 1991

Dear Mr. Whitehead:

Governor Sununu appreciates your letter and the memorandum you submitted on behalf of The Rutherford Institute regarding the proposal submitted by the Fellowship of Legislative Chaplains to establish an office of White House Chaplain. We are giving this proposal careful consideration and appreciate the Institute's valuable input. Thank you for your interest in writing.

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

Mr. John W. Whitehead
President
The Rutherford Institute
Post Office Box 7482
Charlottesville, Virginia 22906-7482

THE RUTHERFORD INSTITUTE

December 20, 1990

Mr. John H. Sununu
Chief of Staff
The White House
1600 Pennsylvania Ave. N.W.
Washington, D.C. 20500

Dear Mr. Sununu:

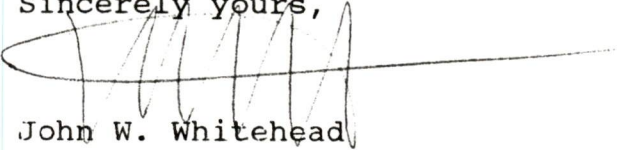
Enclosed for your consideration is a memorandum that has been prepared by The Rutherford Institute regarding the proposed White House Chaplaincy.

Also, enclosed are information and materials on The Rutherford Institute.

Please do not hesitate to call if we can be of further assistance with this matter.

With best regards, I remain,

Sincerely yours,



John W. Whitehead

JWW/sm
enclosures

THE RUTHERFORD INSTITUTE

M E M O R A N D U M

DATE: December 20, 1990
TO: Interested Parties
FROM: John Whitehead, Esq., President*
RE: White House Chaplaincy Proposal

I. SUMMARY OF PROPOSAL

A. Proposal

The Fellowship of Legislative Chaplains has proposed a privately-funded chaplaincy for the President and the White House staff. The program would be instituted through an Executive Order and would be implemented through an office in the White House.

B. Proposed Duties

Duties proposed for the White House Chaplain include:

1. Providing enrichment and support to White House staff and their families through staff seminars and retreats;
2. Ministering to hospitalized White House staff; coordinating Presidential expressions of sympathy;

*Mr. Whitehead is an attorney, author and serves as president of The Rutherford Institute. The Rutherford Institute is a civil liberties organization that concerns itself primarily with religious liberty and free speech issues. The Rutherford Institute is located at P.O. Box 7482, Charlottesville, Virginia 22906; (804) 978-3888.

3. Counseling individual White House staff members and the President;

4. Providing devotionals;

5. Performing general pastoral functions such as conducting weddings and funerals as requested;

6. Participating as requested in national religious and patriotic holidays;

7. Offering prayer and encouragement at cabinet meetings;

8. Returning thanks at staff luncheons and state dinners;

9. Leading the nation in prayer during times of national crisis;

10. Conveying the President's condolences as requested;

11. Performing as the President's personal religious envoy to U.S. troops abroad;

12. Providing White House staff motivation and development assistance;

13. Providing religious liaison for White House to clergy;

14. Assisting with White House visitor public relations;

15. Coordinating special religious services such as those held on religious holidays and at Camp David;

16. Performing other assigned duties as requested by the President.

C. Financial Support

The White House Chaplaincy would be supported by private funds provided by the Fellowship of Legislative Chaplains. Funds would not be solicited from the White House staff or the general public.

The federal government would be requested to provide basic office amenities, such as a telephone and a small office in the White House, at the federal government's expense.

D. Professional Requirements

Professional requirements proposed for the White House Chaplain include government chaplaincy experience, a knowledge of church-state issues involving chaplaincies, a non-denominational ecclesiastical identity, and a familiarity with the security and confidentiality concerns of such an office. Professional recognition by peers is also thought to be desirable.

E. Term

Nothing is mentioned in the proposal regarding term of service, termination of the services of any incumbent White House Chaplain, or the selection process.

II. HISTORY AND CONSTITUTIONAL ISSUES

A. Historical Background

One of the earliest acts of the first United States House of Representatives was to elect a chaplain. On May 1, 1789, the House elected its chaplain and five hundred dollars was appropriated from the federal treasury to pay his salary.¹ The United States Supreme Court has noted that this salary compared favorably with the congressmen's own salaries of \$6.00 for each day of attendance.²

The Supreme Court has recognized that the Continental Congress, "beginning in 1774, adopted the traditional procedure of opening its sessions with a prayer offered by a paid chaplain."³

According to the Supreme Court:

The opening of sessions of legislative and other deliberative public bodies with prayer is deeply imbedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom.⁴

James Madison, one of the principal advocates of religious freedom and a drafter of the Establishment Clause, was a member of the congressional committee that recommended the chaplain system.⁵

As the Supreme Court has observed:

On Sept. 25, 1789, three days after Congress authorized the appointment of paid chaplains, final agreement was reached on the language of the bill of Rights...Clearly the men who wrote the First Amendment Religion Clause did not view paid legislative chaplains and opening prayers as a violation of that Amendment...⁶

B. Constitutional Setting

The First Amendment to the United States Constitution contains two clauses that deal with the subject of religion and religious activities where there is any governmental interaction with such.⁷ The Amendment proclaims: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁸ The first clause is known as the "Establishment Clause"⁹ and the second is known as the "Free Exercise Clause."¹⁰

The framers of the Constitution did not intend to seal religion hermetically from governmental functions or public life with this amendment. In fact, Thomas Jefferson referred to the Religion Clauses as an "expression of the supreme will of the nation on behalf of the rights of conscience."¹¹ Jefferson was

apparently more concerned about governmental control over religious persons and institutions than he was about any influence religious persons and institutions might exert upon government.

The First Amendment requires that (1) the state may not establish one religion over others, and (2) the state must allow for the freedom to exercise one's religion. As interpreted by the Supreme Court, this means the state must remain neutral in matters of religion so that it does not prefer one religion over other religions or exhibit hostility toward all religions or any particular religion.

Instead of taking a position of strict neutrality (the absolute separation of religion and state), the United States Supreme Court has taken the approach of "accommodating neutrality." This means that the First Amendment was intended to maintain a proper relationship between the government and religion. As a consequence, not all relationships between government and religion are unconstitutional. The Supreme Court made this clear in 1984 in Lynch v. Donnelly:¹²

[T]he Constitution [does not] require complete separation of church and state; it affirmatively mandates accommodation, not mere tolerance, of all religions, and forbids hostility toward any....Anything less would require the "callous indifference" we have said was never intended by the Establishment Clause....Indeed, we have observed such hostility would bring us into "war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion."¹³

Governmental indifference toward religion does not conform to the Court's definition of neutrality. Regarding governmental indifference to the religious element in American society, former

Supreme Court Justice William O. Douglas wrote:

That would be preferring those who believe in no religion over those who do believe....But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.¹⁴

The accommodating neutrality approach (or what the Supreme Court has referred to as "mandated accommodation") has been referenced by the Supreme Court in numerous decisions.¹⁵

Concerning the supposed separation of church and state, Justice Blackmun wrote in Roemer v. Board of Public Works of Maryland¹⁶ that the "Court has enforced a scrupulous neutrality by the State, as among religions and also as between religious and other activities, but a hermetic separation of the two is an impossibility it has never required."¹⁷

The Supreme Court has warned that what may appear to be an indifferent neutrality in some instances may actually be a form of impermissible hostility toward religion. Justice Arthur Goldberg noted:

[U]ntutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it.¹⁸

Therefore, governmental actions which are "simply a tolerable acknowledgement of beliefs widely held among the people of this country," are not per se an unconstitutional establishment of

religion.¹⁹

Thus, it appears that Supreme Court decisions may require White House decisionmakers thoughtfully to consider the White House Chaplaincy proposal as part of its duty to accommodate religion neutrally within constitutional guidelines.

C. State-Paid Chaplain Is Constitutional

When the Nebraska Legislature's practice of beginning each session with a prayer by a state-paid chaplain was challenged as unconstitutional, the Supreme Court referred to the actions of the first United States House of Representatives and the long history of legislative chaplains in finding the practice constitutional.²⁰

While admitting that historical patterns standing alone cannot justify contemporary violations of constitutional guarantees, the Supreme Court pointed out:

It can hardly be thought that in the same week Members of the First Congress voted to appoint and to pay a chaplain for each House and also voted to approve the draft of the First Amendment for submission to the states, they intended the Establishment Clause of the Amendment to forbid what they had just declared acceptable.²¹

The Court proceeded to say that, with the incorporation of the First Amendment to the states through the Fourteenth Amendment, "it would be incongruous to interpret that Clause as imposing more stringent First Amendment limits on the states than the draftsmen imposed on the Federal Government."²²

In Marsh²³, the Supreme Court carefully considered the facts that for 16 years the legislative chaplain had been of only one denomination, the chaplain was paid at public expense, and that the

prayers given at the commencement of the legislative session were in the Judeo-Christian tradition.²⁴ The Court did not believe that "choosing a clergyman of one denomination advances the beliefs of a particular church."²⁵ The Court noted that the evidence indicated the chaplain was appointed to a long tenure because "his performance and personal qualities were acceptable to the body appointing him"²⁶ and "[a]bsent proof that the chaplain's reappointment stemmed from an impermissible motive, we conclude that his long tenure does not in itself conflict with the Establishment Clause."²⁷ The Supreme Court held that the compensation of the Nebraska Legislature's chaplain from public funds was not a reason to invalidate the chaplaincy.²⁸ The Court indicated that public remuneration is "grounded in historic practice initiated...by the same Congress that adopted the Establishment Clause of the First Amendment."²⁹ Finally, the Court stated:

The content of the prayer is not of concern to judges where, as here, there is no indication that the prayer opportunity has been exploited to proselytize or advance nay one, or to disparage any other, faith or belief.³⁰

Other courts have held or suggested that military³¹, prison³², and hospital³³ chaplaincies are constitutionally permissible as well.

D. Supreme Court Requirements for Constitutionality

1. Lemon Test. In its landmark decision in Lemon v. Kurtzman,³⁴ the Supreme Court held that governmental actions affecting religion or the exercise of religion must pass a three-part test in order to avoid violation of the Establishment Clause.³⁵ Such action must (1) have a secular purpose; (2) have a primary

effect which neither advances nor inhibits religion; and (3) not involve the government in excessive entanglement with religion.³⁶

In establishing the Lemon test, the Supreme Court acknowledged that some governmental involvement with religion is acceptable under the Establishment Clause and that "total separation [of church and state] is not possible in an absolute sense."³⁷ The Court also recognized that "the line of separation, far from being a wall, is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship."³⁸

(a) Secular Purpose. This test is ultimately a question of fact. As set forth in the proposal, institution of the White House Chaplaincy would appear to meet the secular purpose requirement of the Lemon test. For example, the White House Chaplain could (i) provide counseling and emotional support for staff members and their families, thereby promoting efficiency and dedication of staff employees; (ii) boost staff morale during times of stress, death, sickness or injury, thereby reducing staff burnout and turnover; (iii) alleviate stress on the staff and presidential schedules by serving as the President's representative (e.g., at state funerals); and (iv) facilitate relations between the White House and outside clergy, thereby promoting efficient and smooth functioning of the President and White House staff.

Indeed, a federal court has recognized that a hospital chaplain "fulfilled some strictly secular duties, 'including grief counseling and other patient counseling.'"³⁹

(b) Primary Effect Which Neither Advances Nor Inhibits

Religion. The Supreme Court has noted that "Lemon's 'purpose' requirement aims at preventing the relevant governmental decision maker ... from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters."⁴⁰ In applying this test to a particular religious practice, if that practice no more than "incidentally" benefits religion, it passes the Supreme Court's muster. As Justice Blackmun stated in the Roemer decision:

Everson and Allen put to rest any argument that the State may never act in such a way that has the incidental effect of facilitating religious activity....If this were impermissible ... a church could not be protected by the police and fire department, or have its public sidewalk kept in repair: The Court never has held that religious activities must be discriminated against in this way.⁴¹

For example, in affirming the constitutional rights to student-initiated religious expression in a public school, the Supreme Court noted that although religious groups would benefit from such expression, the benefit was merely "incidental," not primary.⁴² On its face, the effects test is simply a requirement of neutrality.

The Supreme Court has made it clear that active participation by the government is necessary in order for an impermissible "primary effect" of advancing religion to be found:

To have forbidden "effects" under Lemon, it must be fair to say that the government itself has advanced religion through its own activities and influence. As the Court observed in Walz, "[F]or the men who wrote the Religion Clauses of the First Amendment, the 'establishment' of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity."⁴³

Under the White House Chaplaincy proposal, there would seem to be no active involvement with or official sponsorship of religion. The President would merely allow a privately-funded chaplain to perform certain authorized activities on White House premises and at state functions. The government would not direct or endorse such activities, nor would it require White House staff or others to attend such activities or endorse the content of such activities.

It should be noted in passing that the Lemon "effects" test has two aspects. It is unconstitutional as a "primary effect" for the government to advance religion, but it is equally unconstitutional for the government to inhibit religion. Nonetheless, the argument that the failure of the government to permit a privately-funded White House chaplaincy has the primary effect of inhibiting religion is not substantial.

(c) Avoidance of Excessive Governmental Involvement. Analysis of the entanglement requirement may be unnecessary. Justice White asserted in his concurring opinion in Roemer v. Board of Public Works:⁴⁴

As long as there is a secular legislative purpose, and as long as the primary effect of the legislation is neither to advance nor inhibit religion, I see no reason -- particularly in light of the 'sparse language of the Establishment Clause,' -- to take the constitutional inquiry farther.⁴⁵

Nonetheless, the matter of "entanglement" has been considered and construed by one federal district court to refer not only to the day-to-day interaction between government and religion, but

also to refer to the effect of state policies toward religion.⁴⁶ Ultimately, the question is one of degree⁴⁷ as to whether or not government policy necessitates "official and continuing surveillance" of or excessive government involvement in the affairs of religious organizations.⁴⁸

Since the selection of the White House Chaplain as well as the funding of the chaplaincy would be performed by a private citizens organization, it would appear that the government would not be excessively entangled in the institution of the chaplaincy. Moreover, the government would not be involved in the supervision or direction of chaplaincy duties.

Provision of incidental services, such as electricity, telephone and office space would probably not constitute impermissible "excessive involvement." In deciding a tax exemption case, the Supreme Court wrote that:

Granting tax exemptions to churches necessarily operates to afford an indirect economic benefit and also gives rise to some, but yet a lesser, involvement than taxing them....There is no genuine nexus between tax exemption and establishment of religion.⁴⁹

As the Court explained, an exemption would preclude tax valuations of church property, tax liens, tax foreclosures, and the "direct confrontations and conflicts that follow in the train of those legal processes."⁵⁰ This rationale applies equally to the provision of incidental services which are provided to the White House premises as a whole.

Thus, as written, the proposal appears to conform to the requirements of the Supreme Court's Lemon test.

2. Endorsement Test. In recent years, the Supreme Court has increasingly utilized another test to determine when government action contravenes upon the First Amendment Establishment Clause. Referred to as the "endorsement test," it was first formulated in Lynch v. Donnelly⁵¹ by Justice Sandra Day O'Connor. In Lynch, Justice O'Connor proposed the endorsement test as an alternative to or refinement of the Lemon test.

According to the endorsement test, if a government action creates the perception that the government is endorsing or disapproving a religion, it is unconstitutional.⁵² The fundamental concern is whether the challenged governmental activity conveys "a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community."⁵³

According to this test, a governmental action which does not create a perception of endorsement could be constitutionally permissible even though it actually has a primary effect of advancing or inhibiting religion.⁵⁴ On the other hand, a government action or law which creates a perception of endorsement would be unconstitutional even though it neither advances nor inhibits religion.⁵⁵ The relevant perception under Justice O'Connor's test is that of an informed, objective observer familiar with the text, legislative history, and the implementation of the governmental action in question.⁵⁶

The White House Chaplaincy proposal includes opportunities for

various religions to conduct chaplaincy duties for the White House staff and the President at the invitation of the White House Chaplain. Presumably, this would provide opportunities for all religious organizations to participate in the White House Chaplaincy program and would appear to mitigate the perception of governmental endorsement of, for example, the Christian religion or any particular Christian denomination.

The proposal for a White House Chaplain does not appear to provide such opportunities for groups who endorse or support no religion at all. It would most likely be these groups which would assert that the "endorsement" test renders the chaplaincy proposal unconstitutional. However, Justice Tom Clark, speaking for the Supreme Court, observed in Schempp that:

[T]he State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe."⁵⁷

To elevate the demands of those who advocate a purely secular government that is completely void of any involvement with religion over those who believe such involvement is appropriate would constitute a form of governmental hostility which is contrary to Supreme Court mandates.

3. Limited Public Forum Considerations

One final consideration is that of whether the status of a chaplaincy in the White House would create an open public forum which would force the White House to permit all other forms of expressive activities on its grounds.

There are various types of forums. One type of public forum consists of public property that is not traditionally a public forum, but which has been opened by the government for use by the public as a place for expressive activity.⁵⁸ These forums must be opened by intentional government action, not merely by inaction or by permitting limited discourse.⁵⁹ "Intentional" governmental action is determined by reference to (1) government policy, (2) government practice, (3) the nature of the property, and (4) the compatibility of the forum with the expressive activity to be conducted there.⁶⁰

Unlike the traditional public forums, the government is not required to open the limited public forum in the first place but does so on its own discretion.⁶¹ Once, however, the government has opened a forum for expressive activity, government officials are "bound by the same exacting standards as apply in a traditional public forum."⁶²

The government is not required to retain the character of the designated or limited public forum indefinitely.⁶³ Although the government is proscribed from exercising its authority to close the limited public forum merely to censor certain views, the government can redefine a limited public forum and close it. As one federal appellate court has held: "Once the state has created a forum, it may not ... close the forum solely because it disagrees with the message being communicated in it."⁶⁴

Thus, it appears that the government, in permitting a White House Chaplain, will not be making an irrevocable commitment. The

government could dismantle the White House Chaplaincy and close its forum for constitutionally permissible reasons.

4. Management Considerations

The government, in permitting a White House Chaplain, will not be required to open the White House floodgate to all sorts of groups in unrestrained chaos. The government may constitutionally create a forum for specific purposes.⁶⁵ For example, the forum may be limited to the discussions of certain subjects or to certain speakers.⁶⁶ This means that the White House could create a chaplaincy program with the specific duties proposed, for example, by the Fellowship of Legislative Chaplains.

The Supreme Court has previously addressed such concerns and has responded:

We do not doubt the sincerity of those, who like respondent, believe that to have prayer in this context risks the beginning of the establishment the founding Fathers feared. But this concern is not well founded, for as Justice Goldberg, aptly observed in his concurring opinion in Abington, 374 U.S., at 308...

"It is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow."⁶⁷

Moreover, the government may impose reasonable regulations concerning time, place and manner of expression, provided such regulations are content-neutral, narrowly tailored to serve a compelling state interest, and leave open alternative channels of communication.⁶⁸

III. CONCLUSION

The proposal by the Fellowship of Legislative Chaplains for a White House Chaplaincy appears to meet current requirements for constitutionality as promulgated by the United States Supreme Court.

IV. SUGGESTIONS

A. Role of the Chaplain

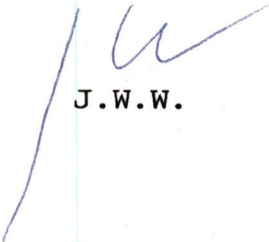
In order to minimize further any implication of excessive Presidential involvement in the duties of the White House Chaplain, consideration should be given to providing services which are agreed to in advance and not as a "menu from which the President may choose." Neither the President nor the White House staff should be involved in organizing, executing or otherwise directing any duties of the White House Chaplain. Rather, the services should be as regularly scheduled as logic permits with attendance not being a factor in whether the services are scheduled. Receipt of and attendance at services should be absolutely discretionary.

B. Funding of the Chaplaincy Program

Although constitutionally permissible, consideration should be given to private compensation to the government for the telephone, electricity, office space and other services provided to the chaplaincy. This would provide further evidence that the government is not excessively entangled in the affairs of the chaplaincy and that the government is not favoring one religion over another.

C. Appointment of the Chaplain

Details should be added to the Executive Order regarding precisely how the chaplain will be selected, what the tenure will be, terms and conditions for removal, etc. Moreover, consideration should be given to designation of the preferred chaplaincy candidate in the Executive Order.*



J.W.W.

*This memorandum is not intended to be, and does not constitute, the giving of legal advice. Particular court decisions may not apply to particular factual situations, or may not be legally binding in particular jurisdictions. The existence of unfavorable decisions indicates that reliance should not be placed on the favorable decisions as necessarily dispositive or assuring success. This memorandum is not intended to substitute for reliance on privately retained legal counsel.

Notes

1. Marsh v. Chambers, 463 U.S. 783, 788 n.7 (1983).
2. Marsh, 463 U.S. 783.
3. Id. at 787.
4. Id. at 786.
5. Id. at 788 n.8.
6. Id. at 788.
7. U.S. Const. amend. I.
8. Id.
9. See, e.g., McGowan v. Maryland, 366 U.S. 420, 442 (1961); Everson v. Board of Educ., 330 U.S. 1, 15-16 (1947).
10. See, e.g., Committee for Pub. Educ. and Religious Liberty v. Nyquist, 413 U.S. 756, 786 (1972); Engel v. Vitale, 370 U.S. 421, 430 (1962).
11. As quoted in Adrienne Koch and William Peden, eds., The Life and Selected Writings of Thomas Jefferson (New York: Random House, 1944), p. 332 (emphasis supplied).
12. 104 S. Ct. 1355 (1984).
13. Id. at 1359 (emphasis supplied; footnotes omitted).
14. Zorach v. Clauson, 343 U.S. 306, 314 (1952).
15. See, e.g., Zorach, 343 U.S. 306; Engel, 370 U.S. 421; School District of Abington Township, Pa. v. Schempp, 374 U.S. 203 (1963); Walz v. Tax Commission, 397 U.S. 664 (1970); and, Roemer v. Board of Public Works of Maryland, 426 U.S. 736 (1976).
16. 426 U.S. 736 (1976).
17. Id. at 745-46 (emphasis supplied).
18. School District of Abington Township, 374 U.S. at 306 (Goldberg, J., concurring).
19. Marsh, 463 U.S. at 792.
20. Id. at 787-88.

21. Id. at 790. The Supreme Court did not apply the requirements of Lemon v. Kurtzman, 403 U.S. 602 (1971), in Marsh. Rather, the Court may have carved out a special exception for legislative chaplaincies in light of the historical record. See Note, Does The Wall Still Stand?: Separation Of Church and State In The United States, 37 Baylor Law Review 755, 768 (1985).
22. March, 463 U.S. at 790-91.
23. 463 U.S. 783 (1983).
24. Id. at 793.
25. Id.
26. Id.
27. Id.
28. Id.
29. Id.
30. Id. at 794-95.
31. Katcoff v. Marsh, 755, F.2d 223 (2d Cir. 1985); see School District of Abington Township, 374 U.S. at 296. See also Note, The United States Military Chaplaincy Program: Another Seam in the Fabric of our Society?, 59 Notre Dame Law Review 181 (1983-84).
32. Theriault v. Carlson, 339 F. Supp. 375, 380-81 (N.D. Ga. 1972), vacated on other grounds, 495 F.2d 390 (5th Cir.), cert. denied, 419 U.S. 1003 (1974); see School District of Abington Township, 374 U.S. at 296.
33. Carter v. Broadlawns Medical Center, 857 F.2d 448 (8th Cir. 1988).
34. 403 U.S. 602 (1971).
35. Id. at 612-13.
36. Id.
37. Id. at 614.
38. Id.
39. Carter, 857 F.2d at 454.

40. Corporation of Presiding Bishop v. Amos, 107 S.Ct. 2862, 2868 (1987).
41. Roemer, 426 U.S. at 747 (emphasis supplied).
42. Widmar v. Vincent, 454 U.S. 263, 273-75 (1981). For a detailed discussion of the public school issue, see John W. Whitehead, The Rights of Religious Persons in Public Education (Westchester, Ill.: Crossway Books, 1991).
43. Corporation of Presiding Bishop v. Amos, 107 S. Ct. at 2868-69 [quoting Walz v. Tax Commission, 397 U.S. 664, 668 (1970) (latter emphasis added)].
44. 426 U.S. 736 (1976) (White, J., concurring).
45. Id. at 768.
46. Country Hills Christian Church v. Unified School District No. 512, 560 F. Supp. 1207, 1219 (D. Kan. 1983).
47. Id.
48. Walz, 397 U.S. at 675.
49. Id. at 674-75.
50. Id. at 674.
51. 465 U.S. 668 (1984).
52. 465 U.S. at 688-92 (O'Connor, J., concurring).
53. Id. at 688.
54. Id. at 691-92.
55. Id.
56. See Wallace v. Jaffree, 472 U.S. 38, 76 (1985) (O'Connor, J., concurring).
57. School District of Abington Township, 374 U.S. at 225 (quoting Zorach, 343 U.S. at 314). See Crockett v. Sorenson, 568 F. Supp. 1422, 1425-26 (W.D. Va. 1983); Jaffree v. Board of School Commissioners of Mobile County, 554 F. Supp. 1104, 1108 (S.D. Ala. 1983).
58. Perry Education Association v. Perry Local Educators' Association, 460 U.S. 37, 44 (1983).

59. Hazlewood School District v. Kuhlmeier, 108 S. Ct. 562, 568 (1988), quoting Cornelius v. NAACP Legal Defense and Educational Fund, Inc., 473 U.S. 788, 802 (1985).

60. Cornelius, 473 U.S. at 802.

61. Perry, 460 U.S. at 46.

62. Id. at 46.

63. Id. at 47.

64. See Government Association v. Board of Trustees of the University of Massachusetts, 868 F.2d 473, 480 (1st Cir. 1989).

65. Perry, 460 U.S. at 46.

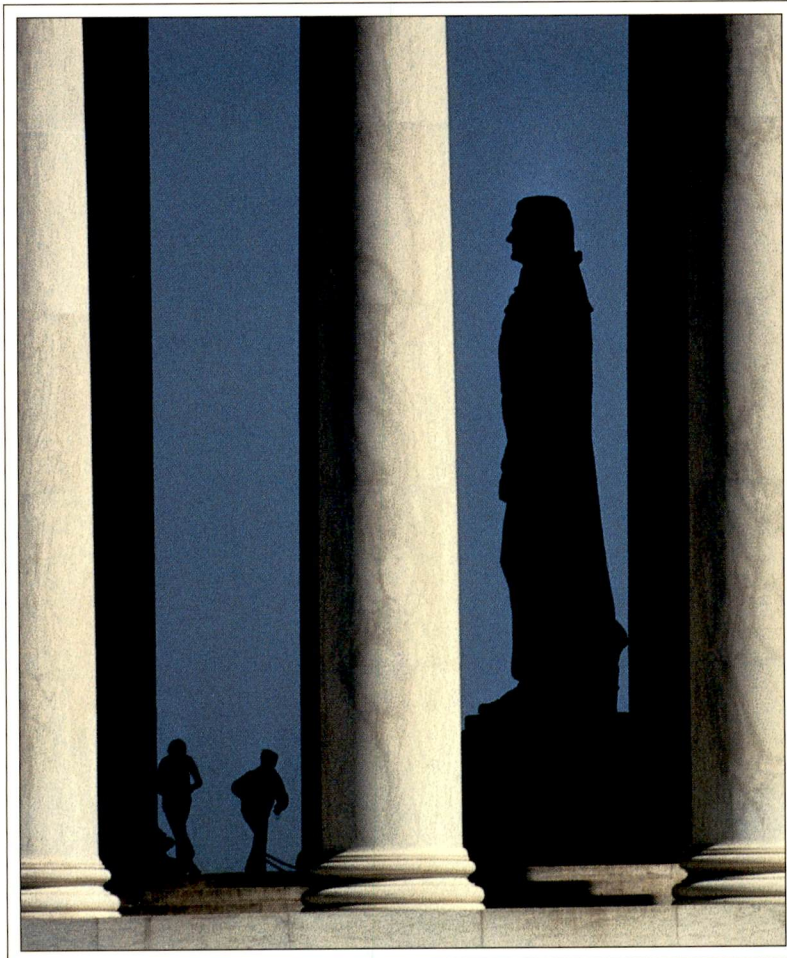
66. See Widmar, 454 U.S. 263.

67. Marsh, 463 U.S. at 795.

68. Perry, 460 U.S. at 44.

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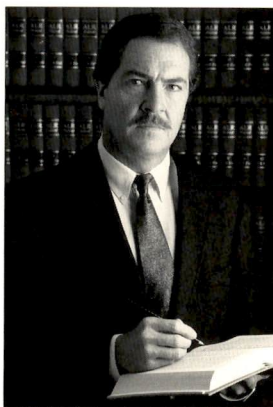
The Rutherford Institute provides legal services without charge to hundreds of clients each year through a network of state chapters. For example, Rutherford Institute attorneys have defended:

- An Illinois man who was denied unemployment benefits because he turned down a temporary job that required him to work on Sunday. State officials told the man that his religious convictions against Sunday labor did not constitute "good cause" because they were not tied to an "established" sect. Rutherford Institute attorneys argued before the United States Supreme Court that individual religious beliefs are as constitutionally protected as those endorsed by a particular church. The Court agreed and ruled unanimously that the denial of unemployment benefits violated the plaintiff's free exercise rights.
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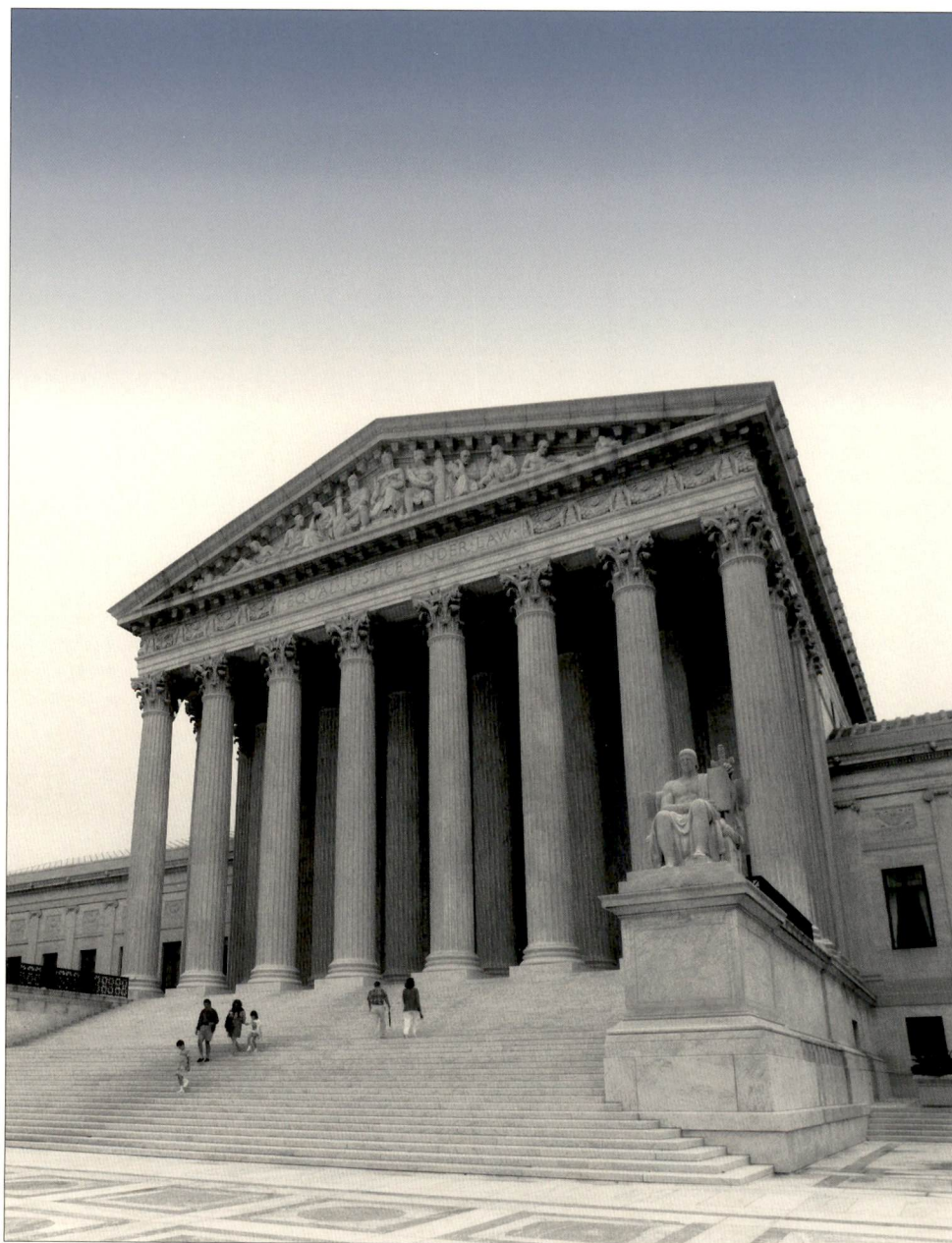
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The Rutherford Institute takes its name from Samuel Rutherford, a 17th-century Scottish divine who resisted the European doctrine of divine right of kings. In his book *Lex Rex* (The Law and the Prince), Rutherford argued that all men are subject to a law apart from and higher than themselves, including the king.



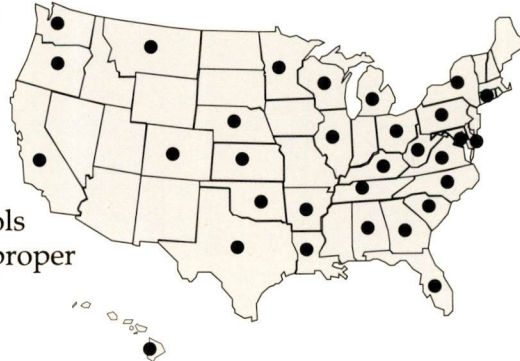
Author of numerous books and legal articles, Rutherford Institute President John W. Whitehead has been involved in defending religious liberty at every level of the judicial system, including the United States Supreme Court. Mr. Whitehead is a member of various bar associations, both on the state and federal level, and is a member of *Who's Who in American Law*, *Who's Who in the World* and other honorary societies. He lives in Virginia with his wife and five children.



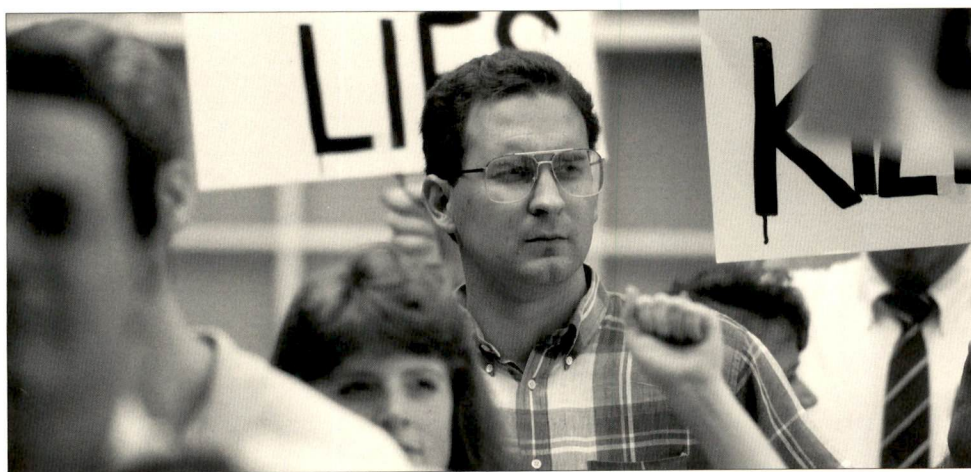
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- Defending parents and children within the family structure.
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The Rutherford Institute has grown rapidly since its inception in 1982. Currently, there are more than 30 state chapters, and 50 chapters are anticipated by 1994.

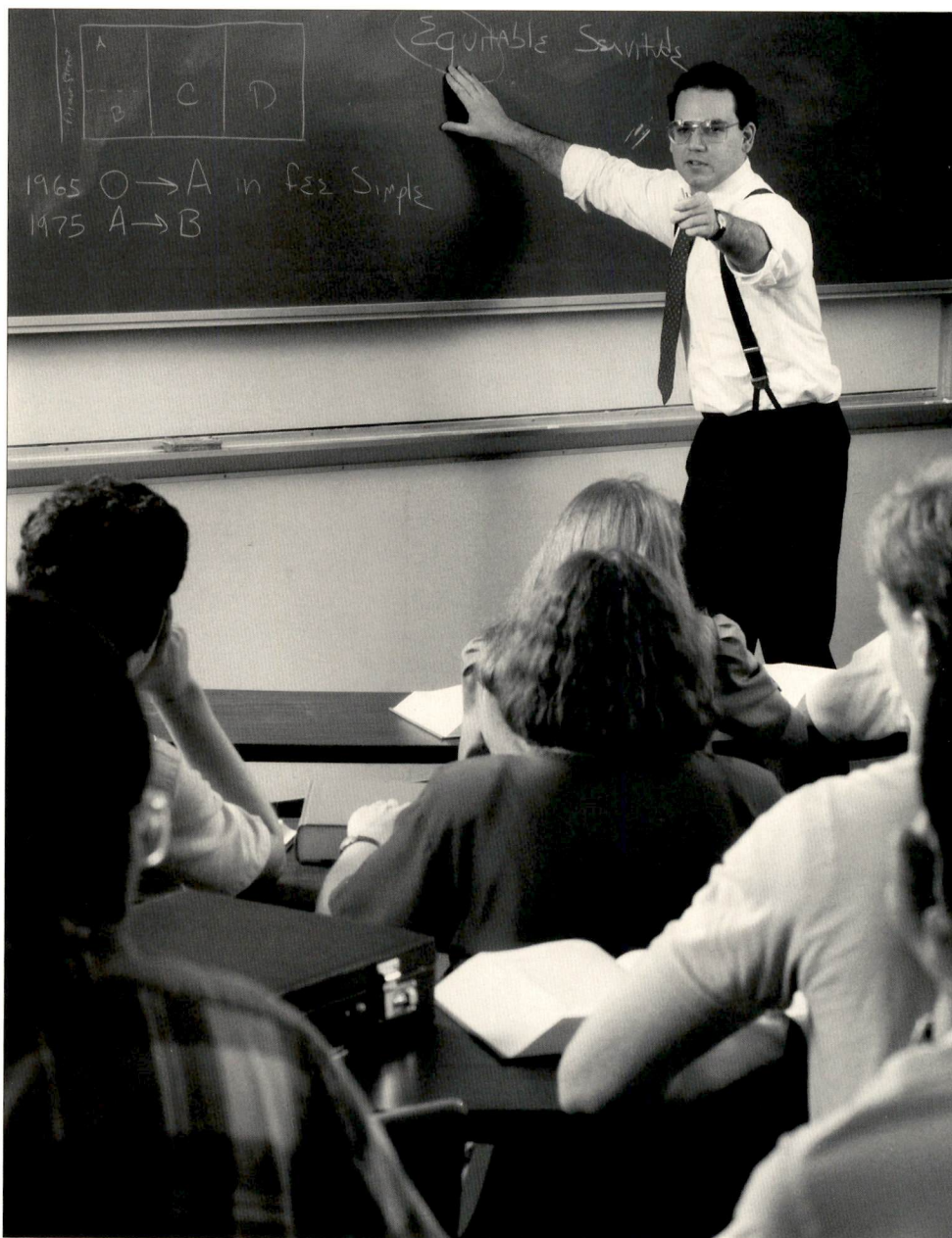




"The student chapters of The Rutherford Institute are a good addition to the law school environment. They provide both an outlet and a focal point for students whose strong religious faith makes them a small minority in the typical secular law school. And the chapters' activities partially offset the relative neglect of religious liberty in the constitutional law curriculum."

Douglas Laycock

*Alice McKean Young
Regents Chair in Law
University of Texas at Austin*



Rutherford Institute student chapters provide a forum for law students to discuss, analyze and participate in issues of constitutional law from a practical standpoint, enhancing the theoretical exposure received in the classroom.

Student chapters are officially recognized campus organizations that function under the auspices of a law professor. They are active academic and intellectual enterprises, independent, yet affiliated with The Rutherford Institute.

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Student chapter members are encouraged to attend Rutherford Institute state and national activities and to interact and share information with other student chapters at law schools across the country.

Although the organization and activities of student chapters vary, The Rutherford Institute national office stipulates that each student chapter draft a constitution and by-laws and meet at least once a month. The national office provides model organizational guidelines for students desiring to form chapters.

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*Professor of Constitutional Law
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*Visiting Assistant Professor of Law
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The Rutherford Institute Student Intern Program offers to qualified law students the opportunity to develop a critical understanding of First Amendment law. Students accepted into the program train for three months at The Rutherford Institute's national office in Charlottesville, Virginia. Interns analyze and discuss a broad range of constitutional issues under the instruction of Rutherford Institute President John W. Whitehead and other religious and civil liberty experts.

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Charlottesville and the surrounding area provide students with many opportunities for cultural enrichment. Nestled at the foot of Virginia's Blue Ridge Mountains, Charlottesville is home to the University of Virginia, founded by Thomas Jefferson. Jefferson's home, Monticello, is just outside the city limits, as is Ash Lawn, the home of James Monroe. Montpelier, the home of James Madison, is a 20-minute drive away. The colonial city of Williamsburg, Virginia, and the nation's capital are also nearby.

Many students have made contacts through the intern program that proved to be beneficial for career opportunities. Former interns are now serving in nationally recognized firms, as clerks for federal and state judges and in leadership roles with various civil liberties groups, including The Rutherford Institute.

The Rutherford Institute Student Intern Program attracts top students from law schools across the country. The program is funded through scholarships, and students who are accepted receive a salary and a housing stipend. The program is open to any law students interested in receiving a grounding in First Amendment law. Active members of Rutherford Institute student chapters are given special consideration for acceptance into the program.

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T. Wesley Holmes
Associate
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Dallas, Texas



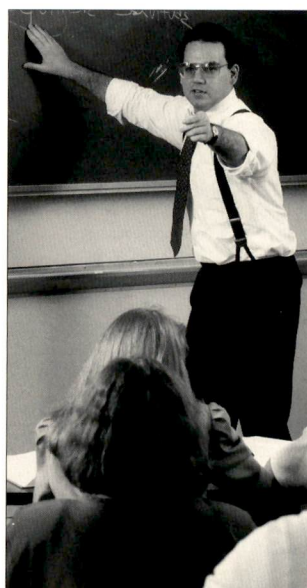
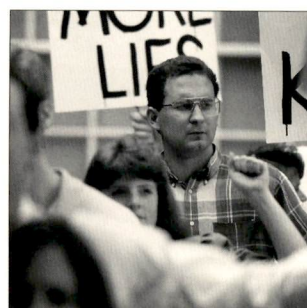
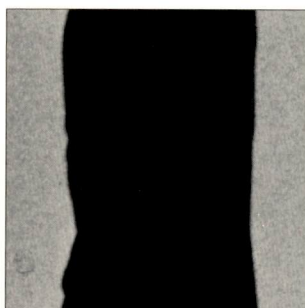
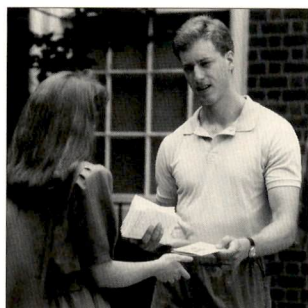
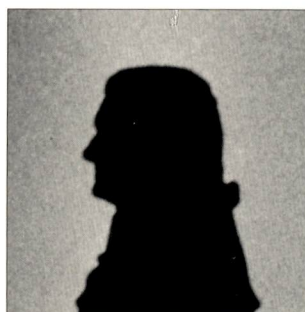
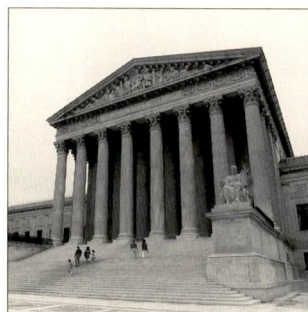
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Executive Director
Home School Legal Defense
Association
Paeonian Springs, Virginia



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For the first time in its eight-year history, The Rutherford Institute has expanded its legal and educational activities into full-time operations abroad.

The formation of chapters in Canada, Bolivia and Eastern Europe enables The Rutherford Institute to accomplish one of its original key objectives: assisting individuals oppressed for their beliefs in countries outside the United States.

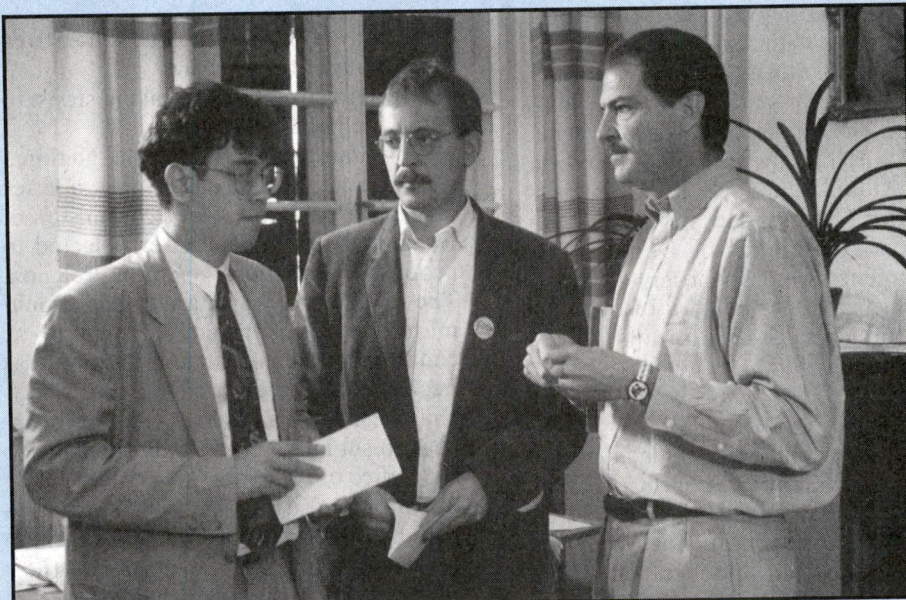
"Our vision for a coalition of attorneys to defend religious liberty and the sanctity of human life has always been international in scope," Rutherford Institute President John W. Whitehead said. "Religious liberty, being God-given, is everyone's right. Therefore, our efforts to protect it must extend beyond America's borders."

Whitehead added: "Western citizens have a high duty to relieve the suffering of those oppressed in other countries."

The Rutherford Institute kicked off activities in Eastern Europe after Whitehead made a business trip to Hungary and met with attorneys and religious dissidents from throughout the region.

The Eastern European office, headquartered in Budapest, Hungary, will coordinate Rutherford Institute activities in eight Eastern and Central European countries.

The chapter's full-time president is Dr. Imre Madarasz of Budapest, who holds a doctorate in law.



Rutherford Institute President John W. Whitehead, right, talks with Eastern European lawyers during a meeting in Hungary

A Christian, Madarasz was persecuted for years by Communist authorities for attempting to defend ministers and others trying to live by their beliefs. The phone at his apartment was tapped by the Communists for two decades.

"The Rutherford Institute has the very important role in Hungary of protecting Christian and religious values in a post-totalitarian state," Madarasz said. "The people are demoralized, so it

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is very important to teach the next generation Christian values. To protect these values legal means are necessary."

Madarasz has worked to promote religious liberty since age 17, when he saw a government-sponsored film that denigrated Christianity through a demeaning portrayal of a Catholic priest.

"I decided then in the cinema that I would fight against those and their influence who would serve the Communist regime with the aim of ridiculing Christianity," Madarasz said.

Madarasz said he believes "the church should not be silent" but should "bravely take up the public function ..."

Alexander Ogorodnikov, a Russian dissident who spent six years in solitary confinement for organizing Christian meetings, also met with Whitehead in Hungary and agreed to help establish The Rutherford Institute in the Soviet Union.

In Bolivia, The Rutherford Institute is operated from the capital city of La Paz by 29-year-old attorney Pedro Moreno.

A Bolivian native, Moreno learned about The Rutherford Institute while in the United States earning a degree in international law at Tufts University in Medford, Mass. He gave up a job as Secretary General of Bolivia's Social Emergency Fund in order to work full-time with The Rutherford Institute.

Moreno said 12 attorneys agreed to work with The Rutherford Institute during a recent organizational meeting in La Paz.

In addition, Moreno has met with lawyers in Santa Cruz and Cochabamba, Bolivia's second and third largest cities, respectively, and in Buenos Aires, Argentina. His plans include the establishment



Pedro Moreno, president of The Rutherford Institute of Bolivia (standing, third from right), meets with members of Bolivia's indigenous Siriono tribe who face persecution because of their evangelical Christian faith

of Rutherford Institute chapters throughout Latin America.

Moreno already has taken steps to defend religious liberty.

For example, he helped the National Association of Evangelicals draft a letter of protest to Bolivia's Vice Minister of Religious Affairs. The letter objected to proposed regulations governing religion. The regulations, which are stalled, would mandate governmental approval of church doctrine and seminaries as well as licenses for street preaching and new churches. They also would require churches to submit a list of their members to the Office of Religious Affairs.

Moreno also provided legal advice to members of Bolivia's indigenous Siriono tribe who suffer persecution for their evangelical Christian faith.

"There is a very important need in Bolivia for the kind of work The Rutherford Institute is doing," Moreno said. "People who can't afford legal defense often are forced to violate their consciences in order to keep jobs or positions in schools or other things that should be available to anyone without prerequisites."

In Canada, The Rutherford Institute is being led by 34-year-old attorney Charles Lugosi of Prince George, British Columbia.

Lugosi has practiced law for 11 years, and during four of them he has lent his services to the cause of religious liberty.

Recently, Lugosi helped a prolific member of Canada's Social Credit Party

challenge the results of a party election he lost to a pro-abortion member by one vote. The vote was held to determine who would be the party's candidate in an upcoming election. The Supreme Court of British Columbia in Vancouver agreed with Lugosi and his client that there had been voting irregularities in the nominating process and ordered a new election.

"There's a real need for The Rutherford Institute to get active in Canada," said Lugosi, who studied at The Rutherford Institute's national office this summer. "There are many critical cases coming up. I think we will see more and more persecution of Christians."

Lugosi said he finds himself fighting an attitude of apathy in the Canadian church.

"Canadians tend to be great compromisers," he said. "A lot of Christians here just won't stand up for their rights."

Lugosi said he has contacted lawyers across Canada about working with The Rutherford Institute. He also plans to start a summer intern program for law students and embark on a series of speaking engagements this spring. His first objective, however, is to build a strong legal organization in British Columbia, Canada's western-most province.

"What we have in Canada are the people, the energy, the enthusiasm and the skills. The legal team that I'm building is very gifted. Financially, however, we're stretched to capacity right now."

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From the President

'God' is a dirty word

By John W. Whitehead

The book *Huckleberry Finn* was banned in various areas when it was first published in 1885 because, to some, it seemed to speak against the racism perpetrated against the blacks of that day. Currently, however, *Huckleberry Finn*, because of complaints by black civil rights activists, has been banned in numerous public schools because the word "nigger" is used in the text. Some have called it racist.

Likewise, as Franky Schaeffer writes, "[s]ome fundamentalist Christian educators also wish to drop *Huckleberry Finn* from school reading lists - or worse, actually change and edit the text - to tone down what they regard as Mark Twain's antichurch, antireligious 'offensive' worldview. It seems today that Mark Twain has trouble pleasing anyone."¹

All those wanting to censor *Huckleberry Finn* have one thing in common; that is, "they want to rearrange reality and history to suit their political, theological, or ideological tastes."² Unfortunately, *Huckleberry Finn* is but one of hundreds of volumes of literature under attack by various ideologues in America, "from the political Left and Right and, judging by the deconstructionists' interpretations, from the lunatic asylums as well."³

In fact, current books banned in public schools across the United States include John Steinbeck's classic *Of Mice and Men*, *The Wizard of Oz* and, amazingly enough, *My Friend Flicka*. A group of parents complained about *My Friend Flicka* because it contains two

"vulgar" words. What words? The book contains the word "bitch" in reference to a female dog and the word "damn."⁴

With religion and public schools, things are a bit more tense. For example, some of James Dobson's books on family relationships have recently been banned in one Minnesota public school because a teacher had "discomfort over a portion of the content" of Dobson's books and films.

The discomfort was caused because "Dr. Dobson is Christian-based in his philosophies" and so on. These materials had been on the shelves for years.

The general censorship of religion is worse. When, for example, 8-year-old Jennifer Backhaus wrote "I love Jesus" and "Jesus is what love is all about" on her valentines, she was told by her public school teacher that her cards would not be displayed with those from the rest of her third-grade class.

Eleven-year-old Diana Duran, along with her classmates, was asked to write a report on "the power of ____." When Diana filled in the blank with the word "God" and wrote her report, she was discriminated against and told that she would have to give her report in private.

When Kenny Green, a New York high school senior, wanted to do a Christian rap song in the school talent show, he was told he couldn't go on. Why? There were offensive words, such as: "My name is Kenny Green, and I'm a Jesus machine. I love Jesus Christ for he is not mean."

The reason for these acts of censorship is the so-called separation of church and state. At heart, the reason is the same for

'Thus, the separation of church and state is another euphemism for the fact that the term "God," in American public life, is a dirty word.

censoring *Huckleberry Finn* or *My Friend Flicka*. It is fear, the fear of words and their power to move people, both mentally and spiritually. Thus, the separation of church and state is another euphemism for the fact that the term "God," in

American public life, is a dirty word.

The basic intolerance and hypersensitivity of various ethnic, religious and other groups is making it increasingly difficult to speak freely in American public life. Overreaction is the current community standard.

"Everyone howls like a banshee these days over small and imagined intergroup slights, denouncing everyone in the area as

a dreaded 'ist' or 'phobe' of some sort or another."⁵ Even Aryeh Neier, the veteran civil liberties lawyer who now works with the Human Rights Watch, deplores the current "competitive attempt to be more sensitive than one's neighbor."⁶ As John

Leo, writing for *U.S. News & World Report*, notes: "Ten years ago, the word racist indicated full-time haters, usually those in Nazi uniforms or white hoods; now, it is the conventional way that ethnic groups clear their collective throats while preparing to say hello to one another."⁷

Therefore, what we face in America is a two-pronged form of censorship - one that emanates from the media-governmental complex and the other from an intolerant collective citizenry. As such, we seldom know the real truth, and when we do we are often afraid to speak our minds.

Such censorship was the focus of Ray Bradbury's novel, *Fahrenheit 451*, where a futuristic state in an apathetic society banned all the books (451 degrees Fahrenheit is the temperature at which books burn). As Bradbury wrote in an afterword to a later edition: "Fire Captain Beatty, in my novel *Fahrenheit 451*, described how the books were burned first by the minorities, each ripping a page or a paragraph from this book ... until the day came when the books were empty and the minds shut and the libraries closed forever."⁸

A little tolerance, anyone?

1. Franky Schaeffer, *Sham Pearls for Real Swine* (Brentwood, TN: Wolgemuth and Hyatt, 1990), p. 123.

2. *Ibid.*, p. 124.

3. *Ibid.*

4. " 'My Friend Flicka' Found Objectionable," *Washington Post* (October 26, 1990), p. A21.

5. John Leo, "Our hypersensitive minorities," *U.S. News & World Report* (April 16, 1990), p. 17.

6. *Ibid.*

7. *Ibid.* (emphasis in original).

8. Ray Bradbury, *Fahrenheit 451* (New York: Ballantine Books, 1979), p. 182.



Playboy magazine backs out of lawsuit against American Family Association

Playboy magazine and other sex-industry publishing interests backed out of a federal racketeering lawsuit they filed against a Florida anti-pornography activist.

Playboy and four other plaintiffs agreed to an out-of-court settlement that puts no constraints on the activities of the Florida chapter of the American Family Association and its president, David Caton.

The settlement requires no payment of any kind, and in it the Tampa-based activist admits no wrongdoing.

The agreement says Caton and his organization are "free to protest the sale of sexually explicit material by all means that are protected under the First Amendment ... provided, however, that (they) ... agree ... not to violate any federal, state or local law or ordinance."

Since Caton never broke any laws with his anti-pornography activities, he is entirely free to conduct any and all methods of protest he was engaged in prior to the filing of the lawsuit, accord-

ing to Rutherford Institute attorney Larry Crain.

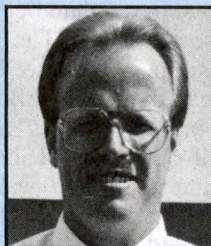
"This lawsuit has been without merit from day one," Crain said. "The unconditional surrender by Playboy shows that the complaints against my client are nothing more than an attempt by the pornography industry to shut down his constitutionally protected protest activities."

Caton and AFA, however, remain under attack from a lawsuit filed by *Penthouse* magazine making almost identical allegations. *Penthouse* refused to enter into the settlement agreement and has vowed to push ahead with its complaint.

Playboy and *Penthouse* filed separate lawsuits against Caton and AFA in October 1989 in U.S. District Court in Miami. Brought under the Racketeer Influenced and Corrupt Organizations Act (RICO), the lawsuits charged Caton and his nonprofit organization with "extortion" and "racketeering" for organizing boycotts, pickets and letter-

writing campaigns against Florida retailers that sell pornography. They also accused Caton of threatening to refer some retailers for prosecution under Florida's obscenity law for selling magazines advertising hard-core pornography.

"My client has never denied any of these activities because all of them are protected under the First Amendment," Crain said.



Caton

At the request of Rutherford Institute attorneys, both cases were transferred to federal court in Tampa and consolidated.

Other plaintiffs settling out of court along with Playboy were the American Booksellers Association, the Council for Periodical Distributors Associations, the International Periodical Distributors Association, and Duval-Bibb Services, a Tampa wholesaler.

Walden Book Co., initially a plaintiff in the Playboy suit, dropped out of the case in June without saying why.

Settlement banning graduation prayer challenged

A lawsuit that led to an out-of-court settlement banning all public prayer at the graduation ceremonies of a Philadelphia-area public school system may not be over yet.

Rutherford Institute attorneys asked a federal appeals court to review the settlement between attorneys for the American Civil Liberties Union and the Downingtown Area School District in Chester County, Pa.

The settlement stems from an ACLU lawsuit - filed in U.S. District Court in Philadelphia in June - which claimed that plans by the Downingtown Area Senior High School to allow a non-denominational benediction and invocation at the school's graduation ceremony violated the separation of church and state.

Under the terms of the settlement, school officials or "students invited to speak at graduation" cannot engage in prayer or "any religious ceremony or activity."

Rutherford Institute attorneys had attempted to intervene in the case, filing a motion on behalf of five students and their parents who believe that banning all public prayer at school ceremonies violates their right to engage in religious speech.

But the school board voted to grant ACLU attorneys the bulk of their demands without a trial, and U.S. District Judge Herbert J. Hutton issued a consent decree approving the out-of-court settlement.

Believing their motion to intervene should have been considered, and that the out-of-court settlement overlooks the rights of their clients, Rutherford Institute attorneys appealed the consent decree to the 3rd U.S. Circuit Court of Appeals.

"The ACLU and the school district together with the court closed the courthouse door and would not let our clients present their legal arguments," said Rutherford Institute attorney Thomas Neuberger, who is working on the case with Rutherford Institute attorneys Thomas Crumplar and William Bonner.

"We want the appeals court to let us in the courthouse door and force the district judge to rule on the merits of this case. After all, the ACLU and the school board are not the only ones who have an interest at stake here."

The ACLU's claim that graduation prayers are unconstitutional was bolstered by a ruling of the 1st U.S. Circuit Court of Appeals in July that upheld the banning of a rabbi's invocation and benediction at a public school graduation ceremony in Providence, R.I.

But Neuberger said that case does not address the free-speech rights of students at such ceremonies, and even in the case of prayer by school officials "there are at least two decisions in federal district courts in Pennsylvania allowing these kinds of activities. There's a split in the courts. Some say you can, some say you can't."



Religious liberty award

Rutherford Institute President John W. Whitehead, left, is honored during a recent awards banquet in Hershey, Pa., sponsored by Religious Heritage of America, an organization dedicated to preserving America's Judeo-Christian heritage. Presenting the Business and Professional Award is Joseph J. Ryan, RHA board member and attorney from Washington, D.C.

N.C. judge's prayer ruled unlawful

A federal judge in Charlotte, N.C., declared unconstitutional a state judge's practice of offering a brief prayer for justice at the start of his court sessions.

Ruling in a case brought by attorneys for the American Civil Liberties Union, U.S. District Judge James B. McMillan held that the 30-second, non-denominational prayer by Mecklenburg County District Judge H. William Constangy violates the separation of church and state.

In a concise, eight-page opinion, Judge McMillan said the prayer has no secular purpose, advances religion, and constitutes an excessive government entanglement with religion.

"Judge Constangy's prayer ... is an obvious violation of the First Amendment," Judge McMillan wrote.

Judge Constangy said he would appeal the ruling to the 4th U.S. Circuit Court of Appeals, and asked Rutherford Institute attorneys to continue to assist the North Carolina Attorney General's office with his defense.

Rutherford Institute attorneys will remain "of counsel" in the case or file a friend-of-the-court brief at the appeals court.

The lawsuit against Judge Constangy was filed in September 1989 by the North Carolina chapter of the ACLU and five Charlotte attorneys who objected to being exposed to the prayer while practicing in Constangy's courtroom.

Rutherford Institute attorney Larry Crain said he was unconvinced by the federal court's attempt to distinguish judicial prayer from legislative prayer, which was ruled constitutional by the U.S. Supreme Court in 1983.

Crain also said that Judge McMillan should have been disqualified from hearing the case because one of the attorneys who filed the suit is a former clerk of his. The woman, an active member of the North Carolina ACLU, retained Judge McMillan to officiate during her wedding.

"Such a warm relationship between a plaintiff and a judge is an obvious conflict of interest," Crain said. "Judge McMillan should have stepped down."

Equal Access Act violations ongoing

Six years after Congress passed the Equal Access Act, and six months after it was declared constitutional by the U.S. Supreme Court, Rutherford Institute attorneys continue to find violations of the federal law that protects student religious clubs in public high schools.

Recently, Rutherford Institute attorneys intervened on behalf of students in San Diego County, Calif., and Greer, S.C., who were denied permission to form Christian clubs at their high schools.

In both cases, school officials were aware of the Equal Access Act and realized that it applied to their schools. Nonetheless, they attempted to prevent Christian students from meeting on school grounds for the purpose of Bible reading and prayer.

In California, school officials tried to stop about 60 students from forming chapters of the Fellowship of Christian Athletes at San Dieguito and Torrey Pines high schools in San Diego County.

In order to avoid triggering the Equal Access Act, school officials considered an option available to them under Supreme Court guidelines: barring all student clubs not related to the curriculum, including Christian clubs.

As of press time for this newsletter, the San Dieguito Union High School Board

had not voted on whether to take such action, which would require the dissolution of five to ten non-religious clubs currently operating on each campus.

Cyrus Zal, a Rutherford Institute attorney representing the Christian students, said school officials clearly were motivated by religious discrimination "although no one would admit it."

In South Carolina, a principal tried to prevent about 25 students from forming a Bible club at Riverside High School in Greer.

Principal Wayne Roads changed his mind, however, after Rutherford Institute attorney Russell Burke phoned him and challenged the discriminatory policy.

"He knew about the Equal Access Act," Burke said. "He just didn't want to get involved with a Christian club."

Burke advises Christian students in public schools to "know the law and stand up for your rights. Just because the Supreme Court has upheld the Equal Access Act doesn't mean that school boards and principals are automatically going to let Christians have their clubs. We have to be vigilant in securing our rights even when they are clearly defined by the Supreme Court."

Florida school teacher sued over Bible stories

Rutherford Institute attorneys are providing legal defense to a 5th-grade teacher in Nassau County, Fla., who was sued by attorneys for the American Civil Liberties Union for reading Bible stories to her students.

The ACLU lawsuit was filed in U.S. District Court in Jacksonville, Fla., against Nassau County school officials and Martha Lee Mitchell, a public school teacher at Emma Love Hardee Elementary School in Fernandina Beach.

The lawsuit claims the 51-year-old teacher's practice of reading Bible stories for about five minutes each school day violates the separation of church and state.

The federal complaint was brought on behalf of Donald and Louise Hatch, whose 9-year-old daughter, Nicole, is in Mitchell's class.

A day after the suit was filed, U.S. District Judge John H. Moore II issued a court injunction temporarily stopping the Bible stories.

Mitchell has read Bible stories to her students throughout her 30-year career. Despite ACLU threats to sue, the Nassau County School Board voted 5 to 0 to allow the practice to continue.

Rutherford Institute attorney Stephen Hurm, who is providing legal assistance to the school board's attorney, believes the teacher did not act unconstitutionally because she was using the Bible to teach literature and not as a devotional exercise.

"The U.S. Supreme Court has prohibited Bible reading as a mandatory devotional exercise, but that is not what Mrs. Mitchell was doing," Hurm said.

"She was merely exposing her students to literature using stories of Biblical origin. And the Supreme Court said years ago that teaching the Bible as literature is okay."

Hurm added that, "For the plaintiffs to prevail in this case would mandate that the Bible or any other religious literature would be censored from the classroom. And that would represent an unconstitutional governmental hostility to religion."

Hurm noted that Mitchell read other literature to her students, such as the classic children's book, *Black Beauty*.

In addition to teaching literature, Mitchell used the Bible stories as a way to calm the students, Hurm said.



Martha Lee Mitchell and her husband, Franz, share a laugh during a meeting of the Nassau County School Board held to discuss an ACLU lawsuit

How the ACLU muzzled a teacher

Martha Lee Mitchell has read Bible stories to her 5th-grade pupils for most of her 30 years as a public school teacher, and she never received a complaint until two months ago.

That's when attorneys for the American Civil Liberties Union sued the 51-year-old teacher from Fernandina Beach, Fla., accusing her of violating the separation of church and state.

Now Mitchell has been ordered by a federal judge to stop reading the Bible stories, and she is afraid to mention anything even remotely religious to her students.

"The other day, I was discussing an upcoming field trip in class," Mitchell said during a recent telephone interview. "One student asked what we would do if the buses broke down, and the first thing I thought to say was that we'd pray about it. But I dared not say it. I'm on center stage now, and anything I say can be held against me."

ACLU attorneys filed the lawsuit in U.S. District Court in Jacksonville on behalf of Donald and Louise Hatch, who complained to school officials after their 9-year-old daughter, Nicole, was exposed to the Bible stories in Mitchell's class.

While the ACLU and the Hatches are upset by the Bible stories, the Nassau County School Board and most of

the citizens of Fernandina Beach are not.

Hundreds of local residents with children in the public schools came to a school board meeting to support Mitchell. Despite ACLU threats to sue, the school board voted 5 to 0 to allow Mitchell to continue her readings. After the lawsuit was filed, the school board voted unanimously to fight the legal challenge in court rather than cave in to ACLU demands.

Mitchell said she was not reading Bible stories to convert students to her Christian faith. Rather, she said she adopted the practice years ago after seeing the results of a school-approved program that used Old Testament stories to improve students' vocabulary.

"I used the Plus 10 program in my class. We would read an Old Testament story and discuss the vocabulary in it. Our vocabulary scores were low at the time, and after we used the program it raised the scores."

Although Mitchell is disappointed that the court order keeps her from reading the Bible stories, she said she will abide by the temporary ruling because she obeys the law and because "I want to keep my job. I've got a daughter in college that I've got to finish putting through."

Prolifers appeal racketeering judgment

Forty-seven proliferers in Greenville, S.C., appealed a federal court's verdict that they were guilty of "racketeering" for participating in three civil-disobedience protests at an abortion clinic.

The Palmetto State Medical Center, an abortion clinic, sued the proliferers last year along with the national prolife group Operation Rescue and a Greenville prolife group called Operation Lifeline.

The lawsuit was filed in U.S. District Court in Greenville after three "rescues" were conducted at the clinic in which proliferers blocked the clinic's entrance for about 15 minutes.

In the federal complaint, the proliferers were accused, among other things, of conspiring to violate the civil rights of a class of women seeking abortions and "racketeering" in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), a federal law designed to fight organized crime.

U.S. District Judge G. Ross Anderson Jr. issued a temporary restraining order prohibiting further demonstrations.

Judge Anderson also dismissed the civil rights claim, but upheld the RICO charge, and the proliferers were assessed more than \$120,000 in damages.

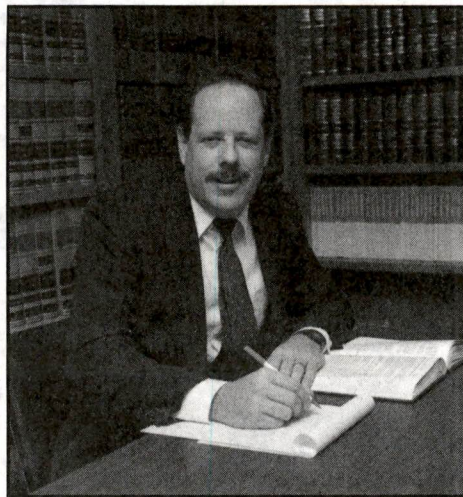
Rutherford Institute attorney David Holmes helped the proliferers appeal the judgment to the 4th U.S. Circuit Court of Appeals.

In the appeal, Holmes challenged the constitutionality of applying RICO to civil-disobedience protesters. He also charged Judge Anderson with making several procedural errors during the one-day jury trial, including instructing jurors about factual matters.

Holmes said the appeals court probably won't use the case to address the constitutionality of RICO.

"I really don't believe this is the case the court is looking for to overturn the RICO statute," Holmes said. "This is a case where the clinic simply failed to prove anything, and the appeals court could reverse the judgment on that basis."

A decision is not expected for months.



Rutherford Institute attorney Craig L. Silver works in his law office in Gaithersburg, Md.

State chapter forms in Maryland

A Rutherford Institute chapter formed in Maryland, bringing the total number of state chapters to 32.

Gaithersburg attorney Craig L. Silver will serve as president of The Rutherford Institute of Maryland. The 35-year-old Silver has practiced law for ten years, specializing in civil litigation.

Silver first heard of The Rutherford Institute in the early 1980s when he read President John W. Whitehead's book, *The Second American Revolution*.

In 1988, Silver volunteered to be local counsel in a Rutherford Institute case involving a Hagerstown street preacher arrested for disorderly conduct after shouting Bible verses in front of an abortion clinic.

"I worked with attorneys from the national office on that case at both the trial and appellate levels," Silver said. "I was impressed with their devotion and abilities and the amount of zeal they displayed. It was during that case that we started talking about getting a Maryland chapter going. It just took some time to find the resources to develop it."

So far, Silver said, about eight attorneys have agreed to work with the chapter. Al-

though there is no litigation yet, Silver is investigating what he believes may be a religiously motivated firing.

Silver said the chapter's main educational goal is to "convince Christians that they need to be more assertive about their rights before they lose them completely. Christians need to realize that asserting one's rights just as Paul did when he appealed to Caesar, is not dishonorable or un-Christian. Rights that are not asserted tend to get lost. When one Christian has to go to court to protect his rights, it's really a concern for Christians everywhere."

70 proliferers imprisoned for civil disobedience

At least 70 people in 11 states are serving prison sentences longer than 30 days for engaging in civil-disobedience protests at abortion clinics, according to Prisoners of Christ, a Georgia-based ministry that keeps track of such prisoners.

The majority are incarcerated for their continued participation in prolife "rescues" in which protesters block the entrances to abortion clinics, said the Rev. Joseph L. Foreman, founder of the ministry in Marietta, Ga.

Foreman spent five months in jail after blocking the entrance to an Atlanta abortion clinic.

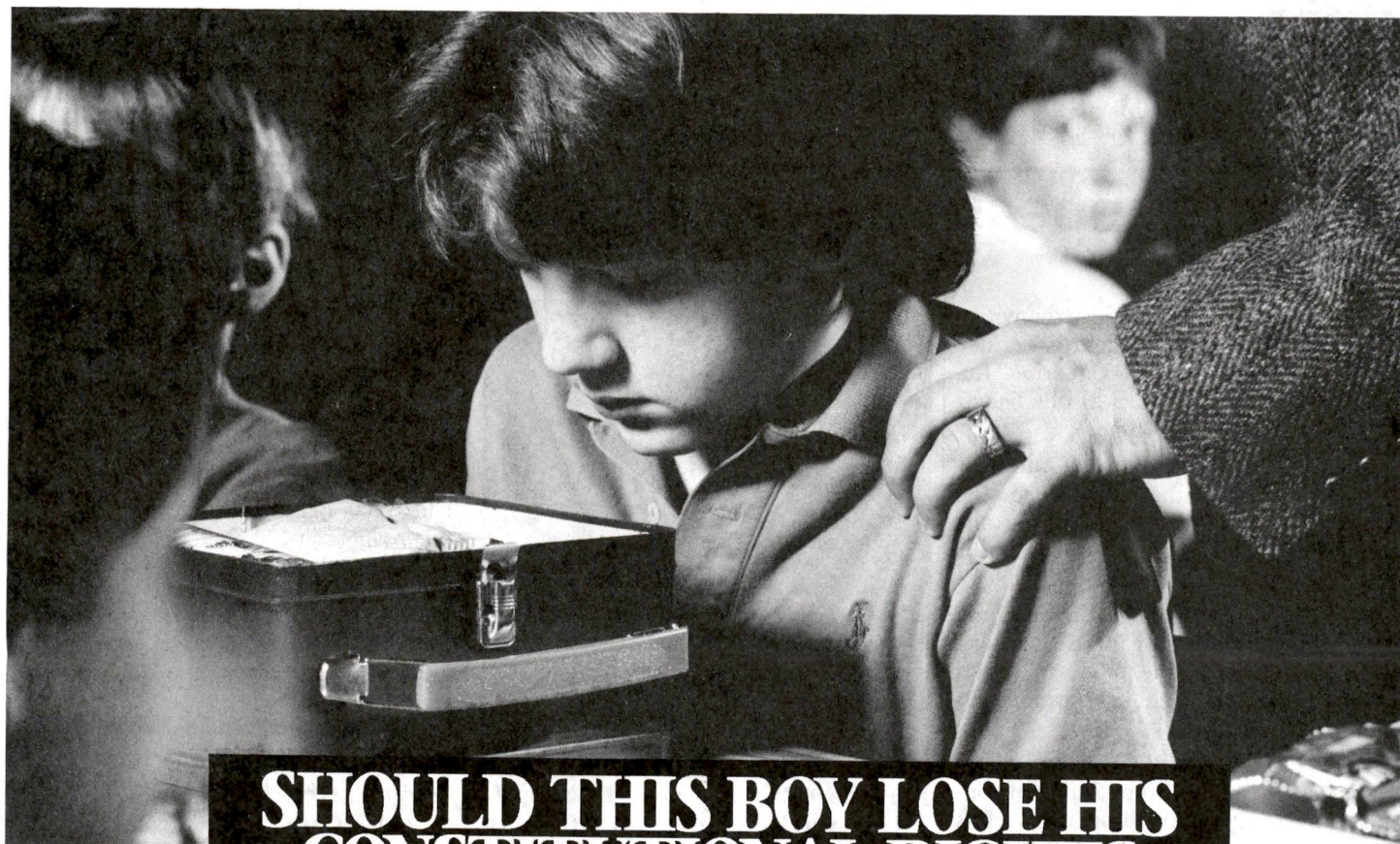
"Standing for Christ in the Soviet Union or China would cost a whole lot more," he said.

In addition to keeping an updated list of prolife prisoners, Prisoners of Christ coordinates a network of persons who support jailed proliferers financially, politically and through prayer.

The ministry also provides for the families of those imprisoned through the Prisoners of Christ Relief Fund.

Foreman encourages members of the public to "adopt" prolife prisoners and write letters and make phone calls to government officials on their behalf, asking that they be freed.

Interested persons may write: Prisoners of Christ, 1033 Franklin Road, Suite 297, Marietta, Georgia, 30067, or call (404) 421-9552.



SHOULD THIS BOY LOSE HIS CONSTITUTIONAL RIGHTS AT THE SCHOOLHOUSE GATE?

In a comprehensive new book, Rutherford Institute President John W. Whitehead spells out the constitutional rights of students, parents, teachers and administrators to express their religious views in the public schools.

The Rights of Religious Persons in Public Education builds a compelling case for accommodating religious expression in public education and answers such important constitutional questions as: Is it legal to sing Christmas carols in the public

We don't think so.

schools? Do religious groups have the right to rent school facilities?

Can students be excused from courses that offend their religious beliefs? What are the rights of parents in the public schools? How far-reaching is the Equal Access Act?

For your Christmas gift of \$100 or more, we will rush to you an autographed edition of *The Rights of Religious Persons in Public Education* when it arrives fresh from the printer in early 1991.

Please give the gift of liberty this holiday season and help us help others who are persecuted for their religious beliefs.

☐ **YES**, I want to give the gift of liberty today. Enclosed is my donation of \$100 or more. Please send an autographed edition of *The Rights of Religious Persons in Public Education* to the address below.

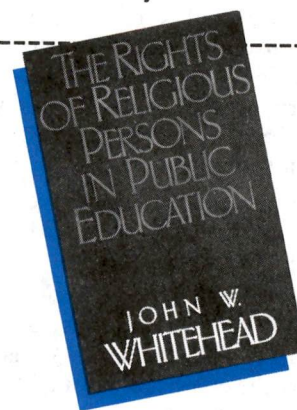
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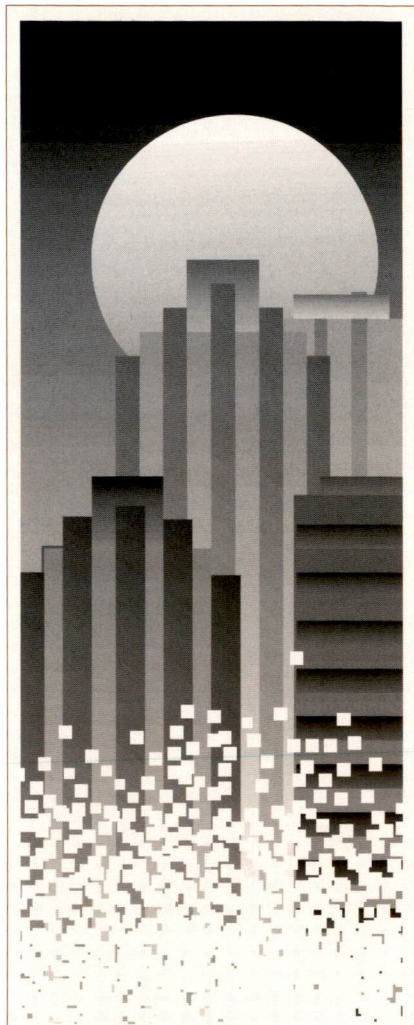


"This is the most important work that I've ever done on the rights of religious people in public schools."

John W. Whitehead

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*"The whole social
structure is now
tumbling down,
dethroning its God,
undermining all its
certainties."*

Malcolm Muggeridge

The Rutherford Institute was founded in 1982 by constitutional attorney John W. Whitehead, who continues to serve as Chairman of the Board of Directors. Author of numerous books and articles, Mr. Whitehead has defended religious liberty at every level of the judicial system, including the U.S. Supreme Court. He lives in Virginia with his wife and five children.

The Rutherford Institute
P.O. Box 7482
Charlottesville, VA 22906-7482

The foundational values of our society are dangerously eroded. The constitutional rights of religious people to speak, publish, assemble, worship freely and live by their beliefs are under fierce attack.

Consider:

◆ Churches are sued in court because members speak out in the public arena on matters of faith, including right-to-life issues.

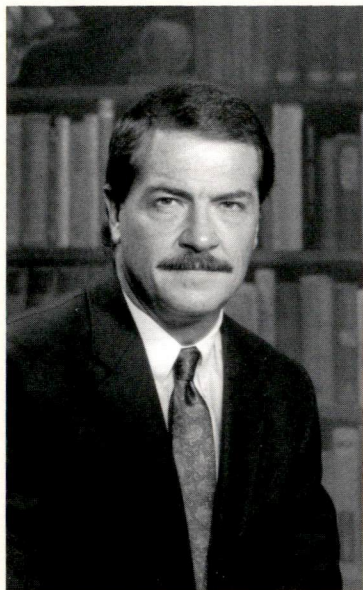
◆ Parents face legal battles trying to educate and raise their own children by religious beliefs.

◆ Public school students are frequently forbidden to speak, write, read or meet if their religious beliefs are a topic.

◆ In all walks of life, religious people are routinely denied equal rights to meet or speak in public places because their speech may be religious.

For many years, little was done to stop religious discrimination. The attacks on religious freedom mounted. Many persons could not afford to defend their constitutional rights.

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*"The time has passed
when we can sit idle
and hope for the better.
We must be bold in
defending the
oppressed.
If not, we will pay a
sad price for
temporary peace
and security –
the loss of freedom."*

*John W. Whitehead
Founder & Chairman of the Board*

Today, things are beginning to change.

The Rutherford Institute is making a real difference to restore vital freedoms. The Rutherford Institute is a nationwide team of aggressive attorneys and concerned citizens dedicated to defending the constitutional rights of religious people.

The Rutherford Institute operates through a rapidly growing state-by-state network of chapters, providing legal services without charge to hundreds of people each year nationwide. Legal and educational services are targeted to five priority areas:

- 1 Preserve free speech in the public arena, including public schools.
- 2 Protect the right of churches, church schools, home schools and other religious organizations to operate freely without improper state intrusion.
- 3 Defend parental rights and family autonomy.
- 4 Support the sanctity of all human life.
- 5 Assist individuals oppressed for their beliefs in totalitarian countries.

Student Development

Student chapters and summer internships provide special training and experience for law school students seeking to use their legal skills in the defense of religious freedom.

We Need Your Help

The Rutherford Institute is a non-profit, tax-exempt legal defense organization in accordance with 501(c)3 of the Internal Revenue Code. Legal services are provided without charge. The Rutherford Institute relies on tax-deductible contributions largely from individuals for its support.

Each year, The Rutherford Institute is audited by an independent and highly qualified accounting firm. Financial statements are available upon request.

Further information on The Rutherford Institute is available without charge on request by writing The Rutherford Institute's national headquarters at:

The Rutherford Institute
P.O. Box 7482
Charlottesville, VA 22906-7482
Telephone (804) 978-3888
Fax (804) 978-1789

Why The Rutherford Institute?

The Rutherford Institute takes its name from Samuel Rutherford, a 17th-century Scottish minister who resisted the European doctrine of divine right of kings. In his book *Lex Rex* (The Law and the Prince), Rutherford argued that all men are subject to the law—including the king. This same premise, that leaders are responsible to a law apart from and higher than themselves, was central to the formation of the United States government.

Yes, I am interested in helping The Rutherford Institute defend religious liberty.

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Religious Liberty

BULLETIN

A RUTHERFORD INSTITUTE® PUBLICATION

December 1990



Federal court rules judge's prayer unlawful

A federal judge in Charlotte, N.C., declared unconstitutional a state judge's practice of offering a brief prayer for justice at the start of his court sessions.

Ruling in a case brought by attorneys for the American Civil Liberties Union, U.S. District Judge James B. McMillan held that the 30-second, non-denominational prayer by Mecklenburg County District Judge H. William Constangy violates the separation of church and state.

In a concise, eight-page opinion, Judge McMillan said the prayer has no secular purpose, advances religion, and constitutes an excessive government entanglement with religion.

"Judge Constangy's prayer ... is an obvious violation of the First Amendment," Judge McMillan wrote.

The prayer reads: "O Lord, our God, our Father in Heaven, we pray this morning that you will place your divine guiding hand on this courtroom and that with your mighty outstretched arm you will protect the innocent, give justice to those who have been harmed, and mercy to us all. Let truth be heard and wisdom be reflected in the light of your presence here with us today. Amen."

Judge Constangy said he would appeal the ruling to the 4th U.S. Circuit Court of Appeals, and asked Rutherford Institute attorneys to continue to assist the North Carolina Attorney General's office with his defense.

Rutherford Institute attorneys will remain "of counsel" in the case or file a friend-of-the-court brief at the appeals court.

The lawsuit against Judge Constangy was filed in September 1989 by the North Carolina chapter of the ACLU and five Charlotte attorneys who objected to being exposed to the prayer while practicing in Constangy's courtroom.

Playboy magazine backs out of racketeering lawsuit

Playboy magazine and other sex-industry publishing interests backed out of a federal racketeering lawsuit they filed against a Florida anti-pornography activist.

Playboy and four other plaintiffs agreed to an out-of-court settlement that puts no constraints on the activities of the Florida chapter of the American Family Association and its president, David Caton.

The settlement requires no payment of any kind, and in it the Tampa-based activist admits no wrongdoing.

"This lawsuit has been without merit from day one," said Caton's attorney, Larry Crain of The Rutherford Institute. "The unconditional surrender by Playboy shows that the complaints against my client are nothing more than an attempt by

the pornography industry to shut down his constitutionally protected protest activities."

Playboy's lawsuit - filed last year - accused Caton of "racketeering" for organizing letter-writing campaigns, pickets and boycotts against Florida stores that sell pornography and for threatening to refer some retailers for prosecution under Florida's obscenity law.

Caton and AFA remain under attack from a lawsuit filed by Penthouse magazine making almost identical allegations. Penthouse refused to enter into the settlement agreement and has vowed to push ahead with its complaint.



Equal Access Act violations continue across country

Six years after Congress passed the Equal Access Act, and six months after it was declared constitutional by the U.S. Supreme Court, Rutherford Institute attorneys continue to find violations of the federal law designed to protect student religious clubs in public high schools.

Recently, Rutherford Institute attorneys intervened on behalf of students in San Diego County, Calif., and Greer, S.C., who were denied permission to form Christian clubs at their high schools.

In both cases, school officials were aware of the Equal Access Act and realized that it applied to their schools. Nonetheless, they attempted to prevent Christian students from meeting on school grounds for the purpose of Bible reading and prayer.

"Christian students need to know the law and stand up for their rights," said Rutherford Institute attorney Russell Burke, who secured the rights of the students in South Carolina after placing a phone call to their principal. "Just because the Supreme Court has upheld the Equal Access Act does not mean that school boards and principals are automatically going to let Christians have their clubs. We have to be vigilant in securing our rights even when they are clearly defined by the Supreme Court."

The 1984 Equal Access Act bars public high schools from excluding student religious clubs if non-religious, extracurricular clubs are allowed at the school.



Rutherford Institute International established

For the first time in its eight-year history, The Rutherford Institute has expanded its legal and educational activities into full-time operations abroad.

The formation of chapters in Canada, South America and Eastern and Central Europe enables The Rutherford Institute to accomplish one of its original objectives: assisting individuals oppressed for their beliefs in countries outside the United States.

"Our vision for a coalition of attorneys to defend religious liberty and the sanctity of human life has always been international in scope," Rutherford Institute President John W. Whitehead said. "Religious liberty, being God-given, is everyone's right. Therefore, our efforts to protect it must extend beyond America's borders."

Student's abortion prompts lawsuit against school officials

A high school student in Prior Lake, Minn., who claims to have had an abortion on the advice of a school counselor has sued school officials, saying they are partly responsible for permanent injuries she suffered during the medical procedure.

The girl's parents are also plaintiffs in the complaint against the Prior Lake Independent School District. They accuse school officials of infringing their constitutional right to teach their child the religiously based belief that abortion is the taking of innocent life.

The lawsuit - filed in Scott County District Court - says that a Sidney Brock, counselor at Prior Lake Senior High School, advised the girl last year to obtain an abortion. Acting on this advice, the girl had an abortion and "sustained injuries to her mind and body, which are lasting and permanent," the lawsuit says.

The girl and her parents are not identified in the court papers in order to protect the minor's confidentiality.

The lawsuit says school officials "impermissibly interfered with family relations" and pressured the girl "to refrain from communicating with her parents and coerced her to obtain an abortion."



Creationist accuses science magazine of discrimination

A well-known science writer says he was denied a job as a columnist for Scientific American magazine because he believes in creationism instead of evolution.

Forrest M. Mims, a 47-year-old evangelical Christian from Seguin, Texas, says the prestigious science journal refused to hire him as writer of its "Amateur Scientist" column after learning that he does not believe in Darwin's theory of evolution.

Mims, a self-taught engineer who has authored hundreds of articles and 70 books, has had a life-long dream of writing the popular column, which has appeared in the magazine for 38 years and influenced his boyhood decision to become a scientist.

Mims says he flew to Scientific American's New York offices last year for an interview with editor Jonathan Piel, and that things went well until Piel discovered he was a born-again Christian who believed in creationism.

In an article about the incident in the Wall Street Journal, Mims accused Scientific American of "sheer religious bias."

In response, the magazine's editor said "Scientific American has never discriminated against anyone for religious reasons."

THE RUTHERFORD INSTITUTE

RICO and prolife protests

October 11, 1990

A federal appeals court ruled Wednesday in an appeal brought by Rutherford Institute attorneys that the Town of West Hartford, Conn., cannot use federal racketeering laws to sue prolife protesters who blocked the entrances to an abortion clinic during two civil-disobedience demonstrations last year.

A three-judge panel of the 2nd U.S. Circuit Court of Appeals held 2 to 1 that the town had not shown that the protesters' actions amounted to "extortion" and "racketeering" as asserted in a lawsuit filed against the national prolife group Operation Rescue and others on June 29, 1989.

The appeals court vacated a preliminary injunction issued against the proliferers by U.S. District Judge Peter D. Dorsey and sent the case back to the lower court with instructions that it be dismissed.

"We feel extremely vindicated by this new ruling," said Rutherford Institute attorney Joseph P. Secola, who represents the proliferers. "Not only have Connecticut proliferers won their day in court, but this opinion carries significant ramifications for the numerous other racketeering lawsuits facing proliferers across the country."

The town's lawsuit -- filed under the Racketeer Influenced and Corrupt Organizations Act (RICO) -- claimed that demonstrations at the Summit Women's Center on April 1 and June 19, 1989, amounted to an "extortion" of town services because they forced the police to divert their attention from other duties.

In a 32-page opinion, the appeals court called the town's claims a "bizarre construction" of the RICO law that "affronts common sense." The appeals court said it would enforce RICO as it was originally intended by Congress but "that does not imply, however, any disposition on the part of this court to countenance fanciful invocations of the draconian RICO weapon in civil litigation."

The RICO law was passed by Congress in 1970 to fight organized crime. In recent years, however, it has been used by abortion clinics across the country and their political allies as a legal weapon to punish proliferers who engage in civil-disobedience protests.

The Rutherford Institute is a nationwide nonprofit civil liberties organization specializing in the defense of religious freedom and free speech. For more information, contact attorney Secola at (203) 355-0923 or (203) 740-1411 or The Rutherford Institute's national office at (804) 978-3888.

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NEWS RELEASE

July 31, 1990

Girl sues teacher over class project

Associated Press

PHILADELPHIA — An 11-year-old Chester County girl filed suit against her teacher and elementary school yesterday, charging that the school violated her First Amendment rights when she was prevented from presenting a religiously oriented project to her class.

The suit, filed by fifth-grader Diana Duran through her parents in U.S. District Court, stated that she was scheduled to give an oral presentation in class on "The power of God," in June, but her teacher told her she would have to present the report in private.

Her lawyer, William A. Bonner, said that students in Duran's Academically Talented Program class at East Coventry Elementary School were assigned a research project and oral report in April on the topic of "Power," and that her teacher, Linda Nitsche, had approved the topic.

"When it became time to give her report, she was humiliated," said Bonner, who works for The Rutherford Institute, a national organization specializing in protecting religious speech.

"I feel it wasn't fair," Duran said yesterday. "I think I should be able to talk about God in front of my class."

Receptionists at East Coventry and the Owen J. Roberts School District said that no one was available to comment on the suit late yesterday afternoon.

Bonner said that as part of Duran's research, the 11-year-old prepared a survey that asked stu-

dents if they believed in God and if so, what powers they believed God has.

But in a letter to Duran's mother, the school's principal, Kenneth Swart, said the survey was "inappropriate for the public school setting," adding that he would advise Duran's teacher not to distribute the survey.

"I felt [the] content would be considered controversial at the least and possibly infringed on the rights of students to maintain a separation of church and state," the letter said.

The suit states that Swart told Duran that "the questions were going too deep into religion" and the "school ran the risk of being sued."

Bonner refuted Swart's claims, saying that the survey was not an issue of church and state, but rather of academic freedom.

"The concept of the separation of church and state is very confused and misused in the public eye and mind," the lawyer said, adding that allowing the academic presentation would not be a school endorsement of any religion.

The suit is filed against Nitsche, Swart, former Roberts School District Superintendent Roy C. Claypool, current Superintendent Terrance Furin, School Board President Sharon Keith-Hopper and members of the school board.

The complaint seeks an injunction against "content-based discrimination" at the school and unspecified damages.

June 4, 1990

Bible studies gain public access

By TONY MAURO
Gannett News Service

WASHINGTON — Bible study groups are no different than chess clubs or marching bands and all must be given equal access to public school facilities, the Supreme Court ruled Monday.

In the closing month, notorious for its hurried push toward adjournment, blockbuster opinions are expected on 39 major cases from flag-burning and abortion to libel and drunken driving.

Monday's Bible class ruling pleased Bridget Mergens Mayhew, who sparked the case five years ago when she tried to form a Bible Club at her Omaha, Neb., high school. It angered critics who say the ruling crosses the



constitutionally required separation of church and state.

"This decision is refreshing news for many religious students in the public schools who suffered unequal treatment," said John Whitehead, founder of The Rutherford Institute, which filed a friend-of-the-court brief.

While those involved in the Bible case rejoiced Monday, hundreds of other people nationwide can only wait for the other court decisions.

Joe Cruzan, who has asked the court to allow him to sever his comatose daughter Nancy's weak link to life, is one of them.

The Cruzan case marks the first time the court will decide when feeding can be withdrawn from a patient in a vegetative state with no chance of recovery but no immediate prospect of dying.

"I'd be very surprised if the court painted with a broad brush" and declared a constitutionally protected right to die, says Harvard law professor

Laurence Tribe.

A possible compromise: Allow intervention by states only when the patient's wishes are unclear.

Other major cases awaiting a court ruling:

■ **Abortion.** A Minnesota law requiring notification of both parents of teen girls seeking abortions is paired with a challenge to an Ohio law requiring minors to notify one parent before obtaining an abortion.

Justice Sandra O'Connor is viewed as the court's swing vote on abortion rights. Past writings suggest she may find the Minnesota law "unduly burdensome" and the Ohio law more acceptable.

■ **Flag-burning.** The court caused turmoil a year ago when it struck down a Texas law that banned burning the American flag. Congress responded by passing a similar federal law. Now the court is being asked to rule on whether the new federal law is constitutional.



Church bashing: Homosexual and prochoice advocates marched outside New York's Saint Patrick's Cathedral and disrupted a Communion service last December. Protesters criticized John Cardinal O'Connor's position on abortion and sexuality.

TRENDS

Open Season on Christians?

While the evidence of antireligious bias builds, calls for a Christian antidefamation league get mixed reviews.

- Angela Guidry, a straight-A student at Sam Houston High School in Moss Bluff, Louisiana, was scheduled to give a valedictory address at her graduation. But when a guidance counselor reviewed the speech, she told Guidry to eliminate references to her Christian faith. Rather than change her address, Guidry did not speak. Her case is now in federal court.

- When Scott Klika mentioned his Christian faith to a group of adult patients at a private psychiatric hospital in Green Bay, Wisconsin, his supervisors asked that he not bring up the subject again. Three months later, though he had not spoken further about his beliefs, he was fired. According to Klika, his supervisors told him his faith

was not in keeping with the beliefs of the hospital.

- After columnist Cal Thomas learned his appearance on ABC's "Good Morning America" had been canceled, he called the network to ask why. According to Thomas, he was told that the producers feared he would quote Bible verses on the air.

Do these cases and scores of others like them prove an anti-Christian bias in America? "Yes," says a growing collection of evangelical leaders. In government, education, media, law, and business, Christians remain the last group that can be ridiculed and discriminated against with impunity. But in no uncertain terms, some Christians are rising for a fight.

In February, broadcaster Pat Robertson announced plans to convene the American Congress of Christian Citizens in the spring of 1991—a gathering he hopes will draw 10,000 to 15,000 Christians from a broad spectrum of beliefs—to address the issue of anti-Christian bias. At a planning meeting held after the National Prayer Breakfast in Washington, D.C., Robertson's call for the formation of a Christian antidefamation league was welcomed with loud applause. Christians are tired of being stepped on, he told the crowd of about 100 supporters, and the time has come to stand up for Christians' rights.

Last month in Memphis, a conference on "Anti-Christian Bias in America"

sponsored by the American Family Association (AFA) drew 120 Christian activists from 20 states to decry what AFA executive director Don Wildmon called "bigotry, plain and simple." There, too, repeated suggestions of an antidefamation league drew hearty approval.

Exclusion of religion

Though the idea of an anti-Christian bias in America is not new—Moral Majority leaders raised the theme in the mid-1980s—the exclusion of Christianity, or at least religion, from public debate has found wider recognition in recent years. For example, People for the American Way (PAW) and Americans United for Separation of Church and State, groups most often at odds with conservative views, have documented in their own studies of public-school textbooks the widespread omission of religion, especially Christianity.

In mass media, commentators such as columnist Don Feder have noted that "no other group is so consistently maligned on prime-time television" as Christians. Michael Medved, cohost of the weekly PBS program "Sneak Previews," has observed, "For many of the most powerful people in the entertainment business, hostility to traditional religion goes so deep and burns so intensely that they insist on expressing that hostility, even at the risk of commercial disaster."

Without a doubt, says Richard John Neuhaus, director of the Institute on Religion and Public Life, bias and even bigotry against supernatural religion exist in society, especially among those who control the cultural centers of media and education. That bias is inevitably expressed against Christianity, which remains the majority religion of the culture, he says.

Running headlong into that trend is the increased involvement of evangelicals in public life. Twenty years ago, high-school students were not standing up to give their testimonies at graduation ceremonies, says John Whitehead, founder and president of the Rutherford Institute, a legal organization specializing in religious-liberty cases. "It's obvious that Christians are singled out because they speak up and evangelize," he said.

In effect, the Rutherford Institute functions as an antidefamation group, Whitehead said. "When we see open discrimination against Christians, we oppose it." Last year his group handled 95 court cases and counseled some 700 clients. Other groups such as the Christian Legal Society and Christian Advocates Serving Evangelism (CASE) also handle cases. And there are countless other incidents of discrimination that are

never pressed, according to Whitehead.

At the same time, conservative leaders admit that Christians themselves must take responsibility for their part in creating a secular bias in society. Their absence from many areas of culture in the past opened the door to the ideas that now dominate public thinking. Only now, Whitehead says, are Christians waking up to how much ground they have lost and beginning to respond.

One other reason for the rising clamor over anti-Christian bias, says Jim Castelli, a journalist who has covered religion for over 20 years and served as director of church-state policy for PAW, is the decline of the Religious Right. "For those who have less influence than they did 10 years ago—namely, the fundamentalist Right—the idea of bias against them is a good explanation, and creating an antidefamation league seems a good way to regain some power."

A matter of motives

While the antireligious bent of society is widely recognized, the motives behind many of the case-study conflicts are not as easily agreed upon. Observers agree some disputes arise from benign ignorance or misunderstanding of church-state issues, and that in other cases political agendas are often intertwined with questions of religious exercise.

Castelli asks how the *Christian* in "anti-Christian bias" is defined. "If you mean the 87 percent of the American people who identify with some Christian faith—no, there's not bias," he said. "But if you define *Christian* as some fundamentalists do, meaning just them, then that's a different story. One problem with conservative Christianity is that it can be very parochial." Though Castelli agrees that some liberal circles do look down on believing Christians, he added, "I would guess if a former McGovern delegate walked into some of these [anti-bias] meetings, he would be subject to some bias himself."

Wildmon concedes that conservatives have not always dealt fairly with their opponents. But the litany of complaints he hears from across the country, he says, leaves him convinced that Christians remain the last acceptable targets for bigotry. "When the norm of society says, 'You can't participate in the mainstream because you're a Christian,' then there's a serious problem, not just for me but for everybody in society," he said.

No one has yet offered a detailed proposal for forming an antidefamation league. Most suggestions focus on pressing legal rights. At the AFA conference, media critic Joseph Farah called for the creation of a Hollywood-based advoca-

cy office to combat anti-Christian stereotyping. He pointed to the success of the Gay Media Task Force in changing programming as an example of what can be accomplished.

"An antidefamation league isn't a final solution," Wildmon said, "but I think its time has come."

Evangelical paranoia

While the call for a Christian antidefamation league has gained supporters, it has also attracted critics within evangelical circles, even among those who share concern for Christian freedoms. Os Guinness, former executive director of the Williamsburg Charter Foundation, which brought together a broad coalition of national leaders in 1988 to affirm religious liberties, considers the idea "one of the worst proposals to come down the road for a long time."

"For one of America's strongest, most historic and sizable faith communities to pass itself off as a beleaguered minority is an insult to real minorities, and an extraordinary testimony to current levels of evangelical paranoia and pessimism," Guinness said. He fears such a reaction would close the very doors Christians should be trying to open. "The single strongest source of prejudice about evangelicalism is its unwise action in the public arena—just like this." What is needed most, he said, is "a constructive Christian view of public life."

Neuhaus also disagrees with any reaction that casts Christians in the role of a persecuted minority. "There is an enormous cultural conflict in America," he said. "But the way you win a cultural war is by fighting bad ideas with better ideas." According to Neuhaus, the solution to antireligious bias is "a lot more Christians in the public square," not in the catacombs.

If Christians want to follow the model of Jewish reaction to prejudice, Castelli points out, they should recognize that its success lies not in its stridency but in the coalitions Jews have built with other communities. He fears that conservative Christians would instead turn an antidefamation league into a lobby "to bash everyone who disagrees with them on abortion or homosexuality as anti-Christian."

Most people in society are not yet aware of anti-Christian bias, Wildmon said at the close of his conference. But he believes the issue will emerge as a major controversy in the next five years. For him, it is a "front-burner issue"—one under which he and other Christian leaders clearly intend to turn up the heat.

By Ken Sidey.

Syracuse, New York

Herald-Journal

February 22, 1990

Oswego teen-ager will get chance to rap about Jesus at school show

By Jackie Arnold
Staff Writer

Oswego High School senior Kenneth Green will be able to "rap" about Jesus Christ after all.

He wasn't so sure on Friday when school authorities told him his act had been banned from a school talent show this week because of its religious message.

That's when the Rutherford Institute stepped in. Attorneys for the Virginia-based institute challenged the ban, and warned school officials that such censorship would violate Green's free-speech rights. Green was told Tuesday by school officials he could deliver his "rap" at the talent show which starts at 8 p.m. today.

■ OSWEGO
Continued from Page A1

Green said he prayed for guidance. Then he contacted his youth pastor, who in turn spoke to lawyers about the school ban.

"I just prayed. I called upon the name of the Lord, and he worked everything out. He opened the doors."

Green said he felt he should have had the right to perform because he believes church and state should not be completely separated. If anything, church should have a higher priority, he said.

"It says in the word of the Lord that the government should be on his shoulders. But things like this are going to happen."

School Superintendent Edward Garno could not be reached for comment.

In his "rap," Green talks about his reborn faith in Jesus Christ. Here's a sampling of the lyrics: "Well my name is Kenneth Green

and I'm a Jesus machine. I love Jesus Christ for he is not mean. I became born again at the age of 14. Now I live for Jesus Christ, now I am his machine.

"Jesus Christ is the one who loves all very much. And he longs to give you all a special love-healing touch.

"Jesus loves you and he died for you upon the cross. He did it to reach you and seek all that was lost. But three days later God rose him from the dead. He rose from the dead just like the Scripture said."

The Rutherford Institute is based in Charlottesville, Va., and specializes in religious free-speech issues.

Rutherford President John W. Whitehead said he was pleased with the school's change of heart. "This could have been a case of clear religious discrimination like so many others we see across the country. But the school district saw fit to accommodate the constitutional rights of Kenneth Green and we are glad," Whitehead said in a press release.

November 15, 1989

Legal defense group to defend AFA against claims

MIAMI (AP) — A legal defense organization announced Wednesday plans to represent a religious group being sued by publishers who allege extortion and racketeering was used to suppress the sale of adult magazines.

The Rutherford Institute, based in Charlottesville, Va., said in a statement that the publishers have misapplied the Racketeer Influenced and Corrupt Organizations Act in their suit against the Florida chapter of the American Family Association.

The institute contends RICO was designed to "fight racketeers like the Mafia."

"The expansion of the use of RICO against free expression activities is extremely dangerous to the future of free speech and is censorship at its worst," said John W. Whitehead, president of The Rutherford Institute.

But the publishers also have accused the Florida chapter of the AFA, which has its state headquarters in Tampa, of attempted censorship.

"These people represent the worst possible element in a free society," Penthouse publisher Bob Guccione

said in a statement Tuesday.

"They will not rest until the public, through its inaction, allows them to regulate and approve our reading, viewing, listening and other educational and entertainment activities," Guccione said.

On Tuesday, Penthouse filed a suit in U.S. District Court in Miami seeking at least \$25,000 it claims it lost in sales when the Albertson's grocery chain stopped selling Penthouse.

A similar suit seeking triple damages and an end to the alleged interference was filed Oct. 31 in Miami by publishing and retailing companies that included Playboy magazine and Waldenbooks.

That earlier suit claimed the AFA used a "pattern of racketeering activity" by organizing pickets and threatening boycotts of stores selling the magazines.

Nation/world

Law limits disposal of fetuses

MINNEAPOLIS (AP)—Flushing aborted fetuses into the sewer system becomes illegal Monday under a Minnesota law requiring hospitals and clinics to arrange burial or cremation of the remains.

The measure, considered the nation's strictest, was strongly opposed by medical groups, which contended that it added costs and risks to the disposal process. Abortion rights advocates fought it for the chilling effect it might have on women considering an abortion.

"I think it says that in Minnesota we regard the remains of unborn babies with dignity and not something to be thrown down the sewer system," said Brian Gibson, director of Pro-Life Action Ministries of the Twin Cities.

Gibson's group helped initiate the law by exhibiting an aborted fetus it said came from an abortion clinic's garbage container. The clinic denied it.

"The law makes illegal the common, sanitary practice of flushing fetal tissue into the sewer system," said Dave Feinwachs, general counsel for the Minnesota Hospital Association. "Storing tissue in barrels of formaldehyde and trucking it around is just plain stupid.

"What was formerly done at a sink now involves the use of vehicles and chemicals."

Thomas Webber, executive director of Planned Parenthood of Minnesota, said: "We believed then and we believe now it is a law to interfere with a woman's rights to terminate a pregnancy. It was designed to give the inference that the state of Minnesota is saying to women, 'You just committed murder. You just killed a little person.'"

Planned Parenthood sued to block the 1987 law, contending it was vague and would stifle abortions by adding costs and psychological trauma. U.S. District Judge David Doty agreed in June 1989, but the 8th U.S. Circuit Court of Appeals overruled him in August.

Laws, regulations or city ordinances in at least 15 other states have called for special disposition of fetal remains, said Thomas Strahan, who researched the issue for the Rutherford Institute, a Charlottesville, Va., non-profit legal services organization.

United Press International, Regional

August 22, 1990

A newspaper editor who criticized the police response to an anti-abortion demonstration and a grandmother arrested at the protest filed suits Wednesday charging their rights were violated.

The lawsuits were filed in U.S. District Court on behalf of John M. Spear, editor of a weekly newspaper in New York, and Lillian Laughlin, a 64-year-old grandmother, their attorneys said.

Laughlin claimed she was suddenly thrown to the ground and assaulted by police during the June 17, 1989, protest at the Summit Women's Center that resulted in 261 arrests.

Spear, editor of the weekly Orange County News in Washingtonville, N.Y., claimed his rights were violated when the town of West Hartford and the women's center sued him for writing an editorial criticizing police conduct at an April 1, 1989, protest at the clinic.

The June 17 demonstration resulted in 261 arrests and the town subsequently won a preliminary injunction sharply restricting demonstrations outside the clinic.

Town Manager Barry Feldman said officials had not seen the complaints filed in court, but vowed that "any and all actions filed against the town will be defended as vigorously as is possible."

"Police response to the 'Operation Rescue' attacks in West Hartford was appropriate and in compliance with the law. Any actions against the police or the town as a result of those attacks would be totally without merit," Feldman said.

Laughlin is seeking more than \$1 million in damages in her suit while the damages sought by Spear were not specified, their lawyers said.

Among the defendants named in the suit were the town of West Hartford, Police Chief Robert McCue and the Summit Women's Center.

Spear is being represented by the Rutherford Institute, which is based in Charlottesville, Va., which describes itself as a nationwide non-profit civil liberties group.

The group said Spear, 49, and his Spear Printing Co. were named in federal suits brought by the town and women's center charging the demonstrations involved violations of federal racketeering laws.

Spear was not in West Hartford for the protests but was accused of racketeering for writing editorials critical of the police response to the April demonstration, the Rutherford Institute said.

November 5, 1989

Parents call state health model invasion of privacy

CENTREVILLE, Mich. (AP) — Nineteen students and their parents filed a lawsuit Friday against the White Pigeon Community Schools, alleging a state curriculum used there employs psychological techniques to invade students' privacy.

The lawsuit, filed in St. Joseph County Circuit Court, seeks temporary and permanent injunctions to keep the St. Joseph County schools from using the Michigan Model for Comprehensive School Health Education, attorney David Melton

said. The suit, which also names the White Pigeon superintendent and six school board members, also seeks damages exceeding \$10,000.

Seven state agencies, including the departments of Mental Health and Social Services, contributed to the project. The curriculum focuses on nutrition, disease prevention and mental health, according to the state Department of Education.

The suit alleges the curriculum forces students to answer questions about "matters of personal and familial privacy, sexuality, death and dying, suicide, etc., in an environment hostile to confidentiality." It also alleges the program is being paid for with misappropriated federal funds targeted for drug prevention.

Melton is state director of the Rutherford Institute, a national organization specializing in the legal defense of religious liberty.

Currently, about 400 of the state's 525 school districts are using the curriculum, which was first implemented in the 1984-85 school year, White Pigeon Superintendent Dale Kimball said.

Kimball said he has been pleased with the plan, which was implemented at White Pigeon in 1986 for students in kindergarten through the second grade. It was expanded this year to include the third and fourth grades.

He was unaware of the lawsuit, but said a committee had been formed to investigate parents' complaints.

Fall, 1989

Institute backs rights of 10-year-old

Group targets religious free speech

By Karen Haywood
Associated Press Writer

MANASSAS, Va. — When school officials told 10-year-old Audrey Pearson she couldn't read the Bible on the school bus, the girl's mother turned for help to the Rutherford Institute.

Within days, Audrey was back reading her Bible on the bus.

The Rutherford Institute is devoted to religious free speech. "I want this group to be a beacon of light for people who give up," said John W. Whitehead, who founded the institute in his basement here in 1982. "There's just a myth out there if it's on public property, it can't be religious."

Although Audrey's case took only a few telephone calls, the Rutherford Institute has successfully defended cases to the U.S. Supreme Court.

In seven years, the institute has grown to 21 state chapters across the country and has an annual budget of \$300,000. Forty staff attorneys handled 75 cases last year, up from 40 cases the year before, Whitehead said.

The institute, which has helped people recently in Nigeria, Canada and India, plans to open offices overseas, Whitehead said. The institute recently moved to Charlottesville.

Michael Patrick, executive director of the institute, said it averages 25 calls for help a day and is defending 600 people now. That does not include calls seeking information and educational materials, he said.

Ellen Pearson said she heard about the institute after reading an essay by Whitehead in a book, "Biblical Principles for Godly Living," and remembered it when her daughter was forbidden to read the Bible.

She said she first tried to send Audrey to school with a lap desk, dolls and other items to entertain herself on the one-hour ride and was told they were unsafe.

"I said I am going to let her bring books to school and I said because she loves God's word she probably will bring God's word," Mrs. Pearson said. "The teacher got quiet and she called me back in five minutes and said the principal said she couldn't bring that."

Mrs. Pearson said she called the principal of Dumfries Elementary School, Nicolette Rinaldo, who said she knew that a rule somewhere said children could not bring Bibles to school.

An institute attorney called school officials to straighten out the matter.

"I didn't think it was handled any differently than any other formal request to the principal," Mrs. Rinaldo said. "You're talking about religious material, and normally children don't bring religious material to school."

"The root of it is fear and a lack of knowledge," Patrick said. "It (the book) could have been a Stephen King novel."

The group operates largely on donations from people who have heard about the institute; Patrick said 90 percent of donations are less than \$100 and most are for \$10 or \$15.

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None of the institute's 40 staff attorneys is salaried. Their expenses are paid by grants from the national group, Patrick said.

One case the institute took successfully to the Supreme Court involved an Illinois man who refused a job because religious beliefs prevented him from working Sundays. In March, the high court ruled in William Frazee's favor, overturning a ruling from the Appellate Court of Illinois. The lower court had ruled that Frazee's personal religious convictions did not constitute good cause for declining a job. Frazee had been denied unemployment benefits.

"The sad part is, for every one of these there's a dozen that go unreported," Patrick said. He said the institute is trying to dispel a notion that religious speech is less free than other speech.

"If it's really a free-speech position, why should I be concerned about what kind of free speech?" Patrick said. "We're only as free as the rights of the least free — religious people."

With that idea in mind, the institute has defended points of view that might seem surprising.

Whitehead said the institute once assisted a Virginia man who wanted to put "atheist" on his license tag. The state Transporta-



AP Laserphoto

Audrey Pearson and her Bible were the center of controversy.

tion Department told the man he could not.

"It's a church-state issue," Whitehead said. "If you can't put 'atheist' on a license plate, you can't put 'theist.'"

Barry Lynn, legislative counsel for the American Civil Liberties Union, said the Rutherford Institute "is much more willing than the Constitution is to allow government support for religious activity" such as allowing religious clubs to meet in public schools.

"They obviously have a right to promote their view of the Constitution," Lynn said. "In many instances, it is fundamentally different from ours and fundamentally wrong."

"What they like to say is all

speech is the same," Lynn said. "It's not. You have to be more careful of any appearance of government sponsorship for religious activities."

Of Audrey Pearson, Lynn said, "That's probably a case where we're on the same side. Individual religious experiences in a public place do not necessarily violate the Constitution."