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85-127

High Court Hears Arguments
In 'Equal Access' Dispute

By Stan Haste

WASHINGTON (BP)--In what may be the most important religion-in-public-schools dispute since the Supreme Court banned state-prescribed prayer and Bible readings more than two decades ago, the nation's high tribunal heard arguments in a celebrated "equal access" case to determine if high school pupils have a constitutional right to use school property for religious meetings.

But while attorneys for both sides asked the high court to decide the case on its merits, several of the nine justices appeared more interested in determining whether they should have accepted the case for review at all. That line of questioning may indicate the possibility of an early decision to reject the dispute after all.

The case, *Bender v. Williamsport* (Pa.) Area School District, dates to 1981 and an unsuccessful effort by a student religious group to meet for prayer and Bible study during a designated, twice-weekly activities period for extra-curricular activities. Although the group, which called itself Petros, was initially given permission to meet, the school principal reversed himself after the group's first half-hour meeting.

Led by senior student Lisa Bender, Petros asked the school board to reverse the principal's decision, and when it refused, Bender and other students took both to court. After a trial in a federal district court, the students won.

But one member of the Williamsport school board, John C. Youngman Jr., appealed that decision to the Third Circuit Court of Appeals in Philadelphia, where a divided panel ruled 2-1 that to permit Petros to meet would violate the Constitution's ban on an establishment of religion.

In oral arguments at the Supreme Court Oct. 15, attorney James M. Smart Jr., of Kansas City, Mo., maintained the equal access dispute is fundamentally unlike earlier cases involving teacher-led, school-sponsored religious devotional exercises. The key question, he argued, is whether the establishment clause requires schools to "censor out" religious groups alone.

Smart argued further that high school students seeking equal access to school property for religious gatherings should receive the same free speech protection afforded college students on state university campuses. Four years ago, Smart was the lead attorney in a case pitting students at the University of Missouri--Kansas City against state educational officials whose written policy denied student religious groups permission to use campus facilities for meetings.

In deciding that dispute, *Widmar v. Vincent*, the court ruled 8-1 that college-age students possess the maturity needed to distinguish between simple permission to meet and state-sponsored religion. Arguing the Williamsport high school students should be seen in the same light, Smart called the cases "indistinguishable."

Supporting Smart's reasoning, the federal government's top lawyer, Charles Fried, warned the justices their decision in the Williamsport case may determine the fate of last year's Equal Access Act, in which Congress guaranteed student-initiated religious groups the same use of public school property enjoyed by non-religious groups.

The federal government's interest in the Williamsport case is direct and substantial," Fried declared, adding if the justices rule against the students, the Equal Access Act will be placed "under grave constitutional doubt."

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He said the case is different from other recent religion-in-schools disputes, including last term's Alabama silent prayer case, because in Williamsport the religious activity was "entirely student-initiated," involved no state "endorsement" of religion, and resulted in "incidental but permissible" state involvement.

Making the other side of the case was Youngman himself, an original defendant in his role as a former member of the school board.

Refuting Fried's arguments, he read from Williamsport school board policies that require the presence of "faculty advisers" in every student meeting conducted in classrooms. Those policies describe faculty advisers as participants in—not mere monitors of—student groups, Youngman maintained.

Such faculty assistance with groups such as Petros, he concluded, would amount to school sponsorship of religion.

Noting students at public high schools are present under state compulsory attendance laws, Youngman declared the case should turn "on the nature of the public school" itself.

Despite the substantive arguments made by all sides, much of the hour-long session was spent on the justices' keen interest in whether the case should be before them at all. Both Smart and Youngman were grilled at length about the question, with both arguing the case should be decided on its merits, not on jurisdictional questions.

If the justices decide to dispose of the case on such technical grounds, a decision may be forthcoming by the end of the year. That would likely postpone a final ruling on the constitutionality of equal access until a challenge to the federal law were accepted by the high court. Such a challenge is widely expected.

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Trustees Affirm Peace Committee,
Dedicate Building, Reelect Chairman By R.G. Puckett and Larry High

Baptist Press
10/17/85

WAKE FOREST, N.C. (BP)—Trustees of Southeastern Baptist Theological Seminary, meeting in regular October session in Wake Forest, N.C., affirmed the work of the Southern Baptist Convention Peace Committee, dedicated the Shaw House, reelected Charles Horton chairman and responded to a statement from the administration regarding a professor's Sunday school lesson on Job.

Trustees adopted a statement affirming the action of the June Southern Baptist Convention establishing a special Peace Committee. The statement said trustees also "welcome the invitation of the convention to the trustees to work with the Peace Committee to achieve reconciliation and to accomplish the purposes of the convention."

Trustees pledged to "cooperate within the formal guidelines of the Southern Baptist Convention and of Southeastern Baptist Theological Seminary as we seek to achieve resolution of the crisis through which the Southern Baptist Convention is now passing."

In response to some inquiries and public discussion in recent weeks concerning Sunday school lesson on Job written by Professor John I Durham, seminary President W. Randall Lolley presented a statement of explanation on the situation. The statement had been prepared in consultation with Dean J. Morris Ashcraft and Durham. All three signed the statement which was brought to the full board on Monday evening and placed on Tuesday afternoon's agenda for discussion and action.

"The administration acted with forthrightness and openness in bringing this matter to the full board," chairman Horton told the Biblical Recorder, newsjournal of North Carolina Baptists.

"It is an excellent statement, thorough in the subject matter, in order that the trustees might be fully informed," he added.

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Earlier this year some questions had been raised about Durham's treatment of evil and "the Satan" as the concepts appear in the book of Job. The Baptist Sunday School Board, which published the quarterly in which the material appeared, discussed the matter at an August meeting of its trustees. Some confusion developed as to whether the published material followed the manuscript which Durham submitted.

In an early statement, Lloyd Elder, president of the Sunday School Board, indicated there had been some editing problems because of a transition of editors in that area. He later said Durham's manuscript was not unlike the material that was published. Some Baptists had asked for a clarification, both from the Sunday School Board and Southeastern seminary, regarding Durham's views.

The statement presented by the administration to the trustees pointed out in its introduction that Durham had written five lessons on Job, dealing with a series of biblical texts in Job, under the overall theme, "God Is In Control."

Durham followed the requested guidelines by the Sunday School Board in preparation of the material, the four-page statement said, but did not respond further to the BSSB trustees or president.

"Evil throughout the Scriptures is very real and it is awful. It is personal and it is cosmic," the statement said. "The Bible speaks of human sin and evil in numerous ways. Satan is one of the ways."

After dealing with several biblical references, the statement asserts: "The biblical writers, however, speak of this power of darkness, personification of evil, devil or satan in the most serious terms but never as if God's control were in doubt."

The only change in the statement as it had been drafted by Lolley, Ashcraft and Durham came when Billy Cline, pastor of Merrimon Avenue Baptist Church in Nashville, N.C., requested that the words "and receive Jesus Christ as Lord" be added to a sentence near the end, to make that sentence read, "If we believe in God and receive Jesus Christ as Lord we shall know the victory over sin, death and the devil."

Trustees held a special service of dedication for the Shaw House on Tuesday, Oct. 15. Mr. and Mrs. Hugh Shaw of Knightdale, N.C., purchased a house adjacent to the seminary campus and gave the property to Southeastern seminary. The facility will be used as a residence for students. Trustees voted to name the structure in recognition of the Shaw's gift. The Shaws are charter members of Trinity Baptist Church in Raleigh, N.C.

O. Charles Horton, an Orlando, Fla., pastor, was reelected to a second term as president of the seminary's board of trustees. David French, pastor of a suburban Detroit, Mich., church, also was nominated for the post but lost to Horton.

Jesse Chapman, a physician and member of First Baptist Church, Ashville, N.C., was elected vice-chairman of the board. He defeated French who also was nominated for the office.

Charles Midkiff, pastor of First Baptist Church, Greenville, Ky., was elected secretary. W. Lee Beaver, a St. Louis layman and former chairman of the Southeastern board, was elected treasurer.

In other actions, trustees,

--granted tenure to Samuel Balentine, associate professor of Hebrew and Old Testament;

--acknowledged a \$6,000 endowment in honor of the late James Purtil Halliburton of Lumberton, N.C., to aid needy and worthy students;

--acknowledged a \$1,000 gift in honor of the late Carlton S. Prickett, pastor emeritus of First Baptist Church, Burlington, N.C., to aid needy and worthy students;

--adopted new matriculation fees and rent schedules; and

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--unveiled the official seminary portrait of President Randall Lolley.

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Non-Theist Challenges
Senate Chaplain Practices

By Kathy Palen

Baptist Press
10/17/85

WASHINGTON (BP)--A non-theist has challenged the constitutionality of practices related to the office of the U.S. Senate chaplain in two separate federal district court suits.

An attorney for Paul Kurtz argued the cases before Judge Louis F. Oberdorfer in the U.S. District Court for the District of Columbia Oct. 11.

In the first suit, Kurtz challenged the use of public funds for annual printing of the Senate chaplain's prayers in book form. The publication is printed by the Government Printing Office and contains the opening prayer from each Senate session as well as other prayers and comments of the Senate chaplain in his official role.

Kurtz's action does not challenge the prayers themselves but the use of public funds for the printing of those prayers, argued Ronald A. Lindsay. Some \$20,000 to \$30,000 is spent annually for the printing of the Senate prayer books, Lindsay said.

Lindsay argued the primary effect of the publication is to advance religion, which violates the Establishment Clause of the First Amendment.

A defense attorney, Sandra Schraibman, argued, however, the publication is secular in purpose since its main objective is to make the public aware of what is being said in a convenient manner. She also contended that since the book contains a collection of constitutionally delivered prayers and is not distributed to schoolchildren its primary effect is not establishment of religion.

In the second case, Lindsay argued for restricting the Senate chaplain from using language on the Senate floor disparaging non-theists' beliefs. He also asked the court to grant Kurtz the opportunity to address the Senate and House of Representatives.

Lindsay argued that because guest chaplains from across the United States are invited to open congressional sessions, his client should be given the same opportunity. Lindsay explained Kurtz proposed to open the sessions with an ethical statement rather than a prayer.

Arguing against Kurtz's request, Senate legal counsel Michael Davidson said there is no provision under congressional rules or history for an individual to demand to be heard. He added the invitation of guest chaplains has not changed the function to include anything other than an opening prayer.

Davidson argued the dictionary defines prayer as "evoking divine guidance," while the plaintiff wants to outline his philosophical view.

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Panel Votes To Retain
Non-Itemized Deduction

By Kathy Palen

Baptist Press
10/17/85

WASHINGTON (BP)--The House Ways and Means Committee has voted to retain, with limits, the charitable contribution deduction now allowed non-itemizing taxpayers.

The committee's action came in response to a provision in President Reagan's tax reform package that would remove deductibility for contributions made to charities by people who do not itemize their deductions.

Under the committee's agreement, non-itemizers would be able to deduct in full their contributions above \$100 a year. The committee's vote also would make this provision permanent law.

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Current tax law allows non-itemizers to deduct 50 percent of all charitable contributions made during 1985, with a 100 percent deduction on such contributions scheduled for tax year 1986. The present provision for non-itemizers is to expire at the end of 1986. The Reagan plan would repeal outright the 1986 deduction.

Rep. Harold E. Ford, D-Tenn., proposed an amendment in the committee to make permanent a deduction for all who contribute to charity. After several revisions, a version offered by Rep. Judd Gregg, R-N.H., was adopted.

Gregg's version would offset the loss in revenue caused by maintaining the deduction for non-itemizers with a reduction in the standard deduction earlier approved by the committee. Under Gregg's amendment, however, taxpayers using the standard deduction would still get a larger deduction than they do now.

"I agree with the need for tax reform and simplification, but we must be fair to all Americans," Ford said. "The President's proposal didn't treat all Americans fairly because it discriminated against non-itemizers. As we continue the process of tax reform, we must recognize that all tax deductions are not bad. Simply put, a tax deduction for a donation to a soup kitchen is not the same as a deduction for a three-martini lunch and should not be treated as such."

Baptist Joint Committee on Public Affairs Executive Director James M. Dunn hailed the Ways and Means Committee action but warned that the battle to save deductibility for non-itemizers has only begun. "Action on this item involves at least three more major steps in the congressional process, so those interested in the outcome should stay in touch with their members of Congress," Dunn explained.

He added: "The churches are not seeking privileged treatment or operating as one more special-interest group pursuing a tax advantage. Baptists would oppose vigorously such self-serving activity. Rather, for hundreds of years tax laws have distinguished between those segments of society which exist for a profit on one hand and all people-serving, non-profit charitable entities on the other. To honor charitable deductions for non-itemizers simply extends that time-honored distinction."

Last June, the Southern Baptist Convention adopted a resolution urging Congress to continue current policies permitting charitable contribution deductions for itemizers and non-itemizers alike. In similar action, the Baptist Joint Committee's executive committee recently adopted a resolution supporting the continued allowance of those deductions. Both resolutions emphasized the ill effects repealing the deduction for non-itemizers could have on all non-profit organizations.

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Brumley Moves
To Oklahoma Baptist

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10/17/85

SHAWNEE, Okla. (BP)--Larry D. Brumley, former public relations director at William Carey College in Hattiesburg, Miss., has become director of public relations at Oklahoma Baptist University.

Prior to joining William Carey in 1984, Brumley was newswriter for the Baptist General Convention of Texas and editorial assistant in the sports department at the Dallas Times Herald.

Brumley, 26, graduated from Baylor University in 1982 with a degree in journalism education. He is a member of Baptist Public Relations Association and a member representative of the Council for Advancement and Support of Education (CASE).

Brumley replaces Kathy Palen, who recently joined the Washington bureau of Baptist Press, news for the Southern Baptist Convention.

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