

NEXT MEETING
Thursday, January 14, 2010
in Washington
at the First Amendment Center
Washington, DC

Committee on Religious Liberty

of the National Council of the Churches of Christ in the U.S.A.

September 14, 2009

First Amendment Center, Washington, DC

Charles Haynes, Chair

N. J. L'Heureux, Jr., Moderator/Secretary

Attendance:

Barry Bussey (*Director of Legislative Affairs, General Conference of Seventh-day Adventists*)
Margaret Dodson (*Institute on Religion and Public Policy*)
Richard Foltin (*Director of National and Legislative Affairs, American Jewish Committee*)
James Gibson (*Staff Counsel, Baptist Joint Committee for Religious Liberty*)
C. Laurie Griffith (*Manager, Judicial Process & Social Witness, Presbyterian Church in the USA*)
Dr. Charles Haynes (*Senior Scholar, Freedom Forum First Amendment Center*)
Rev. N. J. L'Heureux Jr. (*Executive Director, Queens Federation of Churches*)
Daniel Mach (*Director of Litigation, ACLU Program on Freedom of Religion & Belief*)
Todd McFarland (*Associate General Counsel, General Conference of Seventh-day Adventists*)
Wesley M. Pattillo (*Sr. Program Director for Justice and Advocacy, National Council of the Churches of Christ in USA*)
Sarah Price (*Director of Research and Policy, Institute on Religion and Public Policy*)
Melissa Rogers (*Visiting Professor, Religious & Public Policy, Wake Forest University Divinity School*)
Dr. Sayyid M. Syeed (*Natl Director, Ofc for Interfaith & Comm Alliances, Islamic Society of North America*)
Sharon Worthing Vaino Esq. (*Attorney*)
Rev. Eliezer Valentin-Castanon (*Associate General Secretary, UMC General Commission on Religion and Race*)
Eric W. Treene (*Special Counsel for Religious Discrimination, U.S. Department of Justice, Civil Rights Division*)

Regrets:

Prof. Angela Carmella (*Professor of Law, Seton Hall University School of Law*)
Dr. Derek H. Davis (*University of Mary Hardin-Baylor Station Box 8374*)
Joseph Grieboski (*President, Institute on Religion and Public Policy*)
Rev. Dean H. Lewis
Jeffrey Hunter Moon (*Solicitor, United States Conference of Catholic Bishops*)
Anthony R. Picarello Jr., Esq. (*General Counsel, U.S. Conference of Catholic Bishops*)

1. The meeting was called to order at 10:50 a.m. by Charles Haynes in the Newseum Private Dining Room at the Freedom Forum First Amendment Center.
2. Melissa Rogers reported on the progress on the *Joint Statement on Religious Expression in American Public Life* which has been underway for the past two years with contributions from several members of the Committee. She expects completion and release by the end of the year.

The statement is in the tradition of earlier consensus statements, such as the one on public education, which attempted to state clearly the current state of the law, rather than be a statement of advocacy as to what the law ought to be. It looks at religion in politics, in the public square, in the workplace, public holiday displays, and more. It is written in a Q&A format, aimed at the general, non-legal reader.

A final draft will be distributed, probably by the end of October, to members of the Committee who will be given an opportunity to become signatories, either individually or organizationally. The statement will be released officially by the Wake Forest Divinity School Center for Religious and Public Affairs. The nature of the announcement event(s) is under consideration.

Pat Pattillo mentioned that CBS-TV could be interested in doing a program on this Statement when it is

released; he will initiate the matter through the Interfaith Commission which advised CBS.

3. Sarah Price of the Institute on Religious and Public Policy reported on international issues. In Europe, there are continuing legislative initiatives aimed at Muslims, begun with the French banning of hijabs in schools. In the Middle East, seven leaders of Mirans were convicted and sentenced. In India, Hindu and Christian have continued to battle, often leaving Christians afraid to return to their homes. In North Korea, there is a great deal of religious repression. In China, there is still a campaign directed against house churches; it's a matter of government control over all aspects of life. There are continuing disputes in Vietnam over ownership of Catholic Church property. In Burma, the military regime also seeks to exert absolute control over everything. In Latin America, the disputes are primarily inter-group rather than with government.

Charles Haynes recommended that members review the recent annual report of the U.S. Commission on International Religious Freedom. He said that he had heard some discontent with the Commission voiced by some, favoring other means to achieve the goal of promoting more robust religious freedom. Funding for the Commission is up for renewal in 2011. We pursued a discussion of the history and value of the Commission. Some have suggested that it may have overreached in dealing with issues of discrimination as against persecution. This is an issue we may wish to look at more in a future meeting.

4. Melissa Rogers is a member of the new Advisory Council on Faith-Based and Neighborhood Partnerships; each of its 25 members has a one-year term. Under the Bush Administration, the former Office of Faith-Based and Community Initiatives was focused on social services. The revised Advisory Council continues to look at providing assistance or people in need, reforming religious partnerships (with a view to strengthening Constitutional considerations, improving non-legal relationship, improving inter-governmental operations) global development, interfaith dialogue to reduce conflict worldwide, environmental issue, responsible fatherhood. For each area there is a separate task force which may include persons who are not members of the Council itself. Each task force is to recommend ways to improve the overall working in this subject area. A separate dialogue has been created in the Administration, involving some members of the Council among others, on reducing the need for abortion which is, therefore, outside the purview of the Council. Religious employment issues surrounding government funded positions are also lodged outside of the Council, in the Department of Justice and White House Counsel.

In October, there will be public meeting of the Advisory Council to discuss the draft recommendations, inviting comments. In February, after comments, the Council will make final recommendations to the President.

Barry Bussey noted that the Obama Administration may be described as being in search of common ground. He asked what it would mean when there are those who refuse to come to consensus: Will it be a "common ground" consensus that one ought to be pressured to change religious beliefs, as in the French dealing with the Muslim hijab? Richard Foltin noted the loss of Free Exercise protections under the First Amendment as a result of the 1990 *Smith* decision. Eric Treene stated that some of the Free Exercise issues can be addressed by DOJ on equal protection, funding, or other statutory and regulatory bases.

5. During lunch, we viewed the 9½-minute video, *The Story of Human Rights*, produced by HumanRights.com and found it to be both interesting and provocative as a discussion starter. Skip L'Heureux indicated that, on the same DVD, there are 30 public service announcements, aimed at youth, each setting one of the 30 articles of the Universal Declaration of Human Rights in context.
6. Skip L'Heureux announced, on behalf of Angela Carmella, a conference at Seton Hall Law School, on November 12-13, 2009, on the topic: "Religious Legal Theory: The State of the Field." Conference brochures were distributed.
7. Eliezer Valentin-Castanon asked whether these is an exemption for religious workers who are out of immigration status. The United Methodist Board of Church and Society is seeking to provide guidance to the Bishops. Todd McFarland noted that the Seventh-day Adventists have taken the view that churches must comply with the immigration law. He noted that the religious workers provisions of the immigration laws have too often been used fraudulently. Richard Foltin indicated that it would be "heavy lifting" to assert an across-the-board exemption. Eliezer stated that there have been several United Methodist pastors removed from their parish and the country by ICE. R-Visas exist to bring in religious workers – but where one is

presently here on an undocumented basis, that person, under the law, is required to leave the country and is barred for 10 years from applying for any type of visa. The suggestion was made that he confer with the U.S. Catholic Conference.

8. Sharon Vaino reported that progress is being made on creating a Table of Authorities for the Dean Kelley's *Law of Church and State in America*. It will become available on a volume-by-volume basis. Pat Patillo has the NCC's website staff working on making the online publication more easily able to be located through its website. Skip L'Heureux suggested that the NCC create a section on Religious Liberty with a variety of links.
9. Richard Foltin reported that we still "earnestly and actively" want to see the Workplace Religious Freedom Act be enacted into law. However, there has not been any substantive advance in recent months. Oregon has passed a version of WRFA. It and a few other states have laws prohibiting religious garb/symbols being worn by teachers in the classroom. There is no interest in amending that older law.

The Real ID law affecting state drivers licenses has raised issues with respect to requirement of an uncovered head in photographs.

Eric Treene noted that a Hate Crimes Law is being debated in the Senate. Presently it is an actionable crime under federal law only if there is a crime with racial, ethnic, religious, gender animus which also interferes with such a protected activity. The Senate bill would eliminate that additional element of interference.

10. Todd McFarland reported on an SDA lawsuit in Michigan to challenge a Department of Corrections policy to punish Sabbath observers for not accepting work assignments on the Sabbath. There is also an action on the related to the department's failure to allow for a religious diet for SDAs while meeting Kosher and other religious dietary requirements.. These actions have been brought in conjunction with ACLU/Michigan.

Dan Mach reported that ACLU has brought an action in defending the right of a prisoner, a pentecostal minister, to preach in prison.

Eric Treene reported that the cases of the Shabbos House in Suffran, NY, and an Hassidic boarding school in Armonk, NY, are still pending. There are also various cases involving zoning discrimination, notably a 9th Circuit case from Yuma County, AZ, where a church wanted to located in a "entertainment" zone and was denied a permit because of a state law prohibiting the serving alcohol within a distance of the church. This issue was raised and settled in the 7th Circuit. The DOJ is in the 10th Circuit defending the Constitutionality of RLUIPA in a case where a church was denied a zoning permit. RLUIPA has been held Constitutional in all cases where challenged except one in the 9th Circuit which was reversed on re-hearing.

11. Skip L'Heureux presented the matter of the West Park Presbyterian Church in New York City. The congregation has been considering a redevelopment of its property for the past few years and had an agreement with a developer to replace its "church house" with an apartment tower containing 3 floors of church space. The developer would also do a \$25-million restoration of the church building itself which is at the corner of Amsterdam Avenue and West 86th Street on the Upper West Side of Manhattan. In February, the NYC Landmarks Preservation Commission announced it would conduct a public hearing, held in July, moving toward the designation of the property as an alleged historic landmark. In 1990, the Commission willingly excluded the church from its Central Park West Historic District.

A demolition permit was issued over two years ago but was rescinded by the Department of Buildings at the behest of the local Assemblywoman who alleged the church has failed to comply with internal church requirements for applying for demolition. Notwithstanding the church's providing within 48 hours documentation of all required approvals, the Department never reinstated the permit. Ultimately the developer withdrew two weeks after the Landmarks Commission scheduled its hearing. The matter is pending decision by the Commission. The congregation and the local Presbytery appear willing to litigate when that become practicable.

12. Dan Mach reported that U.S. Supreme Court arguments will be heard October 7 in Mohave Desert Cross case brought by the ACLU. The cases of the highway crosses as trooper memorials in Utah and the Mt. Soladad cross in San Diego are pending in their respective Circuits.
13. An item identified for a future agenda is the future of the U.S. Commission on International Religious

Freedom.

14. Considering the difficulty of Monday dates around the holidays, it was agreed to try a day other than Monday and we elected to meet next on Thursday, January 14, 2010.
15. A question was raised about the present availability of a listserv for Committee use. Pat Patillo and Skip L'Heureux will find if the one established a few years ago at the NCC is still there and, if not, cause one to be created.
16. The meeting adjourned early at 1:45 p.m. with expressions of appreciation to Charles Haynes and the Freedom Forum for their always extraordinary hospitality and an invitation from Charles to take the opportunity to tour the Newseum.

Respectfully submitted,
Rev. N. J. L'Heureux, Jr., Secretary