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Filing ID 71943911
Case Number 354,2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

In re Covid-Related Restrictions on Religious Services	:	**No. 354, 2023**
	:	
	:	Courts Below:
	:	The Superior Court of the State of Delaware, C.A.No. N23C-01-123-MAA; and The Chancery Court of the State of Delaware, C.A.No. 21-1036-JTL

APPELLANTS' REPLY APPENDIX
(AR1-AR98)

STEPHEN J. NEUBERGER, ESQ. (#4440)
THOMAS S. NEUBERGER, ESQ. (#243)
THE NEUBERGER FIRM, P.A.
17 Harlech Drive, P.O. Box 4481
Wilmington, DE 19807
(302) 655-0582
SJN@NeubergerLaw.com
TSN@NeubergerLaw.com

THOMAS C. CRUMPLAR, ESQ. (#942)
JACOBS & CRUMPLAR, P.A.
750 Shipyard Drive
Wilmington, DE 19801
(302) 656-5445
Tom@JCDELaw.com

Dated: February 6, 2024

Attorneys for Appellants Pastor Alan Hines and Reverend David W. Landow

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EVENING JOURNAL

WILMINGTON, DELAWARE / SATURDAY, SEPTEMBER 29, 1973 / VOLUME 41, NUMBER 220 / FIFTEEN CENTS

Millions for Nixon . . . But Please Don't Tell

From Far And Wide

From Around Here

By RALPH S. MOYED

A President besieged
By money

Heavies a Fund-Watcher

Agnew Recruits Democratic Helper

U.S. Judge Won't Halt Agnew Jury

By United Press International

Martha Henderson died today at 5th and French Sts.

Milford Woman Killed Near Frederica

Teen Dies in City Taxi Crash

Catholics To Hold U.D. Mass

Win Chanowes Case, Test It Tomorrow

September Farm Prices Down 8 Pct.

Senate Restores Pay Hikes

Block Nixon On Federal Raises

City Guards Lawns

Garden Ban Sure To Raise Rhubarb

Today's Chuckle

Football Results

IN TODAY'S JOURNAL

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WEATHER

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The News Journal (Wilmington, Delaware) · Sat, Sep 29, 1973 · Page 1
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Catholics To Hold U.D. Mass

Win Chancery Case, Test it Tomorrow

Catholic priests probably will be able to conduct masses on the University of Delaware campus free from university interference.

The university yesterday lost the first round of a legal battle to prohibit the masses after Vice Chancellor William Marvel refused to issue a temporary restraining order.

Following the decision, a university spokesman said it is "safe to assume, as far as I know," that no action will be taken tomorrow if services are held on the campus.

Harry L. Connor, the university's director of information, said the university will review its position and decide on a course of action next week.

In denying the restraining order, Marvel said the rights involved in the case weighed in favor of the priests and that the university failed to show that it would eventually win the suit to block permanently the religious services on the

See RELIGION—Page 3, Col. 2

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Rape-Heist Suspect Ruled Guilty

Samuel Edwards Faces Life Sentence

Delaware Tax Men Face $600,000 Bill

It's Supposed To Be There

Don't Buy Competitor

U.S. Warns Remington

Wins National Award

Environment Unit To Fete Boggs

ALMANAC CORNER

Sen. Cook On Mend

2 Advertisers' Identities Sought

7 Feared Dead In Tenement Blaze

Fish Get Seasick

Religion on Campus Finds Two Rights in Conflict

Students Link Steak, Illness

The Weather Map

The Forecasts

Extended Outlook

Instrument Readings

Day's Record, Tides

Air Quality

Rain and Fog Spot the Nation

EVENING JOURNAL

Like White Clay Creek's

Group to Visit Sewage Plant

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Religion on Campus Finds Two Rights in Conflict

Continued From Page One

campus by the two priests, the Rev. Michael F. Szupper, chaplain at the Catholic Newman Apostolate, and the Rev. William F. Keegan, assistant chaplain.

Szupper held masses Sept. 9 and 16 in the Christiana Towers. Last Sunday, after the university closed the meeting room, he held a service in the dormitory driveway.

Arlen B. Mekler, lawyer for the two priests, said he would be in court Monday for an injunction if the university attempts to block the services again.

The attorneys are to meet Wednesday with university officials to try to work out an agreement.

The university's lawyer, John P. Sinclair, argued yesterday that, although the university was supported in part by public funds, it still was a private corporation and as such could adopt rules and regulations.

Its public aspects fall under the First Amendment which bars use of public facilities for religion, he said.

Mekler responded that the university claimed in its suit it was a land-grant state institution. If it is private, he said, it falls under the Fair Housing Act which bars discrimination.

The attorney general ruled in 1966 that church services could be held on public school property outside school hours if they were nondisruptive, Mekler said.

The masses were conducted at the request of residents of Christiana Towers, the nearest Catholic church being more than a mile away, and most of the students being without cars, he added.

Joseph B. Rosenthal, a Wilmington lawyer and vice president of the Delaware Chapter of the American Civil Liberties Union, and James P. Collins, representing the Most Rev. Thomas J. Mardaga, bishop of the Catholic Diocese of Wilmington, were permitted to join the court action as friends of the court. Both urged Marvel to deny the university's application.

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The Morning News

weather

Secret donors gave Nixon $22 million

Austria bows to Arab duo; hostages freed

Rollins one of biggest of Nixon's secret donors

U.S. OKs boost in gasoline price

Refunds may flow from tax foul-up

Court won't ban masses at U.D.

inside the news

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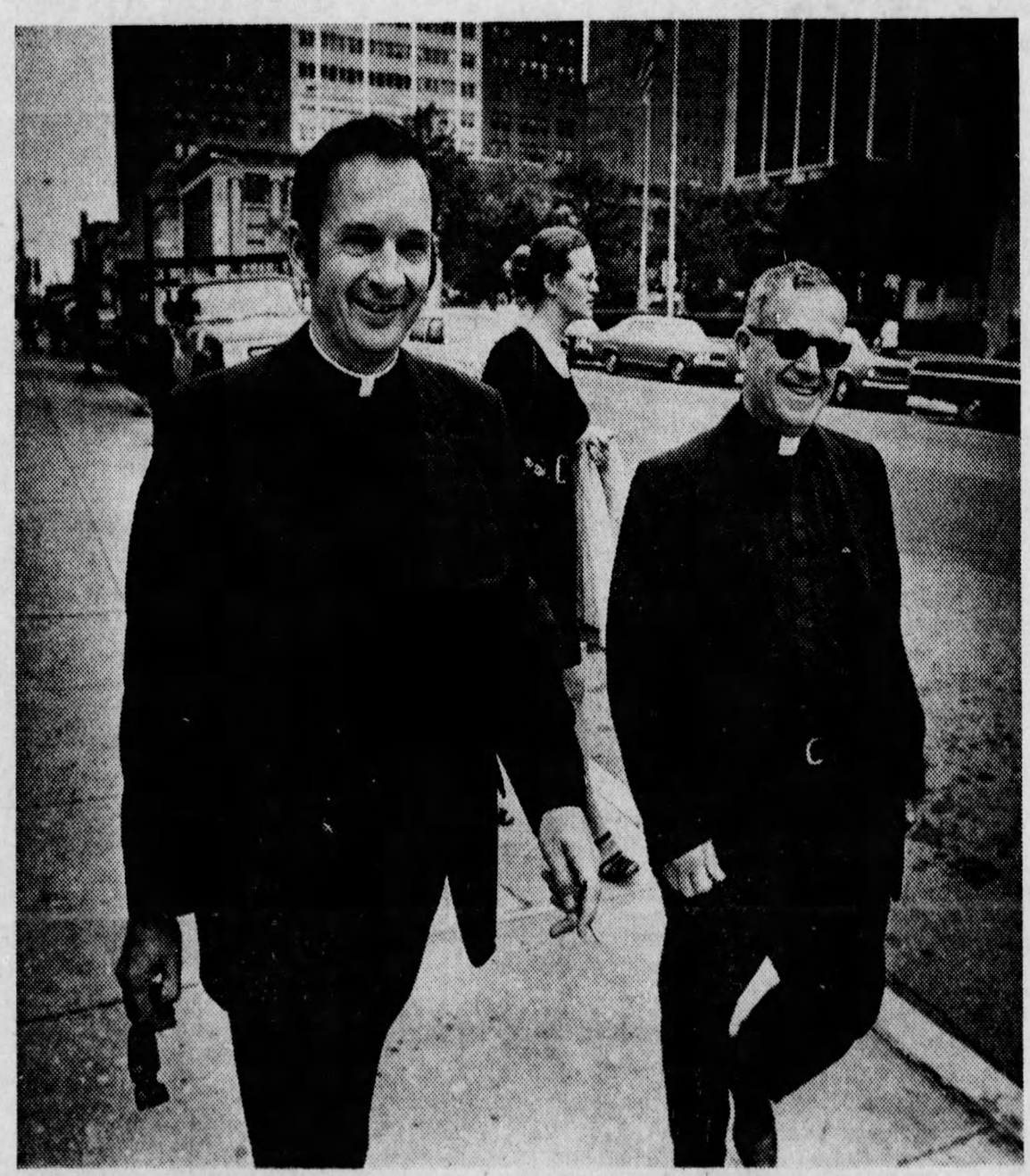

VICTORY SMILES—The Revs. Michael F. Szupper, left, and William F. Keegan leave the Public Building after Chancery Court refused to ban religious services on the campus of the University of Delaware. (Staff photo by J. Glenn Crawford)

Court won't ban masses at U.D.

By Tom Greer

The University of Delaware yesterday lost a bid for legal support of its ban on religious services.

Vice Chancellor William Marvel denied the university's request for a Chancery Court order temporarily barring the holding of Catholic masses on campus.

Marvel also denied the university's application to have two Catholic priests barred from the campus until they agree to abide by "applicable university policy."

His decision came at a hearing on the university's application for a preliminary injunction against the Revs. Michael F. Szupper and William F. Keegan. Szupper is chaplain and Keegan, assistant chaplain, at the Catholic Newman Apostolate.

Father Szupper held masses Sept. 9 and 16 in Christiana Commons, meeting rooms in the Christiana Towers dormitory.

After the university closed the facility last Sunday, Szupper conducted mass in the dormitory driveway.

In its suit, the university claims the services violated its charter and its policy against use of university facilities for religious purposes.

After listening to arguments by lawyers in the case, Marvel said the "equities weighed in favor of the defendants" and that the university had failed to show the required likelihood of ultimate success in their case.

His decision was greeted by scattered applause from about 30 students who packed the small courtroom. Father Szupper was greeted by a round of applause from the students when he emerged into the hallway.

Harry L. Connor, the university's director of information, said last night it would be "safe to assume, as far as I know," that no action will be taken tomorrow if services are held on campus.

He said officials "will continue to take the situation under advisement," and probably won't reach a decision on a course of action until at least next week.

Arlen B. Mekler, the defendants' lawyer, said he hoped the university would "honor the spirit" of Marvel's decision and permit Catholic services at Christiana Commons until a final court decision in the case.

If there is a university effort toward a "lockout" on Sunday, Mekler said, he would consider applying for an injunction against the university on Monday.

The attorneys are to meet Wednesday with university officials to try to work out an agreement.

The university's lawyer, John P. Sinclair, argued yesterday that, although the university was supported in part by public funds, it still was a private corporation and

See COURT—Page 2, Col. 7

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Agnew slams Justice Dept. news leaks

Los Angeles Times Service

WASHINGTON—Seeking court action to block a grand jury investigation of Vice President Agnew, tax lawyers claimed yesterday that he was shielded by the Constitution from prosecution and charged that the Justice Department has waged "an immoral and illegal" political campaign to drive him from office.

The opening arguments of the historic legal and political controversies were made in papers filed in federal court in Baltimore, where grand jury investigation of Agnew began Thursday.

U.S. District Court Judge Walter E. Hoffman set oral arguments for Oct. 12, but ruled that nationwide the grand jury probe would continue.

Defense fund starts for Agnew

New York Times Service

WASHINGTON—B. Clement Stone, the multimillionaire insurance executive, who gave $1 million to President Nixon's 1972 campaign, announced yesterday the formation of an "Agnew Defense Fund" to ensure the vice president "the best possible legal counsel to defend himself."

Stone, who announced the fund's formation by "a nonpartisan group of citizens," said that he was one of three trustees; the others are Sen. Barry M. Goldwater of Arizona, a Republican, and former Gov. Warren E. Hearnes of Missouri, a Democrat.

To one major question concerning whether or not the names of contributors would be made public, Stone was quoted as replying: "There is no reason why the names should not be disclosed and Mr. Agnew has made it clear that he will not accept any contributions offered on the condition that the contributor's name not be disclosed."

Panel may hear '72 candidates

WASHINGTON (UPI) — The Senate Watergate Committee disclosed yesterday it was considering calling 1972 presidential candidates to testify in public hearings on the committee's campaign tactics and financing.

An committee spokesman announced that "we're still going full steam ahead."

Committee sources said the initial list names of hearings will be split "about equally" between campaign tactics and financing.

Sources said the committee may call next year's Democratic presidential hopefuls for

correction

Call the public editor at 652-0000 if you have a comment about accuracy, fairness or adequacy of news coverage. He can be reached between 8 a.m. and 5 p.m., Monday through Friday.

Downstate readers may avoid a toll call by phoning the News-Journal offices in Dover or Georgetown, leaving a message, name and telephone number. The answers to will appear at the bottom of page 2.

A train with more than 30 Soviet Jews en route to Israel was almost two hours late yesterday when two Arab terrorists commandeered it and took four hostages to the Vienna airport. The immigrants are seen after leaving the train. (AP Wirephoto)

Hostages—

Bomb batters ITT building in New York

NEW YORK (—A bomb blasted out windows, injured fourteen and wrecked part of the 26-floor International Telephone & Telegraph Corp.'s Latin American division.

No one was injured in the explosion in about 5:40 a.m., but a lobby security guard who there overtook the man said: "You got the vibration all the way down here."

An anonymous caller to the New York Post said the "Puerto Rican underground" was responsible. A revolutionary offshoot of Students for a Democratic Society, the Weathermen has been dormant since a series of explosions three years ago. Police said a still still exists here.

An ITT spokesman said there was no evidence linking the blast to yesterday's explosion of a small bomb outside the office of ITT Standard S.A. in Rome. The Rome unit is the Italian subsidiary of the multinational conglomerate, which posted $4.866 billion in gross revenues last year.

Another official declined to comment on any possible connection between the explosions and events in Chile.

The explosion came 24 hours after the death in military coup of Marxist President Salvador Allende in Chile. His government has taken over operation of ITT's Chilean subsidiary, Chile Telephone Co.

The Manhattan explosion hit the 41-story skyscraper, situated at Eighth Avenue and St. Patrick's Cathedral, on Madison Avenue at 48th Street. It caused a block from the Park Avenue world headquarters building of ITT.

Police rushed to the Park Avenue skyscraper shortly after receiving a telephone warning at 5:15 a.m. that ITT would be bombed.

They learned they were in the wrong building when a bomb exploded in a reception

Rollins—

Here's who gave Nixon $50,000 up

Hovercraft in New York

The British-built hovercraft SR-7 rushes past lower Manhattan during a demonstration run. The 75-foot hovercraft can accommodate 70 commuters and attain speeds of 70 knots. It is a smaller version of those that regularly cross the English Channel. (AP Wirephoto)

Refunds—

Senate blocks Nixon delay of federal pay hike

Court—

Poet to give reading

Lebanon and Egypt were involved.

Philadelphia wage tax dollar for dollar from the amount of state income taxes owed.

Refunds from the Internal Revenue Service on Delaware's tax return for 1972.

Court in Carlough vs. Lee Archer.

Carlough, who now works at the Du Pont C. Experimental Plant in Delaware, said he thought it was outrageous that the state could hold his money for 16 months and not be willing to pay him interest.

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Court–

Continued from Page One

as such could adopt rules and regulations.

Its public aspects fall under the First Amendment which bars use of public facilities for religion, he said.

Mekler responded that the university claimed in its suit it was a land-grant state institution. If it is private, he said, it falls under the Fair Housing Act which bars discrimination.

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The masses were conducted at the request of residents of Chriatiana Towers, the nearest Catholic church being more than a mile away, and most of the students being without cars, he added.

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Poet to give reading

Poet William Matthews will give a public reading Tuesday

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The Morning News, Tuesday, October 2, 1973 ■ Page 9

New court action vowed over Masses

Offshore rigs' impact ashore is issue now

WASHINGTON (AP) — Environmental groups today were very concerned about the adverse impact of proposed oil development of the Atlantic Coast, then about the size of oil spills, a top Administration adviser said yesterday.

John Busterud, a member of the President's Council on Environmental Quality, gave that assessment when asked for his impression of the first two rounds of quiet hearings on the offshore oil issue.

The council's hearings in Norfolk, Va., following sessions last month in Wrightsville, N.C., Boston and Hartford, Conn., ...

Ban continued on pirate radio

CAMDEN, N.J. (AP) — A federal ban on the Rev. Carl McIntire's pirate radio broadcasts from his ship off the New Jersey coast has been continued.

Judge Mitchell H. Cohen continued the ban he issued on Sept. 21, after McIntire's attorneys asked he meet him to present their plea for a delay of the hot.

A hearing had been scheduled for yesterday, but Cohen set another hearing for Oct. 11.

The Federal Communications Commission had asked the court to bar the broadcasts.

The FCC claims that the broadcasts, aired only one day last month, violate a federal law.

State's burden eased in probe by U.S. panel

...

lottery

N.J. Monmouth winner:

86629

Daniel Ellsberg addresses a crowd at Delaware Fieldhouse on the University of Delaware campus. (Staff photo by Ben Dubick)

Ellsberg likens his role to plight of Solzhenitsyn

By Robert Ballerini

...

Halt degrees, law school petition asks

By Larry Nannigian

...

1 of 9 Pa. prison escapees caught

...

Youth, 19, arrested on heroin charge

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betty burroughs

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New court action vowed over Masses

The lawyer for two Catholic priests yesterday said he will seek court help if the University of Delaware continues its opposition to his clients' religious services on university property.

Arlen B. Mekler, the lawyer, said he will ask for a court injunction this week if the university doesn't "refrain from prohibiting students from enjoying their First Amendment rights to the free exercise of religion."

Mekler, who is to meet with university officials tomorrow, revised an earlier statement that he would ask for an injunction today or tomorrow.

He said he hopes the university will reconsider its position and leave the defendants along until the question can be resolved by the Court of Chancery.

Mekler represents the Rev. Michael F. Szupper and his assistant, the Rev. William F. Keegan.

The controversy is over the holding of Catholic Masses at the Christiana Towers Dormitories. The university claims its policy and charter do not permit religious services on campus.

On Sunday, the commons room of the dormitory was again locked, as it had been the previous Sunday, and Szupper held Mass under a tree on the campus.

The university has filed a Court of Chancery suit against the two clergymen for preliminary and permanent injunctions against the worship services and to bar the ministers from the campus until they agree to abide by the ban against religious services.

After a hearing Friday, Vice Chancellor William Marvel denied the university's request for a preliminary injunction and told the lawyers involved to set up a briefing schedule for his approval.

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EVENING JOURNAL

WILMINGTON, DELAWARE / THURSDAY, OCTOBER 4, 1973 / VOLUME 41, NUMBER 234 / FIFTEEN CENTS

Road Probe Shrouded in Silence, New Site

Food Price Off 6 Pct. in Month

Fog, death and a crushed bike carriage

Chancery Gives Priests Go-ahead

Developer At Probe in Baltimore

Agnew Empowered To Hunt for Leaks

NAACP to Tribbitt: 'We'll Keep $50'

Deficit To Rise: Tribbitt

$15.4 Billion Is New Forecast

Bostonians Apathetic to Torch Death

2 Women Killed in Collision

Station Wagon Hit Truck Near Odessa

By Human Relations Unit

YMCA Ordered to Go Coed

Rise in State Revenues Forecast

Chamber Halts Sales Tax Campaign

IN TODAY'S JOURNAL

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Chancery Gives Priests Go-ahead

Vice Chancellor William Marvel today temporarily restrained the University of Delaware from barring the Rev. William F. Keegan and the Rev. Michael Szupper from conducting Mass in the Common Room of Christiana Towers on Sundays between 10:30 and noon.

The University has brought suit against the priests to bar the religious services on campus.

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Delaware Dysentery In Spotlight

U.S. Health Officer Interviewing Here

More Pickets at Chrysler

For Free Exercise of Religion

Clergymen Go to Bat For Priests in U.D. Tiff

Opposes Skyline Extension

Pike Creek Wars On Traffic Threats

Wind, Rain Rake Central Mo.

ALMANAC CORNER

The Forecasts

Instrumental Readings

Day's Record, Tides

Extended Outlook

EVENING JOURNAL

Air Quality

Hopes Rise In Canada Pulp Strike

Port Rules Debated

Beware Big Oil Monopoly: Biden

MORE BILLS THAN MONEY?

Solve the balance problem with a fast, convenient loan from Colonial National Bank, designed with your financial problems in mind.

Ask about our low-rate Auto loans.

NO SERVICE CHARGE CHECKING ACCOUNTS
WITH A MINIMUM $100 BALANCE

COLONIAL NATIONAL BANK

CENTER CITY OFFICE
9th & Orange Sts.

MAIN OFFICE
6th & Lincoln Sts.

BRANCH OFFICE
101 Maryland Ave.

Delaware Flower Show

"Delaware: Its Art and History"

OCTOBER 5, 6, 7, 1973 — JOHN M. CLAYTON HALL
University of Delaware North Campus

FRIDAY, OCT. 5 — 2:30 p.m. to 10:00 p.m.
SATURDAY, OCT. 6 — 9:00 a.m. to 10:00 p.m.
Sunday, OCT. 7 — 9:00 a.m. to 5:00 p.m.

Admission — $1.00
Children Free

Junior Show Classes and Exhibits Puppet Show — 2 a.m. & 4 p.m.
Collection of Art by Local Artists

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For 'Free Exercise of Religion'

Clergymen Go to Bat For Priests in U.D. Tiff

Major Christian leaders of the Delmarva Peninsula have written the University of Delaware trustees, asking them to allow "free exercise of religion" on campus.

The letter to Samuel Lenher, chairman of the board of trustees, said, "The university needs to maintain its universal character by permitting all legal and moral avenues of human experience, including . . . religion."

Lenher could not be reached for comment.

At issue is the university's attempt to prevent two Catholic priests from offering Mass on the North Campus, either in common rooms of the Christiana Towers or on its lawns.

The Rev. Michael F. Szupper and William F. Keegan of the Newman community, an off-campus Catholic group, have taken the services to the students there, more than a mile from the Newman Center.

The university has taken the priests to court over the issue, and Arlen B. Mekler, the priests' lawyer, has asked Court of Chancery to prevent the university from barring the religious services.

The religious leaders wrote, "We do not believe that allowing the celebration of the Eucharist (Holy Communion) will lead to the establishment of a favorite party, sect or denomination" as forbidden in the university charter.

The letter to Lehner was signed by the Rt. Rev. William H. Mead, bishop of the Episcopal Diocese of Delaware; the Most Rev. Thomas J. Mardaga, bishop of the Catholic Diocese of Wilmington; Bishop Ernest Hickman of the First District, African Methodist Episcopal Church; the Rev. Robert B. Moore, executive presbyter of New Castle Presbytery, United Presbyterian Church, U.S.A.; the Rev. Wayne Cuff, Wilmington district superintendent of the Peninsula Conference United Methodist Church the Rev. James C. Clifford, The Christian Church (Disciples of Christ); and the Rev. Paul Orso, president of the Maryland Synod, and the Rev. Raymond Best, dean of Delaware District Lutherans, both of the Lutheran Church in America.

—

13th day of autumn — Thursday, October 4, 1973 — 275th day of year

ALMANAC CORNER

The Forecasts

WILMINGTON and VICINITY — Increasing cloudiness tonight, lows in the low 60s. Friday mostly cloudy, not as warm, chance of showers, highs in the middle 70s. Probability of precipitation 20 tonight, 40 per cent Friday.

KENT AND SUSSEX COUNTIES, EASTERN SHORE — Mostly cloudy tonight and Friday with chance of showers Considerable cloudiness Friday with chance of a few showers or thundershowers. Highs in the mid to upper 70s. Precipitation probability 20 per cent tonight 40 per cent Friday.

SOUTHEASTERN PENNSYLVANIA — Increasing cloudiness tonight,. Lows 60 to 65. Considerable cloudiness Friday with chance of a few showers or thundershowers. Highs in the low to mid 70s.

Instrument Readings

Yesterday at 7 p.m.: Temperature, 72; humidity, 76; wind, WSW 6; barometer, 30.02 steady.

Midnight: Temperature, 67; humidity, 90; wind, calm; barometer, 30.01 falling.

Today at 7 a.m.: Temperature, 63; humidity, 93; wind, NW 5; barometer, 30.06 rising.

Today at noon: Temperature, 78; humidity, 67; wind, NW 7; barometer, 30.05 steady.

Record temperatures for date since 1894: High, 89 in 1919; low, 30 in 1945.

Day's Record, Tides

Precipitation yesterday	None
Month to date	.70 in.
Normal for month	2.91 in.
Normal to date	35.42 in.
Year's surplus	2.13 in.
Year to date	37.55 in.

Wind, Rain Rake

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The Morning News (Wilmington, Delaware) · Thu, Oct 4, 1973 · Page 13

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this morning

The Morning News, Thursday, October 4, 1973 • Page 13

Oil firms 'ripping off public,' Biden says

By John Schneider
Washington Bureau

WASHINGTON — Sen. Joseph R. Biden Jr., D-Del., yesterday charged that oil companies are, in effect, "ripping off the American public" with their efforts to build deepwater ports.

"I'm not saying there's any collusion among the companies. I'm not saying they're intentionally ripping off the American public, but that's what's happening," Biden said at a special Senate committee meeting investigating the ports.

Biden stressed that he does not believe the oil companies ...

NAACP bans Tribbitt but not donation

By William P. Frank

Gov. Sherman W. Tribbitt yesterday said he didn't interpret a letter from the Wilmington NAACP last week as cancellation of an invitation for him to attend the annual dinner meeting until he read about the cancellation in the News-Journal papers.

Tribbitt stated the letter to him, signed by James H. Gilliam Jr., chairman of the Wilmington NAACP, did not actually discuss him.

"I viewed the letter rather as an expression of publicity." The governor said. "None of the discussion became clear only when I finally found time to read the Evening Journal story last Tuesday."

In his letter to the governor, dated last Thursday, Gilliam stated: "Since we have received no reply to our invitation of July 26, we are proceeding on the assumption that you will not attend. The annual dinner program committee, because of the need to ...

Finishing touch

The last section, weighing 10 tons, of the Delaware Division parking garage is eased into place. When completed, the garage and adjacent parking spaces will hold 1,000 cars. (Staff photo by Ford Cannaga)

Churchmen join fight over Masses

By Eileen C. Spruker

Delaware religious leaders yesterday appealed to the University of Delaware to allow the "free exercise of religion" on the campus.

The appeal was made in a letter to the university trustees from Delaware leaders of the papacy announcements in the Delaware Freemasonry Agency.

"The university needs to maintain its historical character by permitting all religious and moral services of various conviction, including the free expression of religion by groups within the university community," the letter said.

The letter also stated that its signers "do not believe that allowing the celebration of the Eucharist will lead to the establishment of a religious party, sect or denomination."

The letter bore the names of eight religious leaders. It was sent to Russell Trosley, chairman of the board of trustees. Trosley could not be reached yesterday, but Emery Cooney, director of public relations for the university, said such a letter had not been ...

You have it in size 12?

A horse is strapped into his racing garb for the sulky event at Harrington Raceway yesterday. (Staff photo by John Flanagan)

lottery

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438856

Nobody knows, or'll tell, why highway dept. is being probed

By Scott Lockman

Shortly before 11 a.m. yesterday, representatives from three state agencies entered the lobby of Division of Highways records in Room 224 in the Federal Building on Rodney Square in Wilmington.

Moments later a reporter for radio station WILM tried to ask U.S. Atty. Rudge F. Kent about the mysterious grand jury investigation he wasn't the records are to be used, and found himself here to face with a federal marshal ordering him to leave the area.

Kent had ordered the records four secretaries leading to Room 224 cleared for security purposes as the grand jury began sifting through the documents.

Kent said the problem is that the grand jury can join the old Federal Building in the same charged, that proceedings inside might be heard in the corridor.

"Considering the problems other grand juries have been having ... and because I feel that the integrity of the grand jury must be preserved ... I tell the witnesses I feel is necessary to preserve the secrecy of the grand jury," he said.

The secrecy surrounding exactly what it being made of as a federal case remains unsubstantiated, as it was when the marshal served subpoenas last week on the state Division of Highways, the state treasurer and the state auditor.

Even though the original blanket subpoenas—which ordered the three agencies to turn over every piece of paper pertaining to Division of Highways operations back to Jan. 1, 1969—were ordered down by a deal with the state Department of Justice to require only the most crucial documents to be delivered by yesterday, the wall of secrecy still shows no cracks.

The investigation of the Division of Highways records and the secrecy surrounding them have become one of the hottest topics in Delaware political, governmental and social circles.

There is hardly a lawyer or government official left from "dinner" in Claymont who hasn't been asked what the investigation is all about or at least, has or three reporters.

Those who talk don't know and those who know don't talk.

Ernest A. Gerlach, who was an official in the Division of Highways during the period covered by the subpoenas, must be the only present or former employee of the agency who has not been brought before a grand jury because he is in Spain. Mailed in East Berlin, building roads. If the secretary operation ever figure out how to get through to him, he'll get hauled in.

Former Gov. Russell W. Peterson, who now works for Gov. Nelson Rockefeller in New York City, has expressed some astonishment about the investigation. He said he isn't worried about it finding him with any wrongdoing, even though the period under scrutiny happens to begin at about the same time his administration took office. He's worried that the implications of the investigation will knock him out of the running for the job he wants: heading the President's Council on Environmental Quality.

Delaware Democratic leaders are cautious. No other public figure has been subpoenaed, although Democratic Sen. Jeffords-Jackson Carl Gilbert, finds his record fascinating. Attorneys to not ...

betty burroughs

HAILING, HAILING—The good words Dorothy has written about those kids ought to be enough, alas, the long year's over.

Time to put into home sort and go into drydock. That doesn't include letting the ink go dry on the thousands of special recordings of a continuing series already 2017.

But a Quick-Change-Artist reporter asked us to tell the whole history story and you can't turn off the records to record the happenings, no matter how trivial.

As most dear readers, you are to be commended for the help offered of a correspondent without access of pen. Lost words, banned debate, second class of war and mail with the ...

Finally sorted up for this series, the correspondence from Indian passengers — and from the Buffalo (N.Y.) Evening News and the other a Fort Myers (Fla.) Free Financial Daily Sentinel.

Obviously, the old time-travel characters are not to appear ... Dr. Hood, Vienna, Ala.; Jones, Dallas, Texas; Jones, Charlottesville; Prince Robert Jones, Gaspe, on Quebec's Gaspe Peninsula, in the city of Sparta, and the Sentinel's money trip from Indian Rock, Ark., part. B.J. Barnes made it still part of Southport.

Although there were some standard names in the collection of the Mother, Mamie, as the fifth day of January, there were genuine authors on the you of the dwelling in Fort York.

Let's put it this way: Penelope came to the end of the ...

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Churchmen join fight over Masses

By Eileen C. Spraker

Delmarva religious leaders yesterday appealed to the University of Delaware to allow the "free exercise of religion" on the campus.

The appeal was made in a letter to the university trustees from Delaware leaders of the major denominations in the Delmarva Ecumenical Agency.

"The university needs to maintain its universal character by permitting of all legal and moral avenues of human experience, including the free expression of religion by groups within the university community," the letter said.

The letter also stated that its signers "do not believe that allowing the celebration of the Eucharist will lead to the establishment of a favorite party, sect or denomination."

The letter bore the names of eight religious leaders. It was sent to Samuel Lenher, chairman of the board of trustees. Lenher could not be reached yesterday, but Harry Connor, director of public relations for the university, said such a letter had not come to his attention.

At issue is the dispute between two Catholic priests and the university over the offering of Mass on the North Campus, either in the common rooms or on the lawn of the Christiana Towers complex.

The university says the services are contrary to its charter, and the matter is now in litigation.

Arlen B. Meckler, lawyer for the two priests (the Revs. Michael F. Szupper and William F. Keegan), has applied to the Court of Chancery to prevent the university from barring the services.

Meckler met with university officials yesterday, but no change was reported in either position.

lottery

N.J. Wednesday winner

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The Morning News

weather

Vol. 184 • No. 80 Wilmington, Delaware, Friday, Oct. 5, 1973 15 cents, home delivery: 75 cents a week

'Thank God for Nixon,' Agnew tells GOP dinner

CHICAGO (UPI) — Vice President Spiro T. Agnew hyperbolized his own trouble last night and urged Americans to "Thank God we have a man who has faced some of the most unbelievable pressures that ever have confronted a man in the White House."

Agnew's speech at 1,200 Midwest Republicans at a $125-a-plate fundraising dinner made only passing reference to the grand jury investigation of charges that he took kickbacks when he was Baltimore [illegible], county executive and governor of Maryland.

Instead, he made an emotional appeal for the country to follow Nixon's way that Americans "give up their material fascination" with the Watergate scandal.

At the end of his speech, he [illegible] when [illegible] Nixon's qualities as a leader.

"It's been a privilege for me during the time of the Nixon Administration," he said. "We have a great President, we have a President who has basically been made in the crucible of [illegible] abilities he could not anticipate, attributes [illegible] which he could not prepare, difficulties which he will be able to handle with great help.

"Thank God we have a man who has faced some of the most unbelievable pressures that this land ever confronted, a man in the White House, and has found them, and who will lead us to even greater glory.

"I've been proud to serve with him."

In announcing he was not going to dwell on his own troubles, Agnew said ironically: "I prefer to just be long and answer or labor it turns out."

Agnew's Chicago speech was his first major public appearance since he told a meeting of Republican Women in Los Angeles Saturday that he would not resign his office even if he is indicted by a federal grand jury now hearing evidence in Maryland.

Agnew said the President cannot [illegible] everyone's help so that the "minor issues of today — for example, the energy problem, health, foreign policy and others — are not left dangling.

The vice president said that during the 1968 "storm of acrimonious, highly publicized arguments were launched, each opposing unanimous solutions, each dropping with racial and political epithets, and each devouring an incredible slice of our budget."

Al "the conclusions of the senate of the Great Society," Agnew said, "the past years

See AGNEW—Page 2, Col. 1

Vice President Agnew arriving last night at Chicago for a fund-raising dinner. (AP Wirephoto)

THE SAME POSS BUT DIFFERENT OUTDOORS—Sen. Sam Ervin, D-N.C., told Martin Douglas Kelly he wasn't amused by the dirty campaign tricks played by the GOP saboteur. (UPI Telephoto)

GOP saboteur tells of using naked girl to harass Muskie

WASHINGTON (UPI) — A paid political saboteur told the Senate Watergate Committee yesterday he hired a girl for $50 to trail Maine Sen. Edmund S. Muskie's campaign airliner assuming "a Lana Marshall" in an effort to disrupt the Democratic candidate. [illegible] travel aid by Republicans.

[illegible] Sen. Sam J. Ervin, D-N.C., said the witness, Martin Douglas Kelly, 28, of Miami, he was telling funny [illegible] stories because they "seriously destroyed" Muskie as a candidate for the Democratic presidential nomination in 1972.

Kelly said he and Donald H. Segretti, the Republican agent who allegedly hired Kelly's girl for $50 a week, to use discovery among Democrats, made plans to antagonize delegates to the Democratic National Convention in a manner intended to help the fortunes of George S. McGovern, perceived as the weakest possible rival to President Nixon.

"McGovern was the desirable nominee of the administration as far as we were concerned," Kelly said.

The plans to use "gay tricks" to influence convention delegates against McGovern's youth rules abandoned, however, because of the Democratic [illegible] and the [illegible]

See HEARING—Page 2, Col. 1

Nixon hiding, Dash tells court

Washington Post Service

WASHINGTON — The chief counsel of the Senate Watergate Committee accused President Nixon yesterday of hiding behind the doctrine of executive privilege in "a shield for self-protection."

Samuel Dash charged that the real issue in the battle over Nixon's secret Watergate tapes is the question of the President's own possible criminality. In those circumstances, he maintained, executive privilege cannot properly be invoked.

"We have no denial that the President's counsel had a prime facie case has been made of presidential involvement," in the Watergate cover-up, Dash emphasized in a hearing before U.S. District Judge John J. Sirica. "The President is still a citizen and as a citizen, he cannot take the law."

Nixon's chief counsel, lawyer Charles Alan Wright, [illegible] has refused to let the panel. But he argued earlier that Dash's contentions simply [illegible] White House position that the purpose of the Senate committee's court suit for the tapes is "criminal and legislative."

"That seems to me [illegible] traditional work of grand juries," Wright said. "A congressional committee has no power to [illegible] the tapes of someone."

Wright conceded that Nixon's refusal to give up the recordings is "a momentously important decision" that he said "is the duty of every president to resist unreasonable demands on his office."

The hearing came soon to U.S. Court of Appeals session convened to weekly privately with the question of whether was the Watergate grand jury is entitled to the recordings.

The appeals court is expected to hand down a decision in the case shortly. Meanwhile, the Senate committee's court suit, which is several times delayed on an filed by Watergate Prosecutor Archibald Cox

See TAPES—Page 2, Col. 4

Probe clears policeman in Dorjul killing

By Scott Jackson

[illegible] Kelly Jean A. DiOrio of Dept. [illegible] with various [illegible] of the Social Apartments in Limestone Pike.

[illegible] Kelly Jean A. DiOrio [illegible] with the

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The Morning News (Wilmington, Delaware) · Fri, Oct 5, 1973 · Page 1

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Court opens U.D. door Sunday to Catholic priests

By Tom Greer

The door will not be locked against them when two Catholic priests come to Christiana Towers Sunday to celebrate Mass for University of Delaware students.

Vice Chancellor William Marvel yesterday granted an order temporarily restraining the university from barring the Rev. Michael Szupper and the Rev. William F. Keegan from the dormitory commons room on Sundays between 10:30 a.m. and noon.

Marvel's order, following a hearing in the Court of Chancery, remains effective until further order of the court.

A university spokesman said later the university intends to abide by the temporary order and will not lock the facility during the court-designated hours.

A week ago the vice chancellor denied the university's application for a preliminary injunciton banning the priests from university property to conduct Mass.

The application was the first step in a suit by the university seeking a permanent injunction against the religious services, which it says violate its charter and established policy.

Again last Sunday, as it had been the two previous Sundays, the commons room was locked and Father Szupper conducted Mass outside under a tree.

On Wednesday, Arlen B. Mekler, the priests' lawyer, sought an injunction preventing further lockouts. A meeting between Mekler and university officials the same day failed to resolve the controversy.

Yesterday Mekler told Marvel the defendants would suffer irreparable harm if their injunction were not granted and that the public interest would be best served by the free exercise of religion. The university was interfering when it attempted to discourage the services, he said, and in so doing was violating the First Amendment.

James P. Collins, attorney for the Most Rev. Thomas J. Mardaga, bishop of the Catholic Diocese of Wilmington, supported the priests' application.

John P. Sinclair, the university's lawyer, said the university was not discriminating against the priests — that it treated all denominations equally.

"You may be discriminating against all religions," responded Marvel, which he said

See UNIVERSITY—P 2, C 3

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Blacks stone man to death 2 days after woman burned

Nixon off to relax

correction

Agnew–

University–

Fla. bugging operation cited

Hearing–

Jury again indicts Md. official who succeeded Agnew

Tapes–

Shooting–

Grand Opening This Weekend

TOWNHOUSE LIVING IN THE COUNTRY

brookmont farms

Route 40 north of Glasgow

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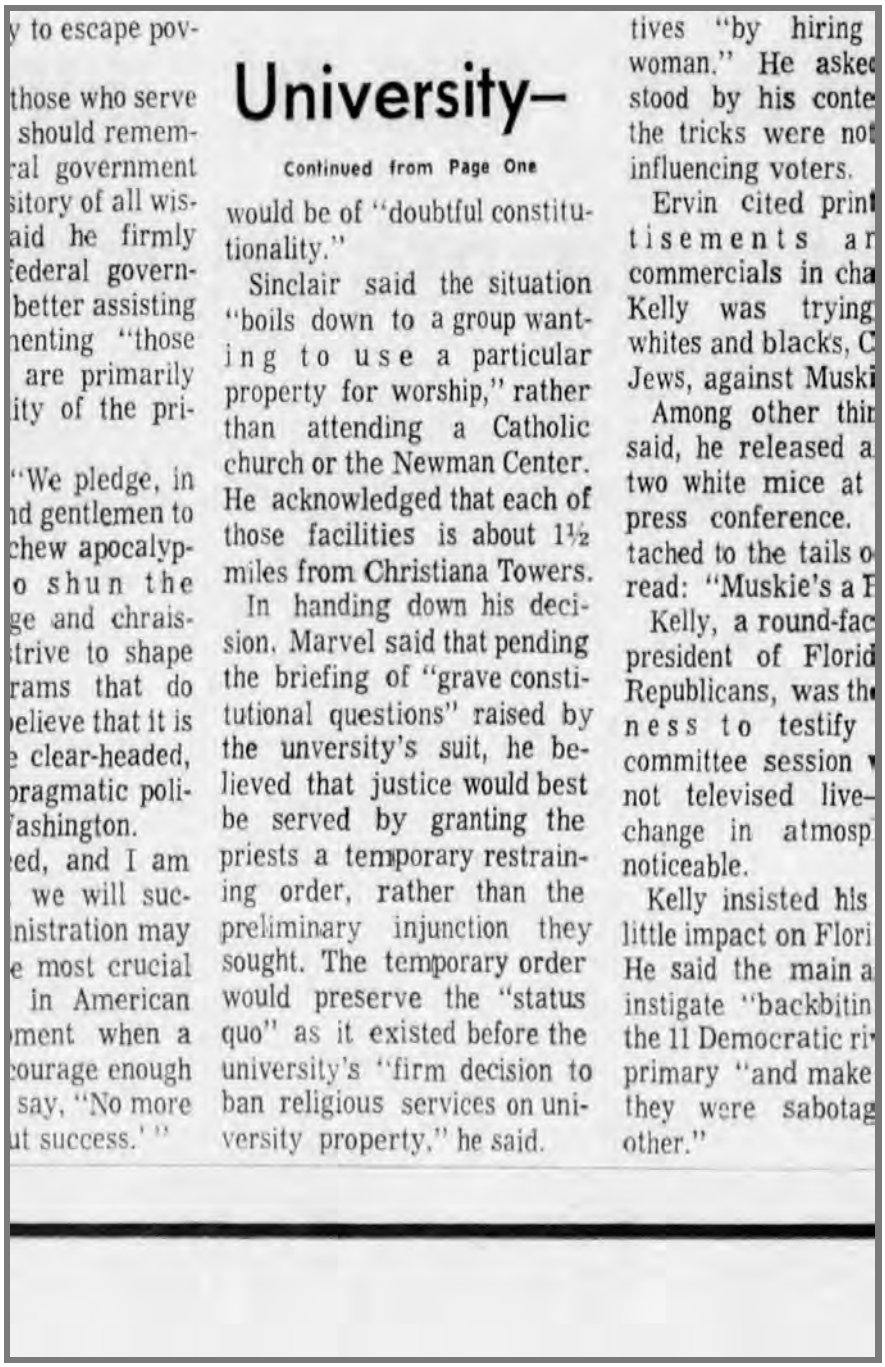

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University—

Continued from Page One

would be of "doubtful constitutionality."

Sinclair said the situation "boils down to a group wanting to use a particular property for worship," rather than attending a Catholic church or the Newman Center. He acknowledged that each of those facilities is about 1½ miles from Christiana Towers.

In handing down his decision, Marvel said that pending the briefing of "grave constitutional questions" raised by the unversity's suit, he believed that justice would best be served by granting the priests a temporary restraining order, rather than the preliminary injunction they sought. The temporary order would preserve the "status quo" as it existed before the university's "firm decision to ban religious services on university property," he said.

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The Philadelphia Inquirer (Philadelphia, Pennsylvania) · Fri, Oct 5, 1973 · Page 25

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The Philadelphia Inquirer / METROPOLITAN NEWS
Friday, Oct. 5, 1973
Serving Philadelphia and Its Suburbs, and Pennsylvania, New Jersey and Delaware
Section C

A FUNNY THING HAPPENED on the way to 5th and Market sts. Wednesday. Philadelphia model Barbara Bobbin harnessed old dobbin to a not-quite-Roman chariot and began riding around center city to publicize the hit Broadway musical "A Funny Thing Happened on the Way to the Forum," which Tuesday will be opening at the Valley Forge Music Fair.

Specter, Levinson Propose Takeover Of Prisons by State

By WARREN BROWN

Two visiting Philadelphia officials recommended Thursday that the state take over operation of the county prison system in an effort to solve the many problems that have plagued it.

The recommendations were made by District Attorney Arlen Specter and City Managing Director Hillel Levinson in testimony before the state House judiciary subcommittee on corrections, which is conducting two days of hearings on the status of Holmesburg Prison.

"Efficiency, uniformity of operation and the fact that crime is a statewide problem," are key reasons the state should assume control of the prisons, Specter said.

The district attorney added, "Frankly, I would not like to see them [state authorities] take over Holmesburg, but I would like to see them replace Holmesburg."

In recommending replacement of the Philadelphia prison, Specter repeated the familiar litany of woes — overcrowding, retaliatory cutbacks affecting the institution.

He said the state "should bring ahead now, under existing legislation, to build a new prison facility in the Philadelphia area."

However, Philadelphia Prison Superintendent Louis Aytch, justifying several issues after Specter, said conditions had improved at Holmesburg since the May 31 killing of the prison's warden and deputy warden by two inmates.

Most of the extra programs announced after the killings, including worship meetings by Black Muslims, have been reinstated, Aytch said. He added that work had begun on the prison building's roof and that contracts had been let to construct a new power plant and to renovate the prison's bakery.

Levinson, supporting Specter's argument for state control of the prisons, said that because the state controlled education and other vital services (as well as the jury commissioner system), it should control the prison system as well.

Levinson said state operation of penal institutions also would be economically feasible, "leaving it would avoid duplication of services" and would provide for more effective prison administration — especially in the area of prison reform programs.

Under the current system, said Levinson, "Philadelphia has been neglected by the state in the area of prisons."

In Pennsylvania, county prisons accommodate persons awaiting trials and serving sentences up to two years. These prisons hold persons serving sentences of two years or longer.

But a state takeover of prisons, he said, the building of new institutions, and prison reforms advocated [illegible] Beverly, would not solve major prison problems.

"The key problem is 'attitude,'" said attorney Rubenstein, who represented Holmesburg inmates in a suit last year that led to cases ruling that confinement in the prison constituted cruel and unusual punishment, prohibited by law.

"It's very political," he said. "No one is going to lose any votes by letting Holmesburg stay the way it is."

Meanwhile, in Harrisburg, Lt. Gov. Ernest P. Kline said at a press conference that the state had considered assuming control of local prisons, but had decided against it because of opposition from municipalities in which the prisons are situated.

This car damaged by bomb in Drexel Hill

Surprise Witness Takes Stand

By PAUL ZABLOW

A man who was in Holmesburg Prison on narcotics charges until less than a month ago became a surprise witness Thursday in a murder trial in which another key witness had been killed.

Harold Gaymont, a self-confessed user of heroin, testified that Raymond Ray Lee, on trial for killing a man, on October 1971, told him that he had been released from prison on the conviction of his associate, and had agreed to give the district attorney's office a statement about the killing of Winfield Green in the bar.

Gaymont said he did not see the killing, but the state was allowed to present eye-witness testimony from Velma Green, Winfield Green's sister.

Miss Green was killed on Sept. 11, a week before the trial opened. But Judge Theodore S. Gelfand allowed a court stenographer to read parts of the transcript of a preliminary hearing almost two years ago at which Miss Green said she saw Ramon shoot her brother.

The decision to allow the testimony followed a day-long meeting in Chambers Wednesday with the judge, defense attorney Jack Myers, and assistant district attorney Michael Stiles.

But Gaymont's appearance, announced by the defense, brought angry questioning of him by Myers and equally angry responses by Costello.

"I didn't have any deal with the D.A.," Gaymont said under cross-examination.

He admitted, however, that he was contacted by the D.A.'s office shortly before his release, he said, but he was told he would not be helped in any way if he refused to talk to him.

He said he had been aware that Miss Green had been killed and that he already had decided to cooperate with the D.A.

When other witnesses have reported that the bar was crowded the night Winfield Green was killed there, the state has so far produced no witnesses who say they saw Ramon shoot him.

Priests Win Delaware U. Prayer Case

By MURRAY DUBIN

WILMINGTON, Del. — Two Roman Catholic priests at the University of Delaware won their second legal battle in a week against the university Thursday in their continuing effort to celebrate Sunday Mass inside campus buildings.

Vice Chancellor William Marvel issued a temporary restraining order Thursday prohibiting the university from barring the Rev. Michael F. Sauppe and the Rev. William F. Keegan from holding religious services Sunday in a school dormitory.

Father Sauppe offered Mass under a tree Sept. 23 and on the dormitory driveway Sept. 23 when the dormitory doors were locked by the administration. The university charter bans any religious service on campus.

On Sept. 28, Marvel denied a university motion seeking a temporary injunction barring the priests from holding religious services on campus.

Before deciding against the university again Thursday, Marvel indicated that this controversy would be decided ultimately somewhere other than in Chancery Court.

"There are grave constitutional questions here," he said. "This is the kind of case [we] go to the Supreme Court."

The main constitutional question involves freedom of religion versus the separation of church and state. Lawyers were not sure exactly what the next legal step would be, but said considerably more than these would be no problem this Sunday when Father Sauppe plans to hold services.

Seventy-five persons march on the city Gas Commission office to demand lower rates for elderly users

Aged to Get Gas Rate Hearing

No More Increases This Year, Goldman Promises

By FRANCIS M. LORDAN

City Gas Commission Chairman Rubin Goldman told a senior citizens' group Thursday that there would be no further hike in gas rates this year, and promised an early public hearing on their request for a rate reduction for the elderly.

However, Goldman stated that a special gas rate for senior citizens would be highly discriminatory and possibly illegal.

Goldman said he would set a date for a public hearing as soon as City Solicitor Martin Weinberg ruled on the proposal, which is expected within the next few days. Later Thursday, he said, ahead and scheduled the hearing for 10 A. M. Oct. 10 in City Council's chambers.

More than 75 members of Action Alliance for Senior Citizens went to the Gas Commission office in the Suburban Station Building to request a public hearing on gas rate reductions for the elderly.

Goldman met with six members of the delegation in his office and promised a hearing in the near future.

The Gas Commission, which sets the rates for the more than 500,000 gas customers in the city, recently increased its rates 3 percent.

If the Commission does set a special rate for senior citizens—those 65 or over—the resulting loss of revenue would have to be picked up by its other customers, Goldman said.

A proposal for a reduced rate for elderly gas customers in Baltimore was recently overturned by the Maryland Supreme Court as discriminatory.

Frank Bradley, president of the Action Alliance for Senior Citizens, said his group was "in a hurry because we are told it is going to be a hard winter." There are more than 200,000 elderly persons living in the city.

The alliance recently won free rides on SEPTA vehicles during off-peak hours.

2 Pagans Charged In Car Bombing

By STEVE TWOMEY

Two members of the Pagans motorcycle gang were arrested by Upper Darby police Thursday in connection with a blast that damaged a car and shattered windows of an apartment complex in Drexel Hill.

Police said that Georgia A. Count, 21, of Collingdale, and John J. Corcoran, 22, of Chester Heights, were picked up about 1 A. M. shortly after an unknown explosive device damaged the front end of a 1961 Fairlane in a parking lot of the Dennis Court Apartments, 300 Dennison ave.

The owner of the car, James Devine, told police he did not know why anyone would park his car and said he was not a member of a motorcycle gang.

Police would not confirm reports that the incident was a case of mistaken identity in a continuing feud between the Pagans and a rival motorcycle gang, the Warlocks.

In recent weeks one Warlock has been killed and two others have been wounded in a series of clashes between the gangs, one involving a [illegible] gas bottle.

Devine was believed to have the same last name as a member of the Warlocks.

Nick Mahle, 28, a building superintendent, said the blast shook a side door of the complex, waking up dozens of persons.

Mahle said that several residents observed a "strange-looking" car in the area shortly before the blast and called police.

Count and Corcoran were charged with criminal conspiracy, arson, criminal mischief, failure to prevent a catastrophe and carrying explosives in a car.

They were arraigned before District Judge Charles Liverani and fined on $2,000 bail each.

Liberty Bell To Move to Mall for '76

The state agreed Thursday to move the Liberty Bell directly across the street from Independence Hall, accepting the Federal and city governments' choice for a new site.

At a meeting in Mayor Frank Rizzo's office, state Environmental Resources Secretary Dr. Maurice Goddard converted to the transfer of the bell to the state-owned site.

The country's symbol of freedom [illegible] will be housed in a low structure in the first block of Independence Mall between Chestnut and Market sts.

Commission Michael Bradley, a member of the Independence National Park Advisory Commission, said that officials had agreed to put the bell "as near the center of the block as possible."

The cost of moving the bell has been estimated at $700,000 to $1 million. Bradley said the Federal government "will undoubtedly pay for this."

Man Tells of Offer of $5,000 to Kill Government Informer Hess

By SUSAN G. STRANAHAN

A 26-year-old Northeast man testified in Federal court Thursday he was offered $5,000 and a 2-for-1 driver to kill government informer Martin Alan Hess.

John Florio, who is in federal protective custody, described two weekend meetings at a City Line [illegible] motel in which four men, later indicted for conspiring to kill Hess, reportedly discussed the murder.

Florio's testimony came at the perjury trial of Frederick Schiavo, 27, of Cornwells Heights, Bucks County. Schiavo also is charged by the Federal government with conspiring to kill Hess and with first-degree murder in New Jersey.

Hess died in August 1972 when a bomb exploded as he entered the trailer of his Cadillac, parked outside his Cherry Hill, N.J. apartment. At the time, Hess — a reputed Jersey dealer — was due to testify against several of the persons charged with killing him.

Florio testified Louis Agosto, 26, currently at Lewisburg Federal Penitentiary on a counterfeiting conviction, offered him the money and the gun.

Across of the alley were Anthony DiPasquale, 32, who lived in the same apartment building where Hess resided, and Raymond Trainor, 25, of Ridge Ave. near Darien lane, Florio said.

Agosto, DiPasquale and Trainor were indicted with Schiavo by both the Federal government and New Jersey authorities in June.

Although Schiavo was present at the motel only where the plot was being discussed, he tried to avoid any connection in front of him," Florio admitted under cross-examination.

Schiavo is charged with lying to a Federal grand jury in April. According to the government, he lied when he denied knowing Florio.

Also included in the perjury charge were Schiavo's repeated denials about telephoning an FBI agent professing to have information about the Hess murder, the government claims.

FBI agent Charles Grubert testified Schiavo called him and asked for a deal, in exchange for Schiavo's information.

When Grubert called back three days later, Schiavo claimed he had never sought a deal and denied knowing anything about the murder, the agent testified.

MARTIN ALAN HESS
killed in Nial

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the defense told a Common Pleas jury that he saw Russell Barnes run out of the

Priests Win Delaware U. Prayer Case

By MURRAY DUBIN
Of The Inquirer Staff

WILMINGTON, Del. — Two Roman Catholic priests at the University of Delaware won their second legal battle in a week against the university Thursday in their continuing effort to celebrate Sunday Mass inside campus buildings.

Vice Chancellor William Marvel issued a temporary restraining order Thursday prohibiting the university from barring the Rev. Michael F. Szupper and the Rev. William F. Keegan from holding religious services Sunday in a school dormitory.

Father Szupper offered Mass under a tree Sept. 30 and on the dormitory driveway Sept. 23 when the dormitory doors were locked by the administration. The university charter bans any religious service on campus.

On Sept. 28, Marvel denied a univeristy motion seeking a temporary injunction barring the priests from holding religious services on campus.

Before deciding against the university again Thursday, Marvel indicated that this controversy would be decided ultimately somewhere other than in Chancery Court.

"There are grave constitutional questions here," he said. "This is the kind of case that will go to the Supreme Court."

The main constitutional question involves freedom of religion versus the separation of church and state. Lawyers were not sure exactly what the next legal step would be, but were reasonably sure that there would be no problem this Sunday when Father Szupper plans to hold services.

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EVENING JOURNAL SECTION 2

WILMINGTON, DELAWARE / SATURDAY, OCTOBER 13, 1973

Vehicle-Inspection Lanes Jammed Again

Overtime Moratorium Is No Help

By MARIAN MATHER

Things move slowly at state inspection lanes

Law Said to Cut Both Ways on Religion

1st Amendment Muddles U.D. vs. Priests

By LARRY SAGENDAT

ANALYSIS

No Body at Mass For Dead; Wrong Man Cremated Here

Delaware Christians Deplore War

Conrad Teachers Walk the Line

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Airport area facility understaffed, overworked

He said with the inspectors out and the state

Voshell said, "we're doing the best we can."

Law Said to Cut Both Ways on Religion

1st Amendment Muddles U.D. vs. Priests

By LARRY NAGENGAST

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." First Amendment to the U.S. Constitution

On Sept. 9, two Catholic priests celebrated Mass in Christiana Towers, a University of Delaware dormitory complex. No one complained.

They repeated the worship service the next Sunday. No one complained.

Then, on Sept. 23, the Rev. Michael Szupper found the door locked when he tried to enter the commons area of the dorm. Students and the priest worshipped instead in the dorm driveway.

The battle between the university administration and the Revs. Szupper and William Keegan had begun.

The priests won the first battle in the Court of Chancery, but, on the fourth Sunday, Sept. 30, they again found the commons area locked and celebrated Mass outdoors.

Then the court issued a temporary restraining order against the university, and, last Sunday, Mass was offered inside the dorm.

John B. Sinclair, the university's attorney, has filed a motion for the court to reargue the case. His petition cited legal precedents to indicate the court may have ruled incorrectly.

The executive committee of the university trustees has resolved "to pursue this matter through the courts to an ultimate decision."

The priests have claimed the university's position is based on "fear and narrowmindedness." The university says it is basing its stance on its interpretation of the law and its own longstanding policies.

It all shapes up as an interesting test of what the First Amendment to the U.S. Constitution means.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," the First Amendment begins.

Permitting the priests to conduct mass on campus, the university claims, would constitute respecting "an establishment of religion"; denying the right to hold Mass, the priests claim, is "prohibiting the free exercise."

The other First Amendment freedoms—speech, press and assembly—don't appear to cut both ways, as the provision regarding religion does.

Arlen B. Mekler, the priests' attorney, recently gave some examples to show how muddy the situation can become.

For example, what if a group of students privately worshipped in their dormitory rooms? Can the university intrude to prevent "establishment" of religion, or are the students guaranteed "free exercise"?

Say the university decided to build an "all-faiths" chapel with its private funds. Would that constitute "establishment" of religion?

What about the current university policy against permitting religious services on campus? Does the policy constitute showing partiality to persons who do not believe in God and discrimination against those who do believe?

The complexion of the current case, Mekler suggests, could have been changed had university policy been to keep the dorm commons area closed on weekends. "If the university paid a custodian to open the doors to accommodate Father Szupper," he says, "I suspect that could be considered 'establishment.' "

Mekler points to, among other cases, Zorach v. Clauson, a 1952 Supreme Court decision which calls for government neutrality and

ANALYSIS

notes there is no constitutional requirement that the state (or a state agency) be hostile to religion.

Other court cases, both at the state and federal level, point to the complexity of the problem. For example, a student in a public institution can't be stopped from distributing religious leaflets outside a class, but a teacher (a state agent) can't announce the time and location of a religious meeting.

Similarly, governmental agencies . . . when they are the sole provider . . . often provide services to churches (water and sewer lines, for example).

But if the state were to give the religious agency a discount on the service, a court could easily decide that constitutes "respecting an establishment thereof."

What is needed, then, is a graceful answer to an awkward problem — an answer which somehow permits the students and clergymen to worship freely while the university maintains its neutrality under the law.

Religious leaders on the Delmarva Peninsula recently have weighed in with statements supporting the priests. In past university-church issues, churchmen have tended to side with the university.

University policy on church-related uses of its facilities was first defined clearly in 1951, when the trustees resolved not to grant use of its facilities to religious and political groups not affiliated with the university.

The resolution was spurred when a Catholic priest sought to use campus facilities after learning that a Protestant student group was holding inspirational meetings in the student center. The ruling barred both religious groups from using university facilities.

The university, whose roots reach back 230 years to a Presbyterian academy, has demonstrated a small interest in academic concerns related to religion. Meetings and lectures on such subjects have been held off and on since 1951, according to newspaper files.

In 1970, as part of the university's community design study, officials expressed hope that an independent department of theology could be developed outside the framework of the philosophy department.

Despite these interests, the university claims it has not permitted worship on campus. However, former Gov. Russell W. Peterson held a prayer breakfast at the university the university held a memorial service, considered by some to be religious, for the late Rev. Dr. Martin Luther King Jr.; and invocations, until recently, have been common at convocations, conventions and conferences.

In short, the university claims it allows university-affiliated church groups to use facilities for non-religious purposes but not for worship.

However, throughout the state, public schools have occasionally permitted religious groups to use their facilities. A 1966 opinion by former Atty. Gen. David P. Buckson supported this usage.

The priests, moreover, are riding on a new tide in Catholic thought—bringing services to the people instead of herding worshippers into church — that has grown in the last few years.

The priests point out that the Christiana complex is more than a mile from the Newman Center, near the main campus, and a similar distance from the nearest Catholic church.

The university, in addition to its legal arguments, has raised the possibility that, as a federal land-grant school, it could lose federal funds if it permitted religious activities.

However, not a penny of federal funds went to construction of Christiana Towers.

Also, officials at the U.S. Office of Education recall only a few cases in which higher education institutions have been cut off from receiving federal funds.

The cases include: Bob Jones University, a fundamentalist religious institution, for not signing non-discrimination pledges under the 1964 Civil Rghts Act; Columbia University, temporarily, over a sex discrimination question; and several instances where misused funds had to be returned.

Robert H. McBride, former president of the state Board of Education, said he couldn't recall any case where a public school district lost federal funds for permitting religious use of its facilities.

McBride was a university trustee when he held the state board presidency. He said no one at the university has discussed the question with him.

Several trustees contacted by a reporter responded curtly to inquiries, offering little information, and referring only to the executive committee's statement. One committee member said he hadn't seen the statement and wasn't informed it would be drawn up.

McBride believes publicity "has to be unfavorable" to the university. But Daniel W. Wood, university secretary, and Harry L. Connor, public information director, said the university hasn't received many letters and calls.

Wood said more letters opposed than supported the university position, but they contained "no animosity or hostility."

According to one survey, university students appear equally divided on the issue.

Just about as divided, in fact, as the First Amendment looks now.

No Body at Mass For Dead:

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AROUND THE WORLD

Vesco Wins Latest Battle

Council of Ireland Moves

Troops Flow to Highlands

But Only Temporarily

Slaying Interrupts Florida Beer Party

Chicago Lawyer Helping U.D.

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Chicago Lawyer Helping U.D.

The lawyer retained to help with the state's defense in the Wilmington school desegregation suit also will help the University of Delaware in its suit over the propriety of campus religious services.

Philip B. Kurland, a University of Chicago law professor and editor of the Supreme Court Review, has written a brief for the university's Court of Chancery suit against the Revs. Michael F. Szupper and William F. Keegan.

John P. Sinclair, university lawyer, said Kurland wrote the brief for a motion for a pretrial judgment which Sinclair filed Thursday. The brief has not been filed.

Kurland, considered an authority on constitutional law, also will help Wilmington lawyer William Prickett in the desegregation case, which begins Thursday in U.S. District Court.

The dispute between the university and the priests is over masses offered in the commons room of Christiana Towers, a dormitory complex on the north campus in Newark.

The university says the services violate its charter and is asking for a permanent injunction. Vice Chancellor William Marvel is presiding. Lawyers say the case involves deep constitutional questions.

Marvel has denied the univerity's request for a temporary restraining order and has granted the priests an order temporarily restraining the university from barring the services.

The Most Rev. Thomas J. Mardaga, bishop of the Catholic Diocese of Wilmington, has intervened as a defendant, and the Delaware branch of the American Civil Liberties Union has been allowed to enter as a friend of the court.

Sinclair said the university trustees authorized Kurland's hiring because they wanted someone from outside the state to examine the university's policy and advise them on a course to pursue.

He said Kurland was consulted, expressed an opinion that the university was "clearly in the right," and agreed to participate.

Sinclair said it hasn't been decided whether Kurland will participate further if the motion is denied. Final arguments are not scheduled to take place before February.

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The Morning News (Wilmington, Delaware) · Sat, Dec 8, 1973 · Page 13

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this morning

The Morning News, Saturday, December 8, 1973 · Page 13

Need to protect aged explained

By Jane Harriman

Penns Grove cinderblock cellblock is opened

Man gets 25 years for rape and robbery

By Virginia Detrow

U.D. lawsuit to halt Mass is aided by Kurland

By Tom Greer

Spanish moss discovered in Trussum, Trap Ponds

From the News Bureau

Government suspends Ocean Pines land sales

From the News Bureau

50-fold markup serves him right

lottery

The weekly winner:

747981

N.J. Friday winner:

66938

Navy dungarees are fading fast

Cattle rustlers come a long way

Lake Erie shallowest

First graders give to fund

betty burroughs

ARDEN FAIR — This is the month when we at the popular planets at first the Christmas spirit seems to elude us the rest the year.

The usual draining behind such laments is not only that the festive mood is missing in January, February, June and July (and all the rest), but since we are really lacking in the "true Christmas" feeling.

This isn't entirely true, especially in the tiree-knit society of Arden where brotherhood abounds and a "friend-of-the-family" form of neighborliness.

In other words, no one serves friendship or not just everyone, but we had a fellow Ardenite who has endowed herself in the community so was the case in Rae Gresham's 75th birthday last month.

It was a basic and an overwhelming surprise for the celebrant, who, since the 1965 death of her husband, Emanuel, has lived close to her fellow boarer out for from the Gild Hall where more than 200 friends assembled to help her marry her "significant" anniversary on this earth.

But as she is universally known in her first-name camaraderie, couldn't possibly have known all of them by name since they represented the three Arden — Arden, Ardentown and Ardencroft.

But, from the oldest to the youngest, they all knew and cherish her, not just as the widow of one of Arden's pioneer leaders but for the longer she, herself, has had an obligation for years longer than most have breathed the vital air of this wonderful "Utopia." She became an Ardenite in 1918.

Friends came in while her well and to show their appreciation for her multiplicity of services with gifts. One was an affectionately-worded plaque from residents of the Gray Arden.

There is a rare exclusivity in Rae Gresham's Arden relationship over the years. Because of her long years as treasurer of the Village of Arden, villagers have come to appreciate her with money — the keeping and collecting thereof.

She also is secretary of Arden trustees, director of the Artisans' Association, secretary of the Arden Building & Loan Association.

You always can count on finding Rae selling tickets at the Gild Hall door when there is a play, Saturday night supper or other such event.

For years she was associated with her husband in the real estate business that still maintains an interest in Arden properties in an unofficial basis. She is a perennial business woman and one of the first persons one turns to when questions about Arden or Ardentown arise.

On the true practical side, she's usually in the think of Arden's social and cultural activities — such as the Labor Day weekend Arden Fair, Christmas competition, tapestry, dancers, musicals and theatrical productions. She always has hung in the curtains of Gilbert & Sullivan operas for which Arden is noted.

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U.D. lawsuit to halt Mass is aided by Kurland

By Tom Greer

A nationally known lawyer already connected with one Delaware case will assist the University of Delaware in its suit over religious services on campus.

Philip B. Kurland, Chicago University law professor and editor of the Supreme Court Review, has written a brief for a pretrial judgement in the University's Court of Chancery suit against the Revs. Michael F. Szupper and William F. Keegan. It has not yet been filed.

Kurland, a nationally known authority on constitutional law, also has been retained by the state to help Wilmington lawyer William Prickett defend the Wilmington school desegregation case, which starts Thursday in U.S. District Court.

The dispute between the university and the two priests is over the offering of mass in the commons room of Christiana Towers, a dormitory complex on the North Campus in Newark.

The university is seeking a permanent injunction against the services, which it says violate its charter and established policy. Vice Chancellor William Marvel, who is presiding, and lawyers connected with the case have said the dispute involves deep constitutional questions.

Marvel has denied the university's application for a temporary restraining order against the Sunday Masses and has granted the priests an order temporarily restraining the university from barring the services.

barring the services.

Sinclair said yesterday the university trustees had authorized the hiring of Kurland because they wanted someone outside Delaware to examine the university's policy of not permitting worship services on campus and to advise them on a course to pursue.

If the motion for pretrial judgement is denied and the case continues, Sinclair said, it has not been decided whether Kurland will take any further part

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religion

Religious world still watches conservative, moderate battle

United Methodist church holds revival services next week

Theological schools share

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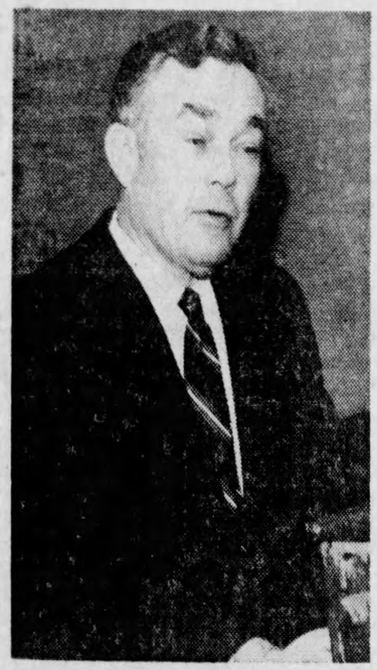
Religious world still watches conservative, moderate battle

By EILEEN C. SPRAKER
Religion Editor

For the second year in a row, members of the religious secular press picked the continuing story of conservative versus moderates in the Lutheran Church Missouri Synod as top newsmaker of the year.



The Rev. Dr. J. A. O. Preus, Mo. Synod Conservative

In a year end poll just completed by the Morning News religion editor for the Religion Newswriters Association, the religion writers of the country said the on-going battle between the Missouri Synod president, the Rev. Dr. J. A. O. Preus and his conservative following has caused a very significant impact on the religious community.

In Delaware, though much talk and attention was focused on the synod's biennial convention held last July in New Orleans, no major schisms seemed developing. The state has less than 10 churches of the denomination. Through many of the pastors are on the more moderate side of the theological controversies, there have been no major confrontations.

Preus is at odds with the Rev. Dr. John Tietjen, president of Concordia Seminary, St. Louis, and his faculty over alleged undoctrinal teachings.

A new similar struggle developing in the Presbyterian Church, U.S., the southern branch of the Presbyterian movement, seemed to be the new focus as the year in religion came to a close.

In that controversy some 275 churches with a membership of over 75,000 have withdrawn from the denomination to form a new branch of Presbyterianims.

This happens as union talks between the northern branch of Presbyterianism, the United Presbyterian Church in the U.S.A. and the southern church go into high gear. The two will hold their General Assembly sessions simultaneously next June in Louisville.

In Delaware, separation of church and state and freedom of religion got a big go-around in Newark with a Catholic campus pastor, the Rev. Michael Szupper, ousted from holding Mass in the remote student residence complex at the University of Delaware.

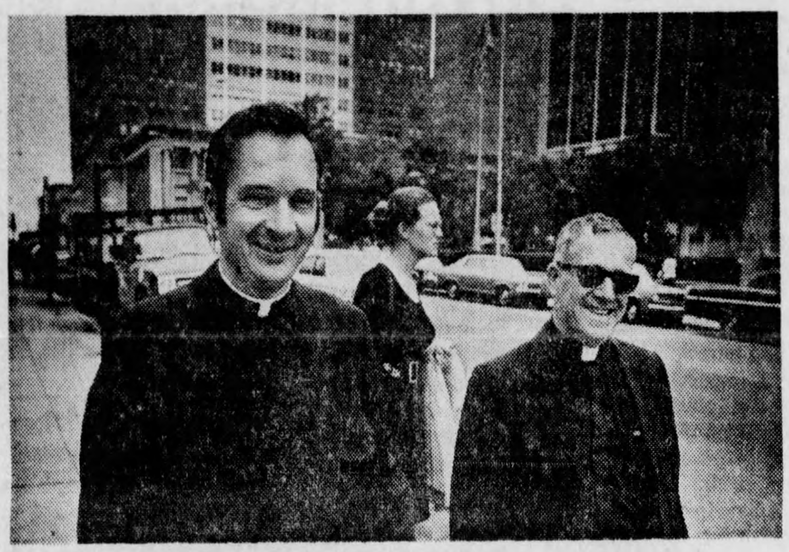
University officials forbid the services and court action is now pending. Szupper at last report was still conducting the services, although the university regulations at present prohibit use of its buildings for religious services.

The religion writers noted as big news the fact that the church generally seems to have withdrawn from its activist role of the 1960's toward a more personal religion. This comes out in increasing Bible study and prayer and charismatic groups, more emphasis on evangelism and less interest in grandiose nationally oriented programs. The emphasis now is on local level programs.

On specific issues, the religion writers considered the refusal of the Episcopal Church's General Convention to ratify the ordination of women as No. 3 top story of the year.

Key 73, the year-long Christian evangelistic crusade to reach everyone on the North American continent with Christ's message, according, to some editors, was important as a "nonstory" rather than as one which came off successfully.

That generally was true in Delaware. Except in the Wilmington area, not much really got done except for vast distribution of Scriptures on an ecumenical basis, a few rallies, a rather limp arts festival, and mostly good feelings as members of the Greater Wilmington Steering committee interacted with each other.



Father Michael Szupper, left, and Father William Keegan battle the University of Delaware. (Staff photo by J. Glenn Crawford)

One religion writer, G. H. LaBonte of the Worcester (Mass.) Telegram said Key 73 failed there because of a split between evangelicals and liberals over approaches to be used toward the Jews.

The fact that parents got legal help to try to "rescue" their children from some of the fundamentalist religious communities such as the Children of God, made the top ten stories list of the religion writers.

Mostly the Jesus People groups were being absorbed by churches as was true at the area group's home base in Wilmington, the Immanuel Baptist Church.

They're no longer known as the Jesus People there, but are now part of the ongoing church program.

The Vatican's reaffirmation of the infallibility of the Pope on doctrines and morals was considered a top ranking story as was continuing violence in Ireland between Protestants and Catholics. Most religion writers point out, however, that that conflict is not basically religious but economic and sociological.

The newswriters thought the U.S. Catholic Bishops' stand on the grape-lettuce boycott and the union fracas with the Farah Corp. in Texas were major stories.

The return of the United Presbyterian Church, U.S.A. to the ecumenically oriented Consultation on Church Union was considered symbolic that ecumenism is not dead.

The Episcopal Church's liberalization of its marriage cannons concerning remarriage of divorced persons; the Rev. Dr. Carl McIntire's battle with the Federal Communications Commission over closing down of his Media, Pa. 20th Reformation Hour radio stations: and the deep undelying religious and moral implications of the Watergate story were considered important news events.

In Wilmington, McIntire made further news in a case in Chancery Court which challenged McIntire's taking over of the assets of a Claymont man, James Scott.

Scott turned over some $60,000 in assets to the fundamentalist preacher in exchange for home and care for the rest of his life.

Judy is the organist at Faith Tabernacle Church, Riverside, Calif. The church is being featured on WHYY Channel 12 at 8:30 p.m. Jan. 6 in a new series on "Religious America."

A petition from Paul L. Buehrle, executive director of the Wilmington Senior Center and Catherine A. Perle, state referral director for the aging, asked that a guardian be appointed for Scott s estate to protect him from "designing persons."

In Tulsa and other places, religious groups such as the Children of God were warning of the end of the world because of the Comet Kohoutek.

In Syracuse, N.Y., Protestants, Catholics and Jews have gotten together to hire a "peace educator."

In Detroit, crime came into the churches and in one instance an entire congregation was robbed during a Sunday service.

In United Methodism, one of the largest Protestant denominations in the country, the last all-black annual conference ended this year with a series of mergers begun nine years ago in the denomination to end the Central (all-Negro) jurisdiction in the church. Two black conferences in Mississippi united in June with their white counterparts. Only 8 of more than 500 districts in the U. S. now remain segregated and those are to be phased out by mid-1974.

The Methodists lost one of their most renowned preachers and missionaries in death. Dr. E. Staley Jones, known for his ministry in India and father-in-law of Bishop James K. Mathews of the Washington area, died in his beloved India.

The Religion Newswriters said the present Israel-Arab conflict in the Middle East has significant religious roots. Many said these roots are not being given enough in-depth reporting, especially in regard to the Arab side.

They called attention to a Thanksgiving meeting of evangelicals in Chicago from which came a statement on the necessity of being involved in social action programs as well as evangelism.

And many termed Supreme Court rulings on abortion and aid to parochial schools deep religious issues.

Theological schools share

Five Philadelphia theological institutions have agreed to share their library resources and to purchase cooperatively.

Involved are Eastern Baptist, Lutheran, Philadelphia Divinity, St. Charles Borromeo and the Westminster Theological Seminaries. Also included, but outside of Philadelphia is Lutheran Seminary at Gettysburg.

The five Philadelphia schools have also cooperated in several cross-registration courses since 1971 when they organized the Association of Philadelphia Area Theological Seminaries.

United Methodist church holds revival services next week

Ezion-Mt. Carmel United Methodist Church, 10th and Lombard Sts. has announced revival services for 8 p.m. each day of next week, except for Tuesday.

Services begin tonight with the Rev. Donald Hamilton of Middletown as preacher.

Others scheduled are the Rev. Elmo Bean, Bethel AME Church, Wilmington, Wednesday; the Rev. George E. Thompson, Mount Raymond UAME Church, Downingtown, Pa., Thursday; and the Rev. Raymond R. Williams, Community-Mount AME Church, Sharon Hill, Pa. on Friday.

An old fashioned "watch night" service is scheduled for Monday night, New Year's Eve.

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Catholic Mass Called an Opening Wedge at U.D.

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Catholic Mass Called an Opening Wedge at U.D.

An attorney for the University of Delaware argued yesterday in Court of Chancery that allowing Catholic services on the campus would be the "opening wedge" for other religious groups to make similar applications.

The university is bringing suit for an injunction restraining the Revs. Michael Szupper and William F. Keegan, two Catholic priests, from holding Mass in the commons room of Christiana Towers on the campus.

Lawyers for the university and for the priests admitted they knew of no previous case like this one, although each professed that constitutional principles supported his clients.

John P. Sinclair, who said the Masses would set a precedent for other religious services on campus, argued that the First Amendment prohibiting the establishment of a state religion should be applied in the case.

He cited numerous rulings by higher courts. Among them were decisions that state actions must have secular purposes, must neither advance nor inhibit religion and must not foster government entanglement with religion.

Arlen B. Mekler, who represents the two priests, said the university should be neutral. In forbidding the services, it has "left its perch of neutrality," he said.

James P. Collins, representing the Most Rev. Thomas J. Mardaga, bishop of the Catholic Diocese of Wilmington, said the charter provision on which the university is basing its case prohibits the university being managed in the interest of any "party, sect or denomination."

The defendants are not violating this, he said.

The defendants have filed a counterclaim asking that the university be restrained from interfering with the Sunday Masses.

Vice Chancellor William Marvel, who is deliberating the case, granted a temporary order Oct. 4, restraining the university from barring services. The temporary order remains in effect.

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14 The Morning News, Friday, February 1, 1974

Yesterday's 'coal charge' is hot DP&L issue now

By Jack Warren

(Second of two articles)

Delmarva Power & Light Co.'s fuel adjustment charge is a somewhat complicated formula but essentially recovers increased fuel costs from customers.

In one form or another the charge has been a part of the company's billing procedure since 1948, when the Public Service Commission approved the first fuel adjustment clause.

A similar charge, also applied only to industrial customers, was suggested in 1945 when the city of Wilmington instituted the first regulatory agency.

A fuel adjustment clause was in the rate used DP&L charged to the PSC when the agency was established in 1958.

It remained substantially the same for industrial customers until 1961, when the Public Service Commission approved a substantial rate increase.

At that time the base cost of fuel, at 97 cents per million BTUs, was almost 40 per cent of the total cost of electricity. The fuel component in new rates filed by DP&L increased the operating costs to the customer approximately about 30 percentage points.

A fuel adjustment clause of about 20 million BTUs per month was established. The base cost was 97 cents per million BTUs through 1961, but customers' bills were reduced proportionately. The cost was 70.5 for the cost of fuel consumption beyond the base, meaning customers' bills to increase.

Part of the reason was DP&L's decision to convert many of its plants from coal to oil, especially to the 475-plus fuel oil plant and unit.

The producers raised a million BTUs per barrel, according to DP&L officials. This means that barrels would be required to produce the same amount of energy as a ton of coal.

When oil was available for 32 cents a barrel—as recently as a year ago, officials said—it was slightly more economical than coal but had other advantages, such as easier to transport, the less-dollar variety was readily available from Libya, and high-caliber grades could be burned more easily than coal.

In 1968 many of DP&L's plants burned coal to make a total destruction. Now most

Last year, the customer used 837.32 cents each at 437.32 plus 85 for the Delaware 10% enhancement charge, plus the 4-percent state utility tax on both.

This year, the customer would use 825.32 cents plus amount of electricity.

If he has raised the energy consumed by other and expects to save money by using less, this customer would have to have used about 200 kilowatt hours less than last year to break even. The monthly bill for 600 kilowatt hours would be $27.72.

The rising adjustment charge has spurred the state Senate to schedule public hearings in order to consider complaints, and has aroused the interest of the state Public Service Commission and the governor's office.

To understand how, since 1958, officials explained, rate changes, sometimes seen as a victory and defended it as essential to the company's ability to keep up with power demands.

According to the company's figures the cost of fuel per million BTUs has increased at the company's Edgemoor plants in December over about 80 cents per million BTUs. Last month, estimated total, DP&L has been paying up to 4.6 a barrel. That would mean an even bigger jump in the adjustment charge than the record hike that today's effect takes.

The coal burned at Indian River, on the other hand, cost only about 70 cents per million BTUs, or about 14.70 a ton. The price of coal has doubled since 1969, but the price of oil is four to six times what it was then.

George J. Pinto, vice president for electricity operations, said the alternate solution — reconversion of the plants to burn coal — isn't feasible now. He said the quantity of coal DP&L would need isn't available, and even if it were, the coal transportation system is inadequate. And, said, it would have to go through an expensive environmental process to meet environmental standards.

"We have to be looking at coal," Pinto said, "especially if the price of oil doesn't come down significantly. But a lot of things have to happen before we go back to it on the major fuel."

Although he acknowledged that the PSC knew of 25 cents per million BTU's increase, Pinto said DP&L would oppose making it adjusted quarterly to reflect fuel costs.

"We'd just have to say the 50 million BTUs we fuel costs getting from the coal plant," he said. He said that because of the increased fuel oil billing for the adjustment charge, the company doesn't receive its total complement with the price of fuel gets down.

"We don't see that happening," he said.

All steamed up

One of the earliest pollution-free cars, a 1912 Stanley Model 86, 15-passenger Mountain Wagon is driven into the Wilmington Savings Fund Society's Exhibit Hall, 9th and King Sts. The car is one of four "Stanley Steamers" which go on exhibition Monday. The cars are courtesy of Thomas C. Marshall Jr. and his Magic Age of Steam. The exhibition, which will be open through Feb. 22, will include steam car component displays, literature, brass lamps, horns and other fixtures that adorned the early cars. The exhibition is open to the public Monday through Friday from 11 a.m. to 5 p.m. (Staff photo by Ron Dubick)

250-kilodollar check outage?

While television cameras whirred and flood lights shined on New Castle County Executive Melvin A. Hawk, at the main Delmarva Power & Light Co. office in Wilmington Wednesday, he pointed an electric bill, estimate made off with $250,000 in DP&L checks.

The theft was discovered shortly after Hawk, and a host of news people left. Police said the checks had been stolen from a desk in the accounting department.

The Hawk entourage made several stops within the DP&L building during the visit. A company spokesman said it was probable that at least some members of the group had been in the accounting section.

Capt. Nicholas Vallorato said $250,000 was the potential value of the checks. He said banks and other business places had been alerted.

Youth held in 18 robberies, 2 thefts and a burglary

Newark woman cited as 'citizen'

From the News Journal

Lawyers quote constitutions to judge over Mass at U.D.

Amendment I, U.S. Constitution.

Gunman holds up Lea Blvd. store

Women's prison cost criticized by council

3 youths held up Union St. pharmacy

2 youths arrested in theater robbery

Mrs. Dorothy Patterson

One of DART's "new" buses. (Staff photo by Josh Cobb)

Seven used buses join DART fleet

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Lawyers quote constitutions to judge over Mass at U.D.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ."

Amendment I, U.S. Constitution.

How these clauses apply to the conducting of Catholic Mass in the commons room of Christiana Towers on the University of Delaware campus is now to be determined by Vice Chancellor William Marvel.

Wilmington lawyer John P. Sinclair argued yesterday in the Court of Chancery that the clauses prohibit such religious services. Sinclair represents the university.

Arlen B. Mekler took the opposite position. He represents the Revs. Michael Szupper and William F. Keegan, two Catholic priests who are the defendants in a suit by the University.

A third attorney, James P. Collins, appearing for the Most Rev. Thomas J. Mardaga, bishop of the Catholic Diocese of Wilmington, turned to another Constitution for support—the one adopted by Delaware in 1792. Its preamble states, "Through divine goodness, all men have by nature, the rights of worshipping and serving their Creator, according to the dictates of their consciences . . ."

Marvel presided at a hearing on the university's suit for an injunction restraining the clergymen from using the campus facility for worship services. The defendants have filed a counterclaim asking that the university be restrained from interfering with the Sunday Masses.

All three lawyers said they knew of no previous case like this one, although each professed that constitutional principles supported his position.

Sinclair cited numerous rulings by higher courts. Among them was that state actions must have secular purposes, must neither advance nor inhibit religion and must not foster government entanglement with religion.

Allowing the services would be the "opening wedge" for other religious groups, who would make similar applications, he said.

Mekler declared that the university should be neutral. In forbidding the services, it has "left its perch of neutrality" and where it prefers no religion to religious groups, "the ax should fall as being unconstitutionally discriminatory."

Collins noted the charter provision on which the university relies in opposing the services. It prohibits the university behing managed in the interest of any "party, sect or denomination."

The defendants are not violating this, he said. They are "merely trying to give the students what they ask for in their residence."

Marvel called the case "extremely difficult." He said he would hand down a decision as soon as possible.

Meanwhile, the temporary order he granted Oct. 4 restraining the university from barring the services remains in effect.

2 youths arrested in theater robbery

Two youths were arrested by Delaware State Police last night and charged with the March 8, 1973 robbery of the Naamans Drive-In Theater.

The youths, Robert W. Cyphers, 19, of Riverview Apartments, Claymont, and Christopher Albertus, 18, of 500 block Wynham Road, North Hills, were both charged with robbery. They were taken to Magistrate Court 15, Independence Mall, and released under $1,000 each pending a hearing in Superior Court.

Police said the two, both armed, held up Elizabeth Shaffer, cashier at the theater, and escaped with an undetermined amount of money.

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this morning

The Morning News, Friday, March 29, 1974 · Page 17

Legislation to stay DP&L hike is eyed

By Walt Rykiel
Dover Bureau Chief

DOVER — Rep. Joseph P. Lilley, Jr., Republican Dr. 3, Hockessin-Yorklyn, said last night he may introduce legislation to block the proposed rate increase of the Delmarva Power & Light Co. for use [illegible]

The company today planned to submit an increase of 15.6 percent in its base rates to the Public Service Commission. That is in addition to its monthly fuel adjustment charge of 1.967 cents per kilowatt hours for March.

Anderson said House members are working to determine if the month-long moratorium is legal. It would carry the authority of the Public Service Commission.

"I also would propose DP&L begin putting a note in [illegible] to afford some kind of refund to the public.

Mrs. Jeanette Arnold of Brookside Heights, Camden, admitted the report to the meeting emotionally charged. She feels that the power company turned her into building an electronic issue.

She said her monthly electric bill is now only $2 less than her monthly mortgage payment.

Mrs. Arnold prefaced a typed chart showing her electric bill in March 1973 was $21.92 for 1,424 kilowatt hours. This March, her bill was $34.87 for 1,424 kilowatt hours.

She said she figured her fuel adjustment charge for her last bill was $22.35. The fuel adjustment charge is the rate per kilowatt hour that DP&L asks to offset its increased fuel costs.

At a press conference, to which Anderson was joined by fellow Dem. two legislators outlined sketchy plans to put utilities' controls on the power company and beef up the Public Service Commission. Walter has been conducting [illegible] hearings into rising electricity bills. The two have decided to join their committees.

Ambassador sworn in

CAIRO, Egypt (UPI) — U.S. Ambassador Hermann Eilts was sworn in as American ambassador to Egypt since relations were restored in 1967. Formal diplomatic relations were restored March 1.

DP&L Vice President Edward P. Spoor explains the fuel adjustment charge. (Staff photo by John Flanagan)

Court order bars Mass on U.D. campus

By Tom Greer

The University of Delaware yesterday won a court order barring the conduct of Catholic Mass from the auditorium of Christiana Towers.

Vice Chancellor William Marvel ruled in favor of the university in a suit it filed against the Rev. Michael Swaguer and William F. Kingan.

John B. Mahler, the private [illegible] said his clients will appeal it to the Delaware Supreme Court.

Marvel ruled that by handing all worship services in its property, the university was [illegible] encouraging religious groups to abusing its discretionary power over its property.

To compel the university to permit Catholic worship services in Christiana Towers merely to suit the convenience of students living there would be unwarranted, he said, adding that Catholic masses are regularly held at nearby churches in Newark. He said it is not a "commercial arrangement" of the students' rights to expect them to attend masses at such established churches no matter of their choice.

Marvel said he will sign an order granting the university's petition for a preliminary injunction on Sept. 10 and the defendants filed a counter-claim, which led to the preliminary injunction restraining the university from barring the services.

The Most Rev. Thomas J. Mardaga, bishop of the Catholic Diocese of Wilmington, and two students entered the suit as defendants. The American Civil Liberties Union also organized as friend of the court as her aide of the defendants had filed no briefs and did not participate in arguments on the cross-motions before the court for partial judgment.

Both the university, represented by John F. Sinclair, and the defendants rested upon the first constitutional amendments to support their positions, each side reading opposite conclusions. The amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Those constitutional guarantees apply to action by the state and its agent, the state-supported university, Marvel ruled.

Chief Various Supreme Court opinions, Marvel said the establishment clause requires the separation of academic-based religion in any form.

The university could not constitutionally permit the masses and various religious services for students of other faiths. It could avoid conflict by allowing all groups equal access to the facilities, he said.

However, the university's contends that the number of religious groups that might allegedly seek worship time would prevent it with an almost impossible scheduling task.

Prosecutors critical of case load

By Virginia Duncan

An examination [illegible] commissioned to speed justice has begun the attorneys general's office is [illegible] Superior Court this month.

Chief Deputy Atty. Gen. Jay [illegible] of the [illegible] said yesterday the office is being pressured to take his many cases to trial [illegible] with low [illegible] and high [illegible] of appearing [illegible] to jury trials.

Weekly statistics [illegible] pointing the finger at attorneys, but some observers say the pressure is being applied by [illegible]

— Chief Deputy Public Defender [illegible] Herrmann of the Delaware Supreme Court, who set a 1974 goal of taking cases from indictment through sentencing in four months.

— Judge Andrew D. Christie, of Superior Court, who is presently pursuing that goal [illegible] promptly [illegible] with extreme scrutiny.

The four-month goal is a "recommendation" [illegible] Herrmann said yesterday. [illegible] and the desire to reach it is resulting in "improper dispositions of cases" and not justice.

Herrmann would not be touched, but comments [illegible] night. Christie said, "I am completely in agreement with many of the things [illegible]

Since the current trial term began March 4, with Christie in charge of scheduling, an average of 20 cases have matured down for trial every day.

Excluding Hartley and their Prosecutor Richard R. Wier Jr., there are 13 prosecutors in the Wilmington office. Herrmann, who is assigned to Family Court, also is Court of Common Pleas and has to be governor's Alcohol Safety Action Program. He also gives [illegible] at least one more will be an additional case two or three and he serving trials, continuing investigations or arraigned with [illegible] court tasks.

That leaves 3 or 4 [illegible] Superior Court cases. Taking into account [illegible] in-office conferences and disappearances of witnesses, the maximum number of cases that ought to be scheduled for trial on any day is 12," Hartley said.

He says the office is having to accept pleas to reduced charges in some cases it would rather take to trial. In other cases, prosecutors are faced with the distasteful choice of going to trial unprepared or dropping the charges.

Yesterday, for example, a defendant named John M. Cox was scheduled to go to trial for the second time on a charge of grand larceny.

[illegible] was accused of stealing $1,000 worth of stereo [illegible] from the Du Pont Co. plant in Glasgow, but a mistrial was declared the [illegible] term ground.

Deputy Atty. Gen. Joseph A. Hurley, who prosecuted Cox, was tied up yesterday in another trial. Because Christie denied a postponement, Hartley hurriedly sketched [illegible] Atty. Gen. Herman A. Barron in Cox's trial.

Barron said he persuaded President Judge Albert J. Bayard, who was to preside, to give him 5 minutes to review the file. Realizing the case was not complete to proceed with that little preparation, Barron reluctantly announced [illegible] the waiting jury that he would drop the charge.

Off the top of their heads, Barron and Hurley were able to [illegible] the eight others' cases dropped this month under similar circumstances. Most were misdemeanors — possession of marijuana, running a red light, etc. But two involved charges of possessing heroin with intent to sell which, the grand larceny, is a felony.

Hartley says the attorney general has asked for money to hire three more prosecutors but got nowhere with the General Assembly.

If the [illegible] presently in [illegible]

See COURTS, P. 28, C. 3

Cycle problem is a growing one, state police say

When 12-year-old Peter L. Jefferson was killed in a crash Wednesday afternoon, he was driving what state police say is becoming an increasing problem — an unregistered motorcycle.

Jefferson, who was [illegible] driving [illegible] a driver's license, was killed shortly after 3 when the bike he was riding passed a stop sign on Pyles Ford Rd. and hit the right side of a car traveling on Cody Ford Road.

A 13-year-old passenger on Jefferson's bike was seriously injured. Kent Reed, of 1108 Brandon Lane, Westover Hills, is in fair condition at Delaware Division, with a broken arm and leg, possible fractured pelvis, multiple lacerations of the face and multiple abrasions. Neither of the youths was wearing a helmet.

State police say the two boys had been riding the bike in a nearby field after coming home from school. Jefferson got [illegible] and the two were [illegible] for his home at 1208 Pyles Ford Rd. to get a jacket when the accident occurred.

Police say the driver of the car, James E. Davis, 18, of 2121 Draycott Dr., Heritage Park, did not see the cycle at the [illegible] intersection until a fraction of a second before the collision.

It is legal to drive unregistered motorcycles on private property without a driver's license or without a helmet. It is illegal to do any of those things on public roads or streets.

Police complain that [illegible] residents of Brandywine and Mallows Run [illegible] trails.

Morning News to print new DART schedules

The Morning News will publish a supplement on Monday morning, DART's revised bus schedules.

The 12-page supplement is being [illegible] by DART, The News-Journal Co., the The Post Co., Harvard Inc. and ICI America Inc.

Schedules of the new routes, which go into effect Sunday, are now available on most DART buses. A spokesman for DART said some schedule [illegible] requested soon and they should be available next week in all banks.

lottery

[illegible] weekly winner:
145913
Millionaire Double a [illegible]
N.J. weekly winner:
230198
N.J. Thursday winner:
70306
Pa. Lucky 7 winner is [illegible]
3. Three-digit numbers are [illegible]
Pa. Baker's Dozen winners are [illegible]

Sky high

Dick Staples stands atop the 180-foot tall superstructure of a Delmarva Power & Light Co. natural gas holding tank adjacent to Interstate 95 which is being dismantled. The skyline of downtown Wilmington is behind him. Another picture on Page 18. (Staff photo by Fred Comegys)

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The Morning News (Wilmington, Delaware) · Fri, Mar 29, 1974 · Page 17
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Court order bars Mass on U.D. campus

By Tom Greer

The University of Delaware yesterday won a court order barring the conduct of Catholic Mass from the commons room of Christiana Towers.

Vice Chancellor William Marvel ruled in favor of the university in a suit it filed against the Revs. Michael Szupper and William F. Keegan.

Arlen B. Makler, the priests lawyer, said his clients will abide by the decision but will appeal it to the Delaware Supreme Court.

Marvel found that by banning all worship services on its property, the university was neither discriminating among religious groups nor abusing its discretionary power over its property.

To compel the university to permit Catholic worship services in Christiana Towers merely to suit the convenience of students living there would be unwarranted, he said, adding that Catholic masses are regularly held at nearby churches in Newark. He said it is not a "substantial infringement" of the students' rights to expect them to attend mass at such established churches or other of their choice.

Marvel said he will sign an order granting the university pretrial judgment in the case and dissolving a preliminary injunction that restrained the university from banning the Sunday morning services.

The controversy arose after Sept. 9, when the priests started the masses at the request of studenst.

Marvel denied the university's motion for a preliminary injunction on Sept. 28 and the defendants filed a counterclaim, which led to the preliminary injunction restraining the university from barring the services.

The Most Rev. Thomas J. Mardaga, bishop of the Catholic Diocese of Wilmingotn, and two students entered the suit as defendants. The American Civil Liberties Union also appeared as frend of the court on the side of the defendants but filed no briefs and did not participate in arguments on the cross-motions before the court for pretrial judgment.

Both the university, represented by John P. Sinclair, and the defendants relied upon the first constitutional amendment to support their positions, each side reaching opposite conclusions. The amendment provides that "congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

These constitutional guarantees apply to action by the state and its agent, the state-supported university, Marvel noted.

Citing various Supreme Court opinions, Marvel said the establishment clause requires the exercise of neutrality toward religion in any form.

The university could not constitutionally permit the masses and exclude religious services for students of other faiths. It could avoid conflict by allowing all groups equal access to the facilities, he said.

However, the university's contends that the number of religious groups that might ultimately seek worship time would present it with an almost impossible scheduling task.

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1st EDITION

peninsula

The Morning News, Friday, March 29, 1974 · Page 17

Prosecutors critical of case load

By Virginia Delayon

Court order bars Mass on U.D. campus

By Tom Greer

Sharp queries are aimed at DP&L rate bid

By Walt Rickel
Dover Bureau Chief

Man put on probation for false loan request

Cycle problem is a growing one, state police say

Sky high

Dirk Stratton stands atop the 180-foot tall superstructure of a Delmarva Power & Light Co. natural gas holding tank adjacent to Interstate 95 which is being dismantled. The skyline of downtown Wilmington is behind him. Another picture on Page 15. (Staff photo by Fred Comegys)

Cannon hems and haws while Sidwell leaves

sussex sketches
ron williams

lottery

Morning News to print new DART schedules

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tions to hire more. with extreme reluctance. in charge of scheduling, an will be writing briefs, conduct- other cases, prosecutors are See COURTS, P. 20, C. 3

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DAILY RECORD

Keep Canal Control, Senators Say

Forum Set On City Housing

Humanities Group Seeks Solutions

DATEBOOK

5 Lose Race With Death

Lawyer Belli Loses His Appeal

Old Newspapers? 3 Million Are Here

Rise in Jobs Is Predicted

Streak Driver Excused as Juror

Ted Widening Lead in Polls

Book-Burning Board Balks

No Specialist Wanted

Big City Folk Like Country Doctors

Yard to Protect Royal Family

Ghost Train Stirs Britons

House Oks Relief On 3 Continents

Suez Reopening Seen in 10 Months

Parasite Kills Yankee Jays

Food-Plan Phaseout Disaster—McGovern

Cherry Fest Nipped in Bud?

Greek Blames U.S. For Athens Regime

Texas Bank Shares Sign of Naked Truth

Broom Sale To Benefit Band

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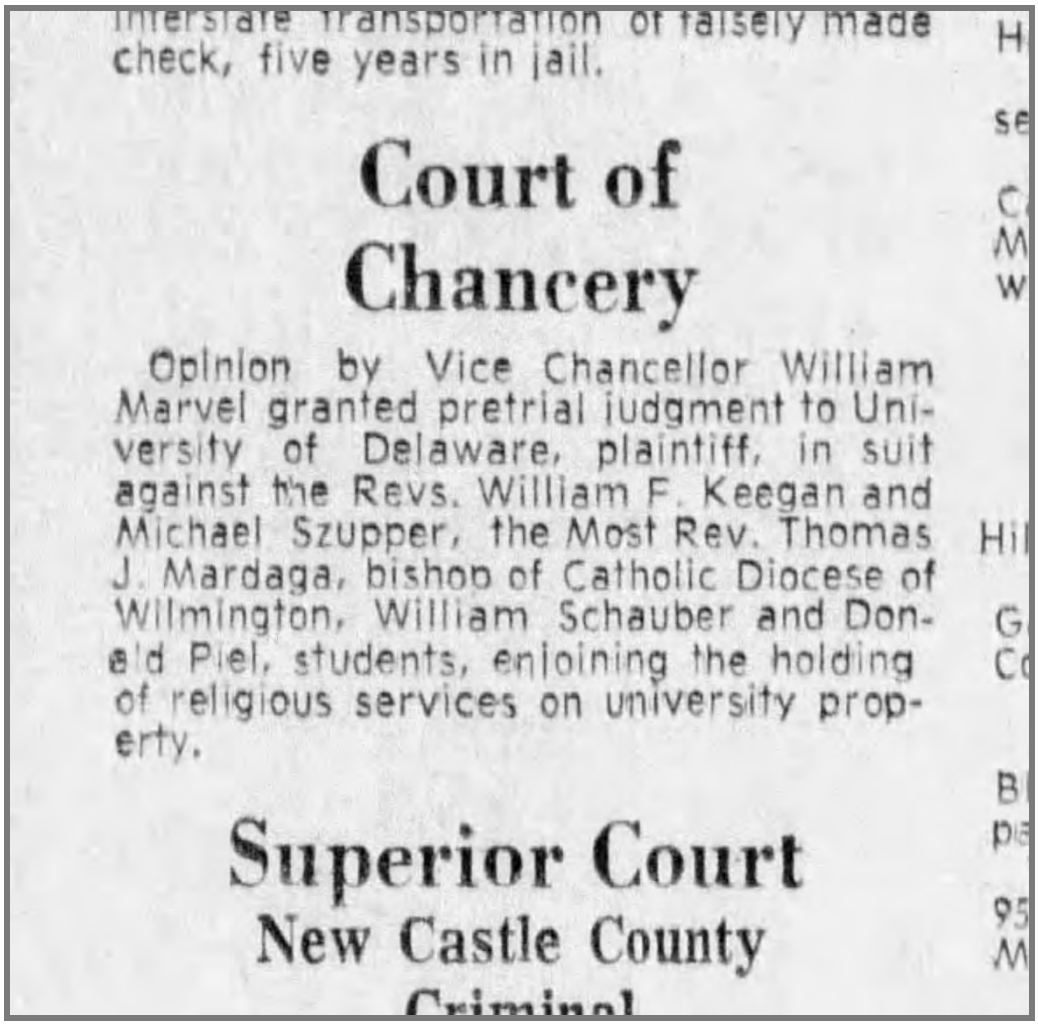

interstate transportation of falsely made check, five years in jail.

Court of Chancery

Opinion by Vice Chancellor William Marvel granted pretrial judgment to University of Delaware, plaintiff, in suit against the Revs. William F. Keegan and Michael Szupper, the Most Rev. Thomas J. Mardaga, bishop of Catholic Diocese of Wilmington, William Schauber and Donald Piel, students, enjoining the holding of religious services on university property.

Superior Court

New Castle County

Criminal

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The Philadelphia Inquirer / METROPOLITAN NEWS
Saturday, March 30, 1974
Serving Philadelphia and Its Suburbs, and Pennsylvania, New Jersey and Delaware
Section B

Crime in City Dips 4 Percent

But Rape, Murder Increase

ONE YEAR AGO, in April 1973, the area on the Parkway between 16th and Arch sts. and the City Tourist Center on Kennedy Blvd. was a barren,

barren path used by short cutters and young baseball players. Now (right) it has been planted with evergreens and made attractive by the city.

THE SENATOR from North Carolina, Sam J. Ervin, the principal speaker at a luncheon at the Warwick street by the Philadelphia Trial Lawyers Association, signs autograph for Karen Carlisi, a school teacher and daughter of a lawyer.

Judge Reverses Self on Mass

Upholds University of Delaware Ban

By MURRAY DUBIN

WILMINGTON, Del. — The University of Delaware can prohibit Sunday Masses from being held inside a school dormitory, a judge here has ruled.

Chancery Court Judge Wilbert Marvel, in making the ruling, overturned a decision he made last September prohibiting the university from interfering with Sunday Mass in dormitories.

Marvel ruled then that University's position of banning all worship services on its property "is not, in any sense, a substantial infringement of the rights of ... students ... to freely worship, according to their faith, at places of their choice rather than in Christiana Towers."

Marvel said the defendants, the Rev. Michael F. Scanlon and William F. Kangas, two students and the Most Rev. Thomas J. Mardaga, Bishop of the Catholic Diocese of Wilmington, based their case for worship on university property "not on the claimed inaccessibility ... of other places to worship in Newark, but rather on a claimed right to easy accessibility to worship selected by them."

Both sides said the First Amendment to the Constitution supported their position.

The university held that governmental establishment of religion was not permitted by the Constitution. The defendants said the Constitution banned governmental entanglement with an individual's right to religious freedom.

The freedom-of-religion case began in September when Fathers Scanlon and Kangas, responding to requests by students, began conducting Mass inside Christiana Towers.

The university felt a risky hazard to all worship services in campus buildings and it took the two priests to court. On Sept. 21, Marvel denied a university request for a preliminary injunction preventing the Mass. A week later, he approved a restraining order preventing the university from interfering with the Mass.

School Board to Try Again To Drop $42 Million Deficit

By PAUL TAYLOR

State Aid Sought For the Unborn

By HARRY GOULD

Lower Merion Pupils Return to Classes

By RICHARD L. PAPIERNIK

Bar Owner, Woman Are Found Slain

Robot Will Do Your Housework, Chase You Around, Too

By JOEL N. SHURKIN

This household robot can chase and trap all the pretty young women in sight

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Judge Reverses Self on Mass

Upholds University of Delaware Ban

By MURRAY DUBIN
Inquirer Wilmington Bureau

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Chancery Court Judge William Marvel, in making the ruling, overturned a decision he made last September prohibiting the university from interfering with Sunday Mass in dormitories.

Arlen Mekler, attorney for two priests who have been celebrating the Masses, said he would appeal to the State Supreme Court. In the meantime, Mass will no longer be held on university property, in compliance with the order.

Marvel ruled that the University's position of banning all worship services on its property "is not, in my opinion, a substantial infringement of the rights of . . . students , . . to freely worship, according to their faith, at such churches of their choice rather than in Christiana Towers."

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State Aid Sought For the Unborn

By HARRY GOULD
Inquirer Staff Writer

A suit seeking secure to public assistance grants for unborn children was filed Friday in U. S. District Court here by two pregnant women and the Philadelphia Welfare Rights Organization.

The plaintiffs, who filed the suit as a class action, asked the court to overturn a State Department of Welfare regulation that limits welfare payments only to mothers and their children after birth.

The suit insists, as its primary argument, that low-income mothers and their infants suffer a disproportionate share of physical and mental illnesses from lack of nutrients during fetal development.

Filing the suit are the two pregnant welfare recipients, Mary Reilly of 8438 Frankford ave., and Mrs. Martha King of 4939 N. 7th st., and

(See UNBORN on 2-B)

Lower Meri
Return to

By RICHARD L. PAPIERNIK
Inquirer Staff Writer

Police patrols assigned to help quell disturbances at Lower Merion High School departed Friday after students ended a boycott and returned to classes.

In the wake of a series of fights between blacks and whites this week at the school, 12 students have been suspended. Eight have been arrested by police.

The boycott was called to

AR042

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EVENING JOURNAL

WILMINGTON, DELAWARE / MONDAY, SEPTEMBER 16, 1974 / VOLUME 42, NUMBER 218 / FIFTEEN CENTS

Campus Religion Case Heads Into Snare

Ford Offers a Conditional Amnesty To Vietnam-Era Evaders, Deserters

Condition: Allegiance, Public Work

In Swap for Food

2 Hostages Freed By Hague Gunmen

Antibusing, Labor Parties Okd for U.S. House Race

Ford at Wheel Startles D.C.

Tug Logs a Real Job

Goodell Is Clemency Chief

Ford on TV Tonight

IN TODAY'S JOURNAL

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WEATHER

Du Pont, 7 Others to Save Legal Fees

Dye Price-Fixing Pleas to Be No Contest

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WILMINGTON, DELAWARE / MONDAY, SEPTEMBER 16, 1974 / VOLUME 42, NUMBER 218 / FIFTEEN CENTS

Campus Religion Case Heads Into Snare

By DAVID HOFFMAN
Newark Bureau

A landmark constitutional battle over the First Amendment, begun a year ago when two chaplains held a Catholic Mass in a dormitory at the University of Delaware in violation of the university charter, may be stalled before the Delaware Supreme Court.

Both justices now serving on the state's highest court may be disqualified from the case because of past and present ties to the university. The remaining seat on the court is vacant, awaiting confirmation of a third judge by the state Senate.

"The case will have to be put aside to wait for further developments," said Edgar Townsend, clerk of the Supreme Court.

Chief Justice Daniel L. Herrmann has already said he will disqualify himself from the case because he is a university trustee. William Duffy Jr., the other justice, has a possible reason to follow suit.

Duffy, a Catholic, was appointed a university trustee in 1961 but resigned in 1966 — 1 year before the end of his term — for what he says were "reasons beyond my control."

Duffy has declined comment on the resignation, but sources close to the trustees indicate it was over a request by the Wilmington Catholic diocese to purchase land to build a chapel on campus. The trustees denied the request, apparently spurring Duffy's resignation.

Duffy has said he will make a decision about his own disqualification "when the appropriate time comes."

If Duffy follows Herrmann, both will be unable to appoint substitute justices from a lower court — the usual procedure when a judge is disqualified — and the case will have to wait for the Senate's confirmation of a third justice, according to Townsend.

Gov. Sherman W. Tribbitt appointed Superior Court Judge John J. McNeilly for the vacancy in August and the senate is expected to act on it when it reconvenes briefly early next month. Both the appointment and the court expansion bill failed to pass a special session of the Senate last month.

At best, it appears the sticky constitutional questions raised by the chaplains and the university won't be considered until next year, although attorneys hoped for an October hearing.

Both the chaplains and the university have filed briefs with the Supreme Court in Dover, and outside the courtroom have vowed to carry the case to "its ultimate conclusion," which would appear to in the U.S. Supreme Court.

The case had its origins on the first two Sundays in September, 1973, when the Rev. Michael Szupper and the Rev. William F. Keegan conducted a mass in the commons area of Christiana Towers, two high-rise dormitories at the university.

On the third Sunday, officials locked the chaplains out, claiming the services violated the university charter, and more importantly, the first amendment to the Constitution.

The charter states in part: "The university shall never be operated or conducted in the interest of any party, sect or denomination."

A university policy prohibits worship services on campus, but allows religious groups to use campus rooms for meetings.

But the center of the controversy remains the First Amendment to the Constitution, which says in part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The chaplains claimed the university was prohibiting the "free exercise" of religion by locking them out. The university, which legally must consider itself a state agency, said it was only attempting to avoid "respecting an establishment of religion."

And from there both sides began what appears a year later to have grown into a long legal debate over the meaning of an enigmatic First Amendment.

At first, arguments were heard in the Court of Chancery, where the university won a temporary restraining order and then lost it; where the chaplains won a similar order and had it dissolved; where a Wilmington bishop and two university students entered the case on behalf of the chaplains; and where the university won the last decision prohibiting services on March 2 this year.

Two weeks later the first appeal to the Delaware Supreme Court was filed by Arlen B. Mekler, a Wilmington attorney who has represented the chaplains without a fee from the first day they

See 2 JUDGES' Page 2, Col. 1

Ford Offers a Conditional Amnesty

AR044

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HELPING HAND

Raising A Baby Possum

Broken Lawn Mower

Hold Checks 3 Years

2 Judges' Hands Tied in U.D. Case

Boston Police Drive Crowd From School

Your Child's Health

Help the Allergic Child Live Normally

Eecvit Says He'll Ask for New Election

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2 Judges' Hands Tied in U.D. Case

Continued from Page One

were locked out at Christiana Towers. Mekler is a Unitarian.

He was joined in his appeal by James P. Collins, representing Wilmington Catholic Bishop Thomas J. Mardaga, and the two students, William Schauber and Donald Peil. Collins is being retained by the diocese.

They face John P. Sinclair, the university's legal counsel, and Phillip B. Kurland, a Chicago attorney acknowledged as one of the nation's foremost experts on constitutional law. Kurland has been retained by the university just for this case.

Kurland is the special counsel who will represent the state Board of Education if the Wilmington school busing case ever goes to the U.S. Supreme Court.

"They've brought in the king," Mekler said of Kurland.

The university said last spring it had spent about $4,000 in private funds for legal fees. Daniel W. Wood, executive assistant to the president and university secretary, confirmed recently that figure had not exceeded $5,000 so far.

Attorneys for both sides have been reluctant to discuss the specifics of the case while it is pending before the court, but they acknowledge privately that the constitutional issues remain unchanged from the first time the chaplains said Mass in the dormitory.

Briefs now before the court indicate those issues are:

- Does the university have a constitutional responsibility to ban all religious services on campus so as to avoid "the establishment of religion?" Could the university, for example, open the campus to all denominations and still maintain neutrality?
- Were students' constitutional rights to "free exercise" of religion violated by the locked dormitory doors?
- To what extent must students be inconvenienced before a state agency has "prohibited" free exercise? The Catholic Newman Center and other churches are less than 2 miles from the dormitory.
- Does a university policy which prohibits religious services of all denominations on campus constitute "undue hostility toward religion?"

As Mekler notes in his introductory brief, the two guaranteed rights in the First Amendment — when taken to extremes — "come into open conflict."

But the arguments now before the court also reflect many fine interpretations of past U.S. Supreme Court opinions. When a decision does come, it will likely support some of those opinions and challenge others.

One example is the question of the university's obligation to avoid the "establishment of religion."

In Emerson vs. Board of Education (1947), the court said: "The 'establishment of religion' clause of the first amendment means at least this: neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another."

But in another case, Zorach vs. Clauson (1954), the court also said: "We are a religious people . . . when the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions."

The opinions are ambiguous But before the courts can begin to straighten them out, a Delaware Supreme Court judge will have to be found to hear the case.

N.J. Daily Lottery

The winning number in Saturday's New Jersey daily lottery was 69107.

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Parents complain of large classes in city schools

High court setup may delay U.D. religion case

Car port

The auto business is booming at Wilmington's Marine Terminal. These new cars from the Chrysler Corp. assembly plant in Newark will soon be headed for Saudi Arabia on the ship whose funnel can be seen in the background. The same vessel brought a cargo of Fiat cars to Wilmington. Chrysler started using the port last month and officials of the city-owned terminal hope the extra traffic will be permanent. The city gets $1.50 for each car shipped from the port. (Staff photo by Pat Crowe)

Dewey Beach incorporation means a lot of hard work

analysis

Gilliam takes new county housing job

James B. Gilliam Sr.

DelTech expects approval of affirmative action plan

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12:40p	—	1:56p NS
1:16p	3:16p NS	4:29p
5:25p	—	7:45p Thrifty
3:45p	7:26p NS	8:43p
9:40p Nc	11:24p NS TriStar	12:41a
12:01a Nc	3:00a NS	6:20a TriStar

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Haig promotion to NATO official

Welfare recipients may be asked to seek jobs

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The Morning News (Wilmington, Delaware) · Tue, Sep 17, 1974 · Page 14
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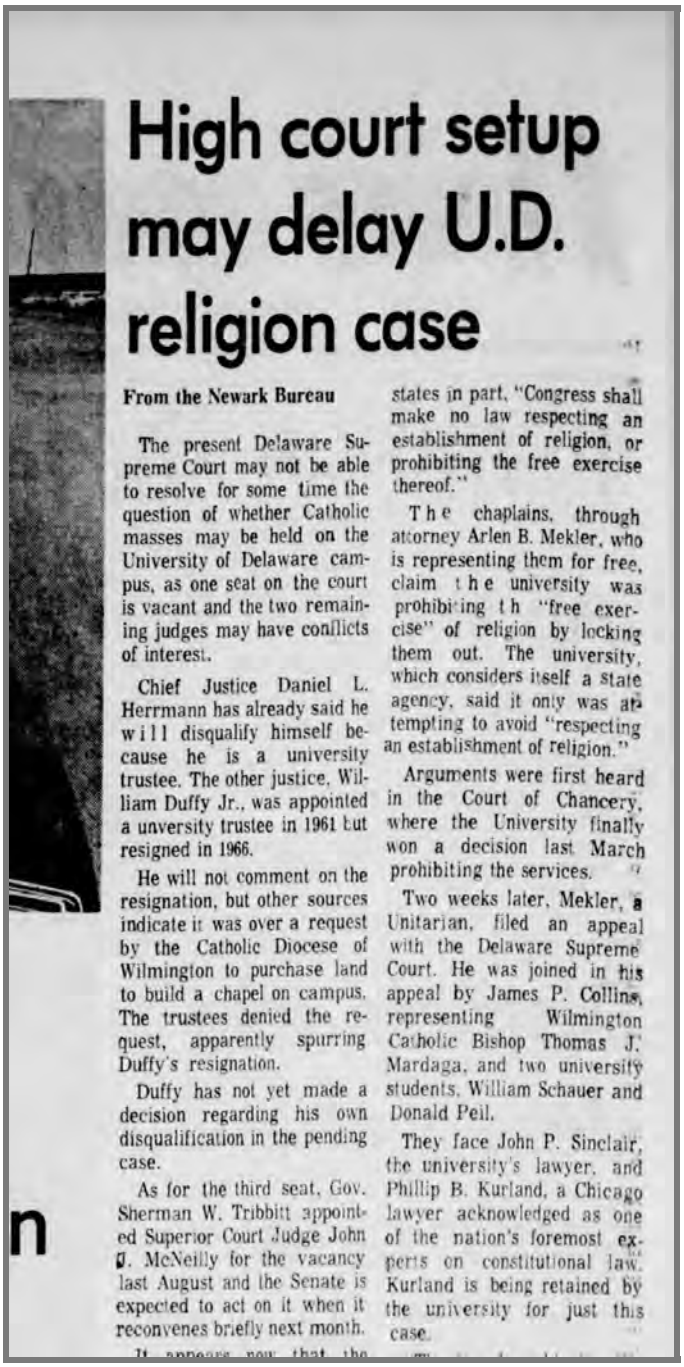

High court setup may delay U.D. religion case

From the Newark Bureau

The present Delaware Supreme Court may not be able to resolve for some time the question of whether Catholic masses may be held on the University of Delaware campus, as one seat on the court is vacant and the two remaining judges may have conflicts of interest.

Chief Justice Daniel L. Herrmann has already said he will disqualify himself because he is a university trustee. The other justice, William Duffy Jr., was appointed a university trustee in 1961 but resigned in 1966.

He will not comment on the resignation, but other sources indicate it was over a request by the Catholic Diocese of Wilmington to purchase land to build a chapel on campus. The trustees denied the request, apparently spurring Duffy's resignation.

Duffy has not yet made a decision regarding his own disqualification in the pending case.

As for the third seat, Gov. Sherman W. Tribbitt appointed Superior Court Judge John J. McNeilly for the vacancy last August and the Senate is expected to act on it when it reconvenes briefly next month.

It appears now that the states in part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The chaplains, through attorney Arlen B. Mekler, who is representing them for free, claim the university was prohibiting the "free exercise" of religion by locking them out. The university, which considers itself a state agency, said it only was attempting to avoid "respecting an establishment of religion."

Arguments were first heard in the Court of Chancery, where the University finally won a decision last March prohibiting the services.

Two weeks later, Mekler, a Unitarian, filed an appeal with the Delaware Supreme Court. He was joined in his appeal by James P. Collins, representing Wilmington Catholic Bishop Thomas J. Mardaga, and two university students, William Schauer and Donald Peil.

They face John P. Sinclair, the university's lawyer, and Phillip B. Kurland, a Chicago lawyer acknowledged as one of the nation's foremost experts on constitutional law. Kurland is being retained by the university for just this case.

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It appears now that the constitutional questions raised by two university chaplains won't be considered until next year, although the attorneys involved hoped for an October hearing.

The case involved First Amendment freedoms of religion. On the first two Sundays in September 1973, the university chaplains, the Rev. Michael Szupper and the Rev. William F. Keegan, conducted a Mass in the commons area of Christiana Towers, two high-rise dormitories on the campus.

On the third Sunday, officials locked the chaplains out, claiming the services violated the univerity charter and, more importantly, the Constitution's First Amendment.

A university policy prohibits worship services on campus, but allows religious groups to use campus rooms for meetings. The school's charter states, "The university shall never be operated or conducted in the interest of any party, sect or denomination."

The First Amendment

Catholic Bishop Thomas J. Mardaga, and two university students, William Schauer and Donald Peil.

They face John P. Sinclair, the university's lawyer, and Phillip B. Kurland, a Chicago lawyer acknowledged as one of the nation's foremost experts on constitutional law. Kurland is being retained by the university for just this case.

"They've brought in the king," Mekler said of Kurland.

Lawyers for both sides have been reluctant to discuss specifics of the case. Briefs now before the court, now however, indicate the issues are these:

— Does the university have a constitutional responsibility to ban all religious services on campus to avoid "the establishment of religion?" Could the university open the campus to all denominations and still maintain neutrality?

— Were students' constitutional rights to "free exercise" of religion violated by the locked dormitory doors?

— To what extent must students be inconvenienced before a state agency has prohibited free exercise? The Catholic Newman Center and other churches are less than 2 miles from the dormitories.

— Does a university policy prohibiting religious services of all denominations on campus constiute "undue hostility toward religion?"

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Won't Offer Mass Now

Victory Not Won Yet, 2 UD Priests Decide

Despite a new state Supreme Court ruling giving them the right to conduct services on campus, two Catholic priests expect more litigation before they actually offer Mass at the University of Delaware.

The two, the Revs. William P. Keegan and Michael Hopper, won the court decision nearly 2 years after they were locked out of a dormitory classroom room by the university.

Now, said Keegan, "We want to give it careful consideration. Our feeling is that we haven't won a complete victory yet."

He said the chaplains for the UD Newman Center will wait for the "approval of the courts" to conduct a Mass on campus.

In its decision handed down Friday, the Supreme Court overturned a Chancery Court ruling that gave the university a permanent injunction against the two priests conducting Mass.

The high court also said the lower court should reconsider its decision and hold a special hearing to determine whether the University has a "compelling justification" to prohibit services.

The university will probably take advantage of that hearing and depending on its outcome it could make further appeals to the state Supreme Court or the U.S. Supreme Court.

University trustees have said they intend to carry the matter to an "ultimate decision."

The case involves the interpretation of First Amendment clauses prohibiting establishment of a state religion and protecting the free exercise of religious beliefs.

The university has contended the worship services violate its responsibility not to respect the establishment of a religion, but the two chaplains say that in doing that the university violates the right of free exercise of religion.

The locked doors began a series of court decisions leading to the latest decision, which is still in effect.

■ The university can keep with its constitutional responsibilities in long as it offers religious groups the same access to facilities as it would offer any religious group.

■ The university must show a "compelling" reason why it should cause the students even the smallest amount of inconvenience in their desire to pursue their exercise of religion. The university had said the students should go to a chapel 2 miles away.

■ Chancery Court should give the university a hearing to determine whether the school has a valid reason to intervene on the religious rights. The high court said Chancery Court had mistakenly not held such hearings earlier.

Delaware Association of Police Pankmobile Derby champs

4 Others in His Family Won Previously

Pushmobile Champ Outvoted at Dinner

The youngest champion in the history of the Delaware Association of Police Pushmobile Derby found himself outvoted Saturday night in choosing the name for a victory celebration.

"The whole family went out for Kentucky Fried Chicken," said 9-year-old Chris Barnes. "I was glad, but my favorite is cheeseburgers."

Two votes ruled that as the new derby champion, Chris' mother would have been responsible — but the family ate in unanimity later in Pennsylvania.

Four sisters in the family, Jerri, Mike, Mary and Kathy have also won the derby event, and three times, weighed in heavily as Chris' Pennsylvania pals all fundraisers for Sharon Corbett 11, daughter of Mr. and Mrs. Ralph E. Corbett Jr. of Nottingham Green, who was first in the girls' division on her fifth try for the title. The contests were conducted at the Midland Downtown track.

Chris collected — among other things — a $50 savings bond, a portable TV set and a trophy.

Little share of the spoils included a $1,000 savings bond, a motorcycle, trophy and a trophy to go on display in the Division of Public Safety Building trophy room.

The new derby champion credits his brother Kevin, 11 years old today and last year's derby runner-up with teaching him the tech-

niques that enabled him to win with the car's nose (one of 12) upwards.

"He showed me how to keep my eyes on him and taught me a number of things to do," said Chris.

Other prize winners included John Gambrowski, Class A boys' championship; Kathy Bonsall, Hockessin, girls' and Leonard Wheatley, girls' runner-up.

Junior runner-up Kathleen Price was 6th, while Lucia Fenwick was followed 10th by her third place brother and Patricia Cool 12th for coming in fourth.

The Jon S. Hallock du Pont — whose unfailing support for the derby helped make it the success that it is — was honored by manager of merchandise John G. Leach as he presented the awards.

Chris Barnes now joins his other brothers and sisters on the honor roll, as does Sharon Corbett.

First place winners are automatically eliminated from future competition.

Chris, with his 10 victory pts., however, is encouraged to help coach Corbett and Jerry Carmean before the day when she's between wins but to add up the points a trophy contender — in 1979.

If he's able to coach her to victory, maybe he can assist Wendy Rodes to get a checkered-car last spot in that victory party.

ALMANAC CORNER

The Weather Map

Cooler weather is forecast today for most of the nation. Very warm weather is forecast for the Northwest. Showers are forecast for the upper Mississippi and Ohio valleys, southern Florida, the Northeast and coastal areas of Washington.

The Forecasts

WILMINGTON AND VICINITY — Fair, warm tonight, lows in low 70s. Mostly sunny, Tuesday, chance of afternoon showers or thunderstorms, highs in the low 90s. Probability of precipitation 10 percent tonight, 30 percent Tuesday.

KENT AND SUSSEX COUNTIES, EASTERN SHORE — Fair tonight, lows in the low 70s. Sultry Tuesday with considerable sunshine, chance of afternoon thunderstorms. Highs in the low to middle 90s. Probability of precipitation 10 percent tonight, 30 percent Tuesday.

NEW JERSEY SHORE — Hazy and humid through Tuesday. Chance of thunderstorms Tuesday evening. Highs 85 to 90. Lows 70 to 75 tonight. Probability of showers 20 percent tonight, 40 percent Tuesday. Ocean water temperatures in the low 70s.

SOUTHEASTERN PENNSYLVANIA — Hazy and humid through Tuesday with chance of a few thunderstorms Tuesday afternoon. Highs upper 80s to low 90s. Lows in upper 60s to low 70s tonight. Probability of showers in forecast tonight, 40 percent Tuesday.

Extended Outlook

DELAWARE — Wednesday through Friday: Chance of showers Wednesday, otherwise fair; highs in 80s to mid-90s; lows in 60s to around 70.

Air Quality

24-Hour Average at noon.

Record, Tides

Weather Elsewhere

EVENING JOURNAL

Ford Fears Industrial 'Quicksand'

Miller Loses Bid to End Curfew

Argentine Guerillas Seize Leader's Corpse

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Won't Offer Mass Now

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- Chancery Court should give the university a hearing to determine whether the school has a valid reason to infringe on the students' rights. The high court said Chancery Court had mistakenly not held such hearings earlier.

Bargemen Block Amsterdam, Rotterdam

AMSTERDAM (AP) — Dutch bargemen fighting a government plan to reduce the numbers of their craft have blocked the harbors of Amsterdam and Rotterdam with their barges.

4 Others ir

Pus

The youngest c
history of the Dela
of Police Pushmot
himself outvoted S
choosing the men
celebration.

"The whole fam
Kentucky Fried C
year-old Chris B
good, but my fav
burgers."

One would think
boys' titleholder,
would have been
the Beatties are n
ly.

Four others in t
Mike, Mary and F
won this annual c
votes weighed
Chris'.

ALMANAC CORNER

1 A.M. EST Aug. 25

Data From NATIONAL WEATHER SERVICE, NOAA, U.S. Dept. of Commerce

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The Morning News (Wilmington, Delaware) · Mon, Aug 25, 1975 · Page 11

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this morning

Finances imperil jail work plan

Delaware's 8-year-old prison work release program may come to a halt next year for lack of money.

Under the program, qualified prisoners hold outside jobs, pay taxes, pay the state for room and board, help support their families and pay any fines levied against them.

Acting State Prisons Commissioner Paul W. Kreve calls work release "one of the most meaningful and productive programs the state prison system has had for years."

But he said Saturday he feels "sure the federal government won't sponsor this program after June of next year. And right now I'm not sure the General Assembly will appropriate funds to continue it."

Federal money for the program comes from the Law Enforcement Assistance Administration (through the Delaware Agency to Reduce Crime. The policy of the LEAA, the program's chief financial support for the past 7 years, is to encourage states to take over projects considered successful.

Kreve estimated at least $300,000 a year is needed to continue the work release program — chiefly for personnel, including guards, counselors and clerks.

Prisoners are supposed to be paid the prevailing community wages for their jobs. Chief's recent 12-month period covered hundred inmates earned $1.5 million and paid $214,000 in federal, state and city taxes, according to a DARC evaluation.

As highly as work release is regarded by prison officials, there has been some criticism.

Newark Police Chief William Hrverky has complained that police are not adequately notified when prisoners are out on work release.

A recent DARC evaluation charges that the Delaware program is not operated as a comprehensive, unified program. "The continual lack of measurable goals and objectives makes the program difficult to evaluate and detect its successes and/or failures."

The work release program will not become financially independent in the foreseeable future, says Harned W. Weir of DARC. "However, if we were to take into account the taxes, fines and support payments paid, one must conclude that the economic benefits of such a program are substantial," he said.

Last week, about 90 prisoners, mostly men, were at work release: 15 were at the Delaware Correctional Center, Smyrna; 27 at the Plummer Center in Wilmington, 42 at the Sussex Correctional Institution, and three at the women's prison at Claymont.

Chris Beattie, 9, gets a congratulatory pat from his mother after winning the Pushmobile Derby Saturday. He's the fifth member of the Charles W. Beattie family to win.

A 5th Beattie is pushmobile king

By Betty Burroughs

Another unbeatable Beattie reigned the Delaware Association of Police (DAP) Pushmobile Derby crown Saturday at Millard Cross-roads.

Seven-old Chris Beattie notched 104 contenders to win the boys' grand prize and championship, while 14-year-old Sharon Collett of Newark made good in her fifth try for the girls' pushmobile title.

Chubby-faced Chris, who also had the day's fastest time of 32.4 seconds was the only member of his family competing this year.

The youngest son of Mr. and Mrs. Charles B. Beattie of Tylerton, he now joins two sisters and two brothers in the DAP Pushmobile "hall of fame."

His victory tritches the Beattie clan from competition for 3 years. The youngest son of Mr. and Mrs. Charles B. Beattie of Tylerton, he now joins two sisters and two brothers in the DAP Pushmobile "hall of fame."

His victory tritches the Beattie clan from competition for 3 years. The youngest age for entering the derby is 9 and the youngest of the Beatties' children is daughter Carolyn, 6.

Dad Charlie Beattie, committee chairman of this year's derby, trains his kids so well that they was before getting into Class A competition for drivers 12 to 14.

Last year brother and sister Steve and Mary Beattie were boy and girl champions of ages 9 and 10, respectively, but have turned 10 next day.

Another Mike Beattie was 11 when he won in 1972, as was Cristy, the oldest and the first of the Beattie brood to set the stage for her siblings. Cathy was pushmobile queen in 1970.

The other two Beatties on the Pushmobile honor roll — David, 1958 champ, and Teresa, 1964 girl champ — are first cousins of Charles B. Beattie III, who himself was Chris B.'s winner in the second derby in 1968. He also holds the speed record for the old Lea Boulevard track abandoned in 1984 for the modern mile-and-a-half track and donated to the DAP by the late S. Hallock du Pont.

Saturday's 29th annual derby was dedicated to the pushmobile patron who died last Oct. 2. Mr. du Pont's support of the DAP's youth project was more than philanthropic. He always put in an appearance at the track on derby day despite failing health in later years.

John G. Lisak, personnel psychologist counselor of corrections, paid tribute to the derby's main benefactor" in presenting the prizes Saturday.

In addition to a $1,000 savings bond and other prizes, champion Chris Beattie won a motorcycle. The 10 grander enters 4th grade at Lewis L. du Pont Elementary School next month.

Girl champion Sharon Collett, who never had been in the money in her four previous attempts, won a $500 savings bond, plus a stereo, TV set, watch, and other donated awards. A sophomore at Newark High School, she is the daughter of Mr. and Mrs. Ralph E. Collett Jr. of Nottingham Green.

Boys and girls who placed second, third and fourth in their divisions and won bonds, bikes and other prizes.

John Cwiekowski, Class A boys' winner and runnerup to Beattie, $100, Charles Evans, 12, $100; Leonard White, 10, $100.

Kathleen White, girls runnerup, $100; Lucia Pennebaker, 12, $100, and Patricia Carl, 6th, $50.

Trophy-class winners in the derby automatically are eliminated from future competition and their winning cars are retired forever.

Marvin Colbert's car carried the name of her Diamond State Telephone Co. opponents to Derby victory as the midget car #2 other girl drivers.

Parkies Hardware sponsored Class and all the other Beattie champs for a total of five winners in 5 years. Meanwhile, 9-year-old Carolyn Beattie is planning for '76 when if products will be boys versus girls. She's primed for the challenge and has plenty of coaches at home to help her do it.

Marvin Colbert won the girls' Pushmobile Derby title Saturday—on her fifth try at the crown. A Civil Air Patrol official keeps her from running off the track at the end of the race. (Staff photo by Pat Crowe)

Wilmington workers due tax windfall

A Social Security audit of the city of Wilmington's accounts turned up a $750,000 windfall for the city and 4,000 to 5,000 particular employers.

Though 16 years ago Wilmington had opted out to contribute Social Security payments for certain of its part-time employees, it somehow had kept the employee on the Social Security rolls, says city deputy finance director Harold S. Gold.

And what's good for city hall, in this case, is good for those employees — they paid out like amounts and are also due for refunds.

Gold said the refunds to employees will average between $25 and $75. Those involved are 1 part-time parks department, part of Wilmington and summer youth employees, who worked fewer than 400 hours annually since 1968.

Their names will be posted in the lobby in the Public Building beginning Sept. 4.

The weeks of Sept. 8 and Sept. 15, checks to properly identified claimants will be issued in City Council chambers from noon to 2 p.m. on weekdays, and Monday and Wednesday nights from 5 to 7.

Though some $500,000 is actually due to be refunded, Gold said, he expects to get only $250,000. The remainder being lost because of difficulties with records.

Gold said the money due the employee will be placed in a trust fund and can be claimed for at least a year. He said the statute of limitations prevents collecting refunds for any payments made before 1968.

Sussex aiming to avoid pollution crisis

By Ray Goldbacher

GEORGETOWN — Sussex County has undertaken a massive planning project designed ultimately to keep circulation from strangling the county's rivers and streams.

The 208 Project — named for the section of federal law which created the program — will involve a 2-year water quality study from which strategies will be developed to deal with present and future pollution problems in the eastern third of the county.

It will cost $851,000, and entire-ly by the federal government, right down to pencils and paper (Sen. County officials are now in the process of hiring six employees to staff the program. Officials also are getting together citizen committees to advise and assist with various phases of the work.

W. Roger Truitt of the county engineer's office, is working in the organization and will act as liaison with the 208 staff when they are hired.

"We haven't had any programs like this before," Truitt said in an interview. "An area that had a specific need for sewers would mention the county council and we would study it. This was a very localized approach."

One of the main themes of 208 planning, he explained, is to look at water quality on a wider, regional basis. "Water resources in one area where you or not to cooperate, because eventually it downstream from intentionally also," Truitt said.

Nationwide, $300 million was allocated for 208 planning. Most of the funds reportedly, the grants have been urban and industrial and have severe water problems.

In Delaware, New Castle County has a 208 project already under way. The eastern third of Sussex County, heavily urban or industrial, also approved for a federal grant because of the impact of transient tourism and projected future growth. Kent County already has received up many of its problem problems, with a central sewage system.

With the program, Truitt said, Sussex County will be able to avoid the crisis situations which programs in urban areas are trying to deal with now. "We've got a good chance here ... to use the money to prevent and protect," he said.

There are already some existing problems areas, such as those noted in the state's 1972 Water Quality Inventory. Three Sussex streams were listed as having major pollution problems: Broad-kill Creek, Indian River's main stream and Burton's Branch near Selbyville.

Because of the problems in Indian River, some areas in the Indian River Bay have been closed to shellfishers of and on for years. The 208 Project will be looking at the causes and cures for that kind of problem in three drainage basins: the Broadkill and Indian

See POLLUTION, P. 12, C. 4

Rehoboth Beach bowling alley robbed

REHOBOTH BEACH — A robber with a small handgun got $50 at the bowling alley here Friday night, the first to hold ...

City police said the robbery occurred at 9:45 p.m. at the Rehoboth Bowling Lanes.

lottery

New Jersey Saturday winner:
[illegible]

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UD priests to await decisions

By David Hoffman

Two Catholic chaplains at the University of Delaware, who had their right to conduct mass on the campus upheld Friday by the state Supreme Court, don't expect to resume worship services until further litigation is resolved by a lower court.

"We want to give it careful consideration. Our feeling is that we haven't won a complete victory yet," the Rev. William F. Keegan said yesterday, almost 2 years after he and Father Michael Szupper were first locked out of a dormitory commons room by the university.

Keegan said the chaplains won't hold Mass on the campus "without approval of the courts."

In a decision handed down Friday, the high court overturned a Chancery Court ruling which gave the university a permanent injunction against the two priests.

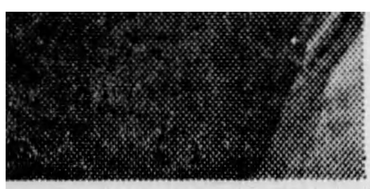
The Supreme Court said the lower court should reconsider its decision by holding a special hearing to determine if the university has "compelling" justification for its actions. The university is expected to take advantage of the hearing and then — depending on the outcome — appeal again to the state Supreme Court and U.S. Supreme Court.

The case involves two conflicting clauses of the First Amendment to the Constitution which define the separation of church and state: one prohibiting the state establishment of religion, the other protecting the free exercise of religious belief.

The university, which gets about a third of its money from the State said the worship services violated its constitutional responsibility not to respect the establishment of religion.

But the chaplains, who regularly hold masses at the Catholic Newman Center about 2 miles from the dormitory, said the university had infringed on the student's rights to free excercise of religion.

The case became the center of



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White, girls runnerup,
Finocchiaro, 3d, $100,
Cael, 4th, $50.
e winners in the derby

a third of its money from the State said the worship services violated its constitutional responsibility not to respect the establishment of religion.

But the chaplains, who regularly hold masses at the Catholic Newman Center about 2 miles from the dormitory, said the university had infringed on the student's rights to free excercise of religion.

The case became the center of controversy when the chaplains found the doors to the dormitory were locked on Sept. 23, 1973. They had conducted mass for the previous two Sundays without interruption.

The locked doors began a series of court opinions leading to the latest decision, which said in effect:

- The university can keep within its constitutional responsibilities as long as it offers religious groups the same access to facilities as it would offer non-religious groups.

- The university must show a "compelling" reason why it should cause the students even the smallest amount of inconvenience in their desire to pursue free exercise of religion. The university had said the students should go to the chapel 2 miles away.

- Chancery Court should give the university a hearing to determine whether the school has a valid reason to infringe on the students' rights. The high court said Chancery Court had mistakenly not held such hearings earlier.

The university's trustees have said they intend to carry the case to an "ultimate decision," indicating that future rulings will probably be appealed to the U.S. Supreme Court.

The priests were represented by Wilmington attorney Arlen B. Mekler. Bishop Thomas J. Mardaga and two students later joined them as friends of the court.

The case was argued before the Supreme Court last Jan. 17. The university was represented by its regular counsel, John P. Sinclair, and noted authority on constitutional law, Phillip B. Kurland, a University of Chicago law professor.

Rehoboth Beach

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The Morning News (Wilmington, Delaware) · Wed, Aug 27, 1975 · Page 14

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opinion

Work release idea adds up

UD should forget it all

Data needed for comparison

A little traveling music, please

bill frank

letters to the news

Builders' deserts

Cartoons tell story

The Morning News

'OK, keep your old ammunition, and I'll push the whole thing over the cliff'

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for instance, that they often learn of a prison-

beyond the $500,000 price tag causing Mr. Reve
concern for its future.

UD should forget it all

Conflicts between different sections of the United States Constitution are usually what the practice of constitutional law is all about. For instance, there is a continuing effort to resolve the guarantee of a free press in the 1st Amendment and the guarantee of a fair trial in the 6th Amendment.

It is fairly unusual, however, to find a conflict within 16 words of the same constitutional amendment. But it came down to that in a decision rendered by the Delaware Supreme Court last week in an appeal from a Chancery Court decision forbidding two Catholic priests to say Mass in the common rooms of the Pencader dormitories at the University of Delaware.

The high court reversed a vice chancellor's 1974 decision granting an injunction against the priests in an action brought by the university.

The governing law was the opening of the 1st Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ."

(For "Congress," read the state or the university.)

The university stood on the first part of that clause, as a ban on all religious services on its or in its facilities. The priests, joined by two students and Bishop Thomas J. Mardaga of the Wilmington diocese, stood on the second half of the clause. alleging that the university policy was an interference with the free practice of religion.

As a matter of priorities, the Supreme Court came down on the priests' side: The court said that the university policy in this issue is "an incidental burden on the students' rights which requires a showing of a compelling state interest for justification," that the vice chancellor had not asked for that justification and had thereby erred. In other words, the burden of proof was on the university, and the Chancery court now must ask for that proof.

Thus, the case can go back to the lower courts for further hearings and then, possibly, back to the appeals courts.

Is that really necessary?

The state Supreme Court, it seems to us, has given the University of Delaware an out in this case: "To allow religious worship groups the same rights and privileges attendant with the use of campus facilities as are accorded other group activities could reflect a lawful accommodation."

In plainer terms, treat everyone alike.

Data needed for comparison

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Court to Hear UD Appeal on Mass Ruling

The Delaware Supreme Court has granted a University of Delaware request to reargue one section of the court's Aug. 26 ruling in favor of two Catholic priests who hold mass on campus.

The Rev. Michael Shupe and the Rev. William F. Keegan, were barred from Christiana Towers dormitory where they conducted mass there in September 1971. Along with two students and Bishop Thomas J. Mardaga of the Wilmington Diocese they have challenged the university's action.

The court ruled in their favor saying the university must make school facilities available to all groups at comparable basis.

The university had contended that religious services violated the First Amendment prohibition against state "establishment" of religion.

No date has been set for the reargument hearings, but attorneys must file briefs by Wednesday. University attorneys are preparing special briefs to reargue the court's opinion that school policy barring religious services violates the U.S. Constitution's guarantee of free exercise of religion.

A court spokesman said this is the only issue to be reargued.

Nixon Threatener Jailed in Ford Case

SACRAMENTO (AP) — Thomas D. Eisert, released from prison last May after serving 4 years for threatening the life of former President Richard M. Nixon, has been convicted on another 3-year prison term... this time for threatening President Ford.

Secret Service agents said Eisert, of Louisville, Ky., telephoned the Secret Service office in Sacramento on Aug. 15 and said, "I'm going to kill your boss, Ford."

House OKs Sinai Sensor Plan; Senate Approval Still Pending

WASHINGTON (AP)—Congress, about to begin a week's Columbus Day vacation, is expected to stamp final approval on a resolution that will place American technicians at electronic-detection posts in the Sinai Desert.

The proposal, part of the United States commitment in the Sinai pact arrived between Israel and Egypt, was given overwhelming approval yesterday by the House, which added an amendment to curb the use of U.S. military forces in the region. The resolution was approved 341 to 69.

All four congressmen from the 1-state area of Delaware, Maryland and Pennsylvania voted with the majority.

President Ford has sought approval of the outcome of the negotiations in the buffer zone between Israel and Egyptian forces by last Friday, but the Senate has yet to act on the proposal.

Sen. James Abourezk, D-S.D., has moved to restrict the measure by referring it to the Senate Foreign Relations Committee for further work. A vote on his proposal was set for today.

Senators said they would take final action on the issue tomorrow, the day they recess for their vacation.

If the Senate does take final action on the measure this week, it will have to accept the amendments tacked onto the proposal in the House and turn down a flood of efforts proposed by senators. Otherwise, final action would have to await the end of the week's vacation when the two chambers could iron out their differences.

Sen. Hubert H. Humphrey, D-Minn., a member of the resolution in the Senate floor, urged his colleagues to adopt the proposal as offered by the House. Humphrey said time is essential, noting that congressional action on the measure will trigger final implementation of the peace accord.

Before approving the resolution, the House passed an amendment specifying that the measure gives the president no authority to introduce U.S. military force into the Middle East.

The amendment, introduced by Rep. Bob Eckhardt, D-Tex., was opposed by supporters of the resolution, including Rep. Wayne Hays, D-Ohio, who said it would not bar Ford from using U.S. military strength to rescue the civilian technicians if they were in peril.

The House also approved on a voice vote, an amendment requiring Ford to report to Congress on the feasibility of replacing the American with technicians from other nations.

Secretary of State Henry A. Kissinger, who negotiated the interim settlement, has said both sides demanded that American technicians monitor the peace from a demilitarized zone in the Sinai.

Another proposal stirred in the House would have placed a 3-year deadline on the use of U.S. technicians, but that was defeated.

In offering the technician proposal for House action, International Relations Committee Chairman Thomas E. Morgan, D-Pa., said that any danger of the civilian volunteers involving the United States in Middle East conflict "is very remote."

Morgan said the technicians would be protected in the buffer zone by 1,000 U.N. troops. Because of their position, said Rep. Dante B. Fascell, D-Fla., they would quickly know if war was about to break. "We think they'll be smart enough to get out of the way," he said.

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Court to Hear UD Appeal on Mass Ruling

The Delaware Supreme Court has granted a University of Delaware request to reargue one section of the court's Aug. 24 ruling in favor of two Catholic priests who held mass on campus.

The Rev. Michael Szupper and the Rev. William F. Keegan, were barred from Christiana Towers dormitory when they conducted mass there in September 1973. Along with two students and Bishop Thomas J. Mardaga of the Wilmington Diocese they have challenged the university's action.

The court ruled in their favor saying the university must make school facilities available to all groups on an equitable basis.

The university had contended that religious services violated the First Amendment prohibition against state "establishment" of religion.

No date has been set for the reargument hearings, but attorneys must file briefs by Wednesday. University attorneys are preparing special briefs to reargue the court's opinion that school policy barring religious services violates the U.S. Constitution's guarantee of free exercise of religion.

A court spokesman said this is the only issue to be reargued.

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52 ++ The Morning News, Wilmington, Del., Thursday, Oct 9, 1975

Court to rehear UD church case

The Delaware Supreme Court has granted the University of Delaware's request for a reargument on a part of the court's Aug. 28 opinion on use of university property by outside religious groups.

The case involved two Catholic chaplains of the Newman apostolate who were the Newark campus who were barred from the Christian Women's communion rooms when their hold Mass a few Sundays in September of 1971 in student request. The two priests, the Rev. Michael Schuster and William Kerrigan, were dismissed and Bishop Thomas J. Mardaga of the Wilmington Diocese have been Father the university's decision in the Mass rooms.

The State Supreme Court ruled in favor of the two Catholic chaplains who were challenging the right of the university to keep them from conducting the rooms. The court opinion said in addition that the university must make its school's facilities available to all groups on a nondiscriminatory basis.

The decision reversed the 1972

Chancery Court decision which ruled in favor of the university.

No date has been set for the reargument hearings, but the clerk of the court said briefs must be filed by attorneys on Oct. 15.

A university spokesman said the reargumentation are to be on the court's opinion that the university policy of barring religious services violates the U. S. Constitution's guarantee of the free exercise of religion.

The university attorneys are preparing the special briefs to recognize this point. A court spokesman said this is the only reason to be heard.

Hotrodding councilman

TUPOMAKI, Finland (AP) — A hotrodding millionaire was charged with 2 counts of traffic violations by police who pulled him in a chase they said was "like a movie car chase." Yoshiaki Kashiyama, 28, a city councilman, said police he had been a fast car fan for years.

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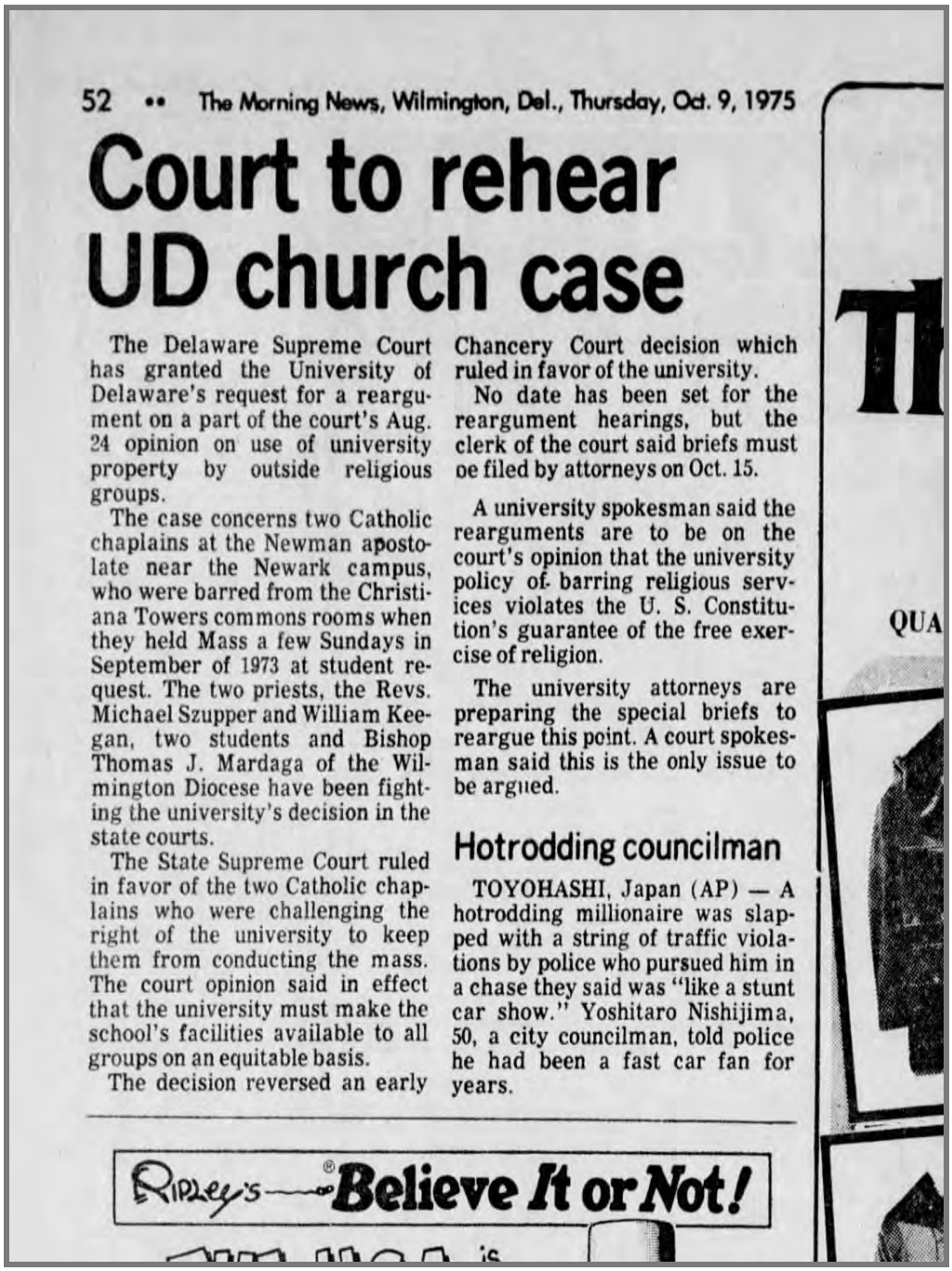

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The decision reversed an early Chancery Court decision which ruled in favor of the university.

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Ripley's — Believe It or Not!

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Mass on Campus Upheld by State High Court

Jack Eckerd Confirmed By Senate

U.S., Thais Agree On Pullback Plans

Storm Kills 28

CHILDREN'S LETTERS

Dear Mayor Beame, If your city needs money like our class did, it's quite a traffic jam. Gregg L.

Wounds Are Fatal

Newspapers are the major news medium for 74% of young people.

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SAVE OVER 1.2! MISSES' SHIRTS 4.99 VALUES $1

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SPECIAL PURCHASE! BOYS' TEE SHIRTS 3 for 2.39 & PERF. $1 2 PCS. FOR

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SPECIAL! PKG. OF 3 MEN'S & ATHLETIC SHIRTS 3 FOR 2.99 & PERF. $1 3 PCS. FOR

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SAVE 2.58 ON 2 PR. CONTROL TOP PANTYHOSE REGULARLY 1.79 PR. $1 2 PR. FOR

SAVE OVER 1.2! MEN'S POCKET TEE SHIRTS REGULARLY 2.50 $1

SAVE 1.2! MISSES' WARM KNIT HATS REGULARLY '2 $1

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SPECIAL PURCHASE! BOYS' TUBE SOCKS '1 & PERFECT $1 2 PR. FOR

SAVE '2' SMALL LEATHERGOODS REGULARLY '4 $1

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SAVE OVER 1.2! MEN'S KNIT HATS REGULARLY '3 TO '4 $1

SPECIAL PURCHASE! FASHION KNEE HI'S 1.25 & PERFECT $1 2 PR. FOR

SPECIAL PURCHASE! BOYS' BRIEFS 3 FOR 2.39 & PERF. $1 2 PR. FOR

SAVE OVER 1.2! WARM GLOVES MISSES' REGULARLY '3 $1

COMPANION SPECIALS

MISSES' STOCKINGS 89 & PERFECT 5/$2

GIRLS' '4 COTTON LINED JACKETS $2

MEN'S DRESS SHIRTS REG. '6-'8 $2

SAVE 2.99! MISSES' 5.99 TOPS $3

MEN'S KNIT SHIRTS REG. '5 TO '6 $3

MISSES' '4-6.99 POLYESTER PANTS $3

4.50-5 PLAYSUITS & BOXED SLEEPERS $2

SAVE '1 - '2 CRAZY TOE SOCKS '1 - '4 $2

SAVE '4! GIRLS' PANTS REG. '6 $2

SPECIAL! HANDBAGS '6 & PERFECT $3

MEN'S SWEATSHIRTS REG. '4-'5 $3

SAVE OVER 1.2! TIGHTS '2 VALUES 3/$2

SAVE '1-2.99! JR. '4-5.99 TOPS $3

'7-'8 SLEEPWEAR & ALL-IN-ONES $4

'4 PATTERNED TWIN SIZE SHEETS 2/$5

BOYS' KNIT SHIRTS REG. '3-'4 2/$3

SAVE OVER 1.2! MEN'S '2-'3 LI SLACKS 2/$5

MISSES' QUILT ROBES '15 & PERF. $7

SAVE '3 ON 2! REG. '4 PILLOWS 2/$5

'12-'30 FAMOUS BRAND DRESS SHOES $4

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Mass on Campus Upheld by State High Court

From the Newark Bureau

The right of two Catholic priests to conduct Mass in dormitory commons rooms at the University of Delaware was again upheld yesterday by the Delaware Supreme Court.

An attorney for the university said a further appeal to the U.S. Supreme Court is "likely."

In effect, the court said that as long as the university is not promoting religious activity, and as long as it allows other student groups to meet in public areas, it must show a "compelling" reason why the Masses would cause even the smallest inconvenience to students who wish to worship as they please.

The high court left open an opportunity for the university to demonstrate such a "compelling" reason to the Court of Chancery, where the case began. But Arlen B. Mekler, attorney for the priests, said yesterday, "It's been pretty well conceded that the university hasn't done that."

Mekler said he would meet with the priests, the Rev. William F. Keegan and the Rev. Michael Szupper, and university Vice Chancellor William Marvel, to set up a court-approved procedure for the resumption of Masses.

The dispute began when the priests celebrated Mass in the Christiana Towers Commons on the north campus the first two Sundays in September, 1973. On the third Sunday, the university locked them out.

The court battle involved principles of separation of church and state and freedom of religion. The American Civil Liberties Union intervened on behalf of the priests.

University policy prohibits worship services on campus but allows religious groups to use campus rooms for meetings.

The university won in Chancery Court but that decision was reversed in August by the Supreme Court. The university petitioned the high court to reargue certain portions of the case.

The Supreme Court found that a state activity which incidentally promotes religion is not unconstitutional. Thus, a university commons room which incidentally is used for religious purposes is not the state "establishment" of religion.

Iso, it is the university, not the priests or students, which has the burden of proving the point, the high court said. Chancery Court had said students and priests must show their First Amendment rights to freedom of religion were infringed.

And, the court said, the university cannot discriminate against religious groups. If it lets anybody use the dormitory commons rooms, it must let everybody. The ruling applies only to dormitories.

Wounds Are Fatal

IPOH Malaysia (AP)—The police chief of Perak state died today of wounds he received Thursday in an attack by Communist guerrillas, the police announced.

CHILDREN'S LETTERS

Dear Mayer Beame,
If your city needs money have a raffle like our class did. We made $27.84.
Grady L

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THRIFT CENTER

SUPER DOLLAR DAY

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Court says student worship OK at UD

By WALLY JUDD
Morning News Staff Writer

The Delaware Supreme Court yesterday again upheld the right of two Catholic priests to conduct Mass in dormitory common rooms at the University of Delaware.

As long as the university is not sponsoring religious activity, and as long as the university allows other student groups to meet in public areas, the court said, the university must show a compelling reason for causing even the smallest inconvenience to students desiring to exercise their right to worship as they please.

The high court left open an opportunity for the university to show that compelling reasons to the Court of Chancery, where the case originated. However, Arlen B. Melvin, attorney for the priests, said "it has been pretty well conceded that the university hasn't done that."

John F. Sinclair, attorney for the university, said a decision on an appeal to the U.S. Supreme Court has been reached, although an appeal "is likely," he said. That was the finding of the university before the opinion was announced, he said, but he has not consulted with the university since the recent opinion.

Melvin said he would arrange a meeting with the priests, William F. Kangas and Michael Sinagra, and Vice Chancellor William Marvil, to set up a court-supervised procedure for the resumption of Masses.

The case began when the priests celebrated Mass in the Christmas Towers Commons on the north campus on the first two Sundays in September 1973. On the third Sunday, the university locked the doors out.

The court battle involved principles of separation of church and state and freedom of religion. The American Civil Liberties Union intervened on behalf of the priests. University policy prohibits worship services as campus but allows religious groups to use campus rooms for meetings.

The university won in Chancery Court but then was reversed on appeal by the Supreme Court. The university petitioned the high court to reargue certain portions of the case.

The Supreme Court found that a state activity which incidentally promotes religion is not unconstitutional. Thus, a classroom room which incidentally is used for religious purposes is not the state "establishing a religion."

Also, it is the university, not the priests or students, which has the burden of proving the point, the high court said. Chancery Court had said students and priests must show their First Amendment rights to freedom of religion were infringed.

And, the court said, the university cannot discriminate against religious groups. If it lets anybody use the dormitory commons room, it must let everybody. The ruling applies only to dormitories.

Driver trapped

Rescue workers work to free the driver of one of two cars that crashed head-on on Chestnut Hill Road in Ogletown about 1 a.m. yesterday. Emmett Kelly, 28, of 645 Robinson Manor, identified as the driver of the car at left, was in critical condition last night at Delaware Division. The other driver, George R. Pusse, 24, of 53 Marbell Rd., Brookside Park, was in fair condition. Volunteers from Aetna Hose, Hook & Ladder Company used a hydraulic rescue tool to extricate the drivers. (John J. Jankowski Jr. photo)

Richardson has right to hang, prosecutor says

By VIRGINIA DELAVAN

Roy Luther Richardson has the right to hang if he wants to, and his lawyers have no right to intervene, says the man who prosecuted the murderer.

Deputy Atty. Gen. Peter J. Booth says he will ask the Delaware Supreme Court to dismiss an appeal filed by Richardson's lawyers against his express wishes.

"If the client doesn't wish to appeal, I don't think the attorney has any standing to appeal," Booth said yesterday. "Whose case is it? It's not the lawyer's case — it's the defendant's case."

The appeal was filed Wednesday by David Lakoff and Richard D. Levin, assistant public defenders. With it was a note dictated by the 34-year-old Richardson saying he refuses "all your appeals and all your other justice things."

Lakoff, who took short shrift Tuesday at the Delaware Correctional Center, said Booth "may be right" in insisting the defense lawyers withdraw their appeal, but it will be up to the Supreme Court to decide.

Meanwhile, Chief Justice Daniel L. Herrmann has granted an indefinite stay of Richardson's execution.

Although Lakoff says Richardson doesn't seem to think he'll ever be executed, the condemned man told interviewer he'd prefer "15 minutes at the end of a rope to 15 years in prison.

"I'm sorry a lot of people would rather be dead than spending the rest of their life in jail," Booth said. "I don't think he's sane for executing that, he's mentally ill."

Richardson's defense at his first-degree murder trial hinged entirely, supported by his testimony that he'd talked with God and the devil in visions, visited dwarves on the planet Jupiter and encountered supreme beings called "hubbas" who were going to kill off billions of characters to expel hell.

Short his conviction, Richardson, who is white, has undergone an abrupt conversion to the Black Muslim faith and suffered a broken jaw while trying to prosecute a fellow inmate in the prison of a knife.

Booth, however, refused to characterize this behavior as "bizarre" or to agree Richardson might not be mentally competent to decide whether to appeal.

A judge found him competent to stand trial and a jury found he was not insane," the prosecutor noted.

Richardson, formerly of Wilmington, is one of two men facing the gallows in Delaware. The other is Philip Ketzn, whose execution also was stayed indefinitely pending appeal.

Wilmington council approves ordinance to end water discount

By RON WILLIAMS

The Wilmington City Council last night sped through a number of resolutions and ordinances, including one that could bring in $500,000 from new water rates for certain apartments and trailers both in and outside the city.

A lack quorum to allow payment of taxes and traffic fines over $50 with BankAmericard, a resolution designating the recent Talbot Mansion strike and a request for a traffic light at 4th and Harrison Streets, also got control support.

The new water rates, according to Councilman William T. McLaughlin, D-at-large, will convert "an auto-assessed discount" now received by several multi-garden-type apartments and a mobile home park. He said 75 percent of the units affected are outside the city in New Castle County and buy Wilmington water.

McLaughlin said "nobody really knows how long this has been going on," but said the owners are now sent only one water bill for each two units. The rate applies to garden-type apartments with eight or more units in a complex.

"Nobody seems to know why it was set up this way in when," McLaughlin told him. "But years ago we didn't even know what a garden-type apartment was."

McLaughlin said public works officials have estimated that "an extra $500,000" in new water revenue should be collectible if the law is passed. The third and final reading of the proposed ordinances will come next Thursday and new billing rates would take effect Jan. 1.

The apartments and trailers are located primarily south of the city limits, a public works official said last night. McLaughlin said there are about nine garden-apartment complexes in the city. It is the county and another 100 smaller units in the county which would be subject to the new rate.

The bill was assigned to McLaughlin's finance committee.

The one-year experiment with BankAmericard was approved nearly last week on one of the two remaining Republicans, Richard J. Barrowcliff, at-large, choosing that the 1.5 per cent "handling charge" by the Delaware Trust Co. could be the long run cost the city money.

Councilman James H. Baker, D-6th, sponsor of the resolution, said it would take the "hassle" of trying to collect overdue taxes away from the city if people would pay with the credit card.

Barrowcliff voted against the idea and Councilman Charles L. Yates, D-9th, voted "present" because, he said "I don't know."

Delaware Trust will charge the

Alleged gang rapes probed at Penn State

STATE COLLEGE, Pa. (AP) — University police and the Fraternity Council are looking into allegations that gang rapes have occurred at fraternity houses.

The Committee of Concerned Women says four cases have been going around at parties recently. The group has been passing out leaflets warning other women that the various were drugged at parties before the alleged attacks occurred.

State seeks method to ensure insurance

From the Dover Bureau

DOVER — Public Safety Secretary Lemon Eickman has an assignment he's not very enthusiastic about — drawing up a proposal to make sure all Delaware motorists are insured.

"I tried it when I was a member of the General Assembly and I didn't get to first base," he told Gov. Sherman W. Tribbitt, who gave him the assignment.

Tribbitt told Eickman to take over the assignment Wednesday after the secretary complained to the governor that "the people who need the most insurance have the least." According to a recent report, one of every eight Delaware drivers fails to carry mandatory insurance.

The cabinet also received four recommendations from state personnel director E. Ronald Langhard for improving efficiency in merit system hiring.

Langhard proposed curbing advertising jobs when a vacant post draws enough applicants, reaffirming interest in applicants by form letter, asking technical help in defining jobs available, and asking the federal Civil Service Commission to allow more than five names on lists of job applications given state agencies.

Rain heralds arrival of wintry cold front

Rain heralded the arrival of a cold front producing the lowest temperatures so far this month yesterday, with high winds creating a wintry wind-chill factor.

The dramatic change occurred in less than 24 hours, the National Weather Service at Greater Wilmington Airport said. Yesterday's high was 54 degrees, shortly after midnight, [illegible] temperature kept steadily dropping from there on.

Snow flurries were a possibility last night, and a weather service spokesman said, "I think we're through with [illegible] as either."

Tuesday's high was 61 degrees, and the mercury fell steadily from that point to about 45 degrees last night.

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Court says student worship OK at UD

By WALLY JUDD
Newark Bureau Chief

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John P. Sinclair, attorney for the university, said no decision on an appeal to the U.S. Supreme Court has been reached, although an appeal "is likely," he said. That was the thinking of the university before the opinion was announced, he said, but he has not consulted with the university since the recent opinion.

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The university won in Chancery Court but that was reversed in August by the Supreme Court. The university petitioned the high court to reargue certain portions of the case.

The Supreme Court found that a state activity which incidentally promotes religion is not unconstitutional. Thus, a commons room which incidentally is used for religious purposes is not the state "establishing a religion."

Also, it is the university, not the priests or students, which has the burden of proving the point, the high court said. Chancery Court had said students and priests must show their First Amendment rights to freedom of religion were infringed.

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Women priests top '75 story

By EILEEN C. SPRAKER
Religion Editor

Looking back over 1975, the Year of the Woman, it was the controversy over women priests in the Episcopal Church which was rated top religion story by the nation's secular religion writers.

An annual poll of members of the Religion Newswriter's Association, rated that story top for the second year in a row.

Impact of the second "irregular" ordination of women in the church was felt in Delaware. One of the four ordained this year is the Rev. Dr. Elizabeth Peard Rosenberg, whose home church is Trinity in Wilmington.

Episcopalians made the news in the Delaware Peninsula in another way. The Diocese of Delaware elected and consecrated and installed its eighth bishop, the Rt. Rev. William Hawley Clark. Formerly of Warrenton, Mass., and a man with a worldwide and ecumenical outlook, Clark was elected in January to succeed the late Rt. Rev. William H. Mead.

In the Diocese of Easton (Md.) it took the entire year to elect a successor to Bishop George A. Tayloe who retired in January 1976. It was the third special convention in November that finally got a majority for the Rt. Rev. William Moultrie Marsh Jr. suffragan bishop of the Diocese of North Carolina in Raleigh. He was one of 20 candidates and is to be installed sometime early this year.

It was a year of life and death decisions. But only was there the Karen Quinlan case, but also the suicide pact of Dr. Henry Pitney VanDusen and his wife, Elizabeth, and the continuing controversy over abortion.

The continuing fight in the Lutheran Church-Missouri Synod was news again last year as the controversy went from doctrinal to its legal and administrative phases. The denomination has been involved in a theological dispute for several years that is slowly dividing it.

The church was humanitarian this past year as evidenced by its emphasis on hunger and its extensive effort to resettle Southeast Asia refugees. That effort was seen up and down the Delmarva Peninsula as churches and individuals sponsored jobs, shelter, lessons and assistance to get a couple hundred refugees settled.

It was a year of discussions on human sexuality as avowed homosexuals cried for ordination, as some courts in matching determinations just last month, Bishop Paul Moore of the Episcopal Diocese of New York ordained

The Rev. W. H. Clark became 8th bishop of Delaware.

Overseas, in 1975 there was a new crop of Christian martyrs in Chile, South Korea, Malawi, the Philippines and South Africa who refused to "render unto Caesar what rightfully belongs to God."

In Delaware, the religious community continued its efforts in treating the elderly. The Methodists of the Peninsula sponsored high rise for the elderly. Episcopal-Presbyterian sponsored high rise for the elderly. Methodists announced plans for a complex for older people to be called Coleesbury Village; and the state of Maryland asked the Delmarva Ecumenical Agency to set up a corporation to plan, supervise building, and to run a new retirement home near Salisbury, Md.

Wesley College, Methodist related, got a new president, Dr. William W. Bender, succeeding Dr. Robert H. Parker, president since 1966, who retired. The Rev. Thomas L. Thorne Jr., First and Central Presbyterian Church was elected moderator of the Presbytery Synod of the Peninsula; Dean John Clarke Saunders went to Cleveland to take a church, leaving the Episcopal Cathedral without a dean.

The more than two-year-old court struggle between the Catholic Diocese of Wilmington and the University of Delaware over use of university facilities for religious services continued with the Delaware Supreme Court ruling in favor of the Diocese. The University is appealing to the U.S. Supreme Court.

There was an increase in the establishment of Christian day schools by area churches in the face of desegregation with area churches and in some cases because of fear of what integration would do to public school systems.

All in all it was a year of involvement of the religious community with the world in which it lives, evidence that the religious has ceased to be apart from the secular.

The Revs. Michael Scopper and William Keegan before the University of Delaware to Supreme Court.

religion briefs

Church resumes Sunday seminars

The Sunday evening seminars resume tomorrow night at 7 at Christ Church Christiana Hundred, speaker will be Dr. Ralph Harper. His subject: "Human Sexuality, Experiments in Understanding."

Harper is rector at St. John's Church, Monkton, Md., and lectures in the humanities at Johns Hopkins University in Baltimore. He is author of a number of books on existentialism.

The sessions in recess since Thanksgiving week are being resumed to run through March 7. The lectures are free and open to the public.

* * *

Emmanuel Orthodox Presbyterian Church, 1306 Wilson Road, has begun a Bible class after school on Fridays 2:45 to 4:45 p.m. Bible stories, songs, games and crafts will be offered boys and girls 5 to 10 years.

* * *

St. Andrew's Episcopal Church, 4th and Shipley Sts., will rededicate its Tapestry at 4 p.m. Jan. 11 with the traditional Feast of Lessons and Music.

* * *

The Rev. Roland Wolpert, pastor of the Assembly of God in East Greenville, Pa., will speak to the Monday, Jan. 12 dinner meeting of Full Gospel Businessmen's Fellowship International dinner at 6:30 p.m. at 9 p.m. (St. Christina Pike and Delaware 7. Business Renee's guests should be made by Jan. 10 with Alvin Kammerer, president, or other officers. The next businessmen's group plans to participate in the Jan. 19-17 national convention in Washington, D.C.

* * *

St. James Catholic high school in Cathaya Point, N.J., is among the nine in the Camden Catholic Diocese affected by a serious financial situation yesterday.

The decrease of 60 pupils enrolled for the 1976-77 school term. The new tuition rate will be $675 for the first child of a family; $600 for the second child and $475 annually for each additional child.

* * *

The annual Assembly of Wilmington Church Women United is slated for Friday, Jan. 23, at 9 a.m. at the Presbyterian Church of the Covenant, 101 Duncan Road. Mrs. Eugenia Gray of Milford will speak on prayer. Women attending are asked to bring their own sandwich. Dessert and coffee will be served at a small cost.

* * *

The Women's Association of Westminster Presbyterian Church, Pennsylvania Ave. at Rodney St., has dedicated funds from an annual bazaar to Christmas Center, the scene of the Piedmont camp and conference center at Fort Ingalls, Me., the Dominick Committee formerly to an Icelandic principality. Meals on Wheels, the Rodney Line Care Center, the Saturday Club nursery for youth in the Evangelical community to the children's Lutheran Church and Westminster, the new summer Presbyterian family for communities in Mississippi, the Kennedale Indian Presbyterian, Inner-community.

DOUG OLDHAM IN CONCERT
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PRINCIPALS OF BIBLICAL THEOLOGY

Coming Sunday
Sunday News Journal
You can't afford to miss these:

Letters to Betty
First Lady Betty Ford received more than 24,000 letters after she said she wouldn't be surprised if daughter Susan had an affair. She answered many of those letters, and spends much of her free time responding to citizens' queries on a wide range of subjects. Also in tomorrow's Home section.

The American Family
A Columbia University sociologist says the decline of traditional family patterns may do more to harm society than the energy crisis. Whether you agree or not, his thoughts makes for fascinating reading in tomorrow's Home section.

Market review
In tomorrow's Business section, the Sunday News Journal publishes several pages summing up the previous year's stock, bond and mutual fund transactions. Tables, charts and text to put the markets in perspective.

Sussex reassessment
The massive reassessment of property values commissioned months ago by Sussex County probably won't be implemented until 1977. Reporter Nancy Kesler explains why, and analyzes the probable next move.

1975 in review
It was a bad year for many politicians, teachers and wage-earners, and a good year for many people who didn't make the news. An illustrated review of what happened in Delaware in 1975.

Rap with Reed
An exclusive interview with Ron Reed, the new Phillies pitcher who bolsters the team's pennant hopes. Reporter Gene Quino talks with him at his home in Atlanta.

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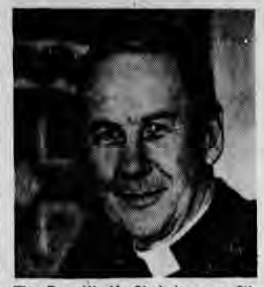

The Rev. W. H. Clark became 8th bishop of Delaware.

a self-avowed lesbian to the order of deacon in the Episcopal Church. The whole issue of homosexuality is a highly charged emotional one for most church people.

The Catholic Church got its first American-born saint with celebrations especially significant to the Wilmington Diocese as Elizabeth Ann Seton reached that high pinnacle in the church. The canonization ceremonies were in Rome, but many went to Emmitsburg, Md., where she founded her Daughters of Charity. They've been serving in Wilmington Catholic Diocese since 1830.

It was a year of both cooperation and conflict for the religious community and government in the United States. They cooperated on relief and refugees resettlement, but were in conflict on the government's use of missionaries as informers for the Central Intelligence Agency. Some parts of the religious community were at odds with government on abortion and parochiad.

Chrisian-Jewish dialog was resumed last year and the two groups joined together to protest the United Nations' resolution calling Zionism "racism."

There was a growing militancy of women in most religious groups most notably in the Catholic Church.

The World Council of Churches met in Nairobi and did not draw too much attention.

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There was an increase in the establishment of Christian day schools by some churches in the face of disillusionment with secular education and in some cases because of fear of what integration would do to public school systems.

All in all it was a year of involvement of the religious community with the world in which it lives, evidence that the religious life cannot be apart from the secular.

religion briefs

Church resumes Sunday seminars

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University backs its ban on prayer

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Chicago Tribune (Chicago, Illinois) · Mon, Jan 5, 1976 · Page 48
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University backs its ban on prayer

WASHINGTON (UPI)—The United States Supreme Court is being asked to decide for the first time whether its ban against official prayer in public schools applies to voluntary worship services on university campuses.

In apparently the first case of its kind, the University of Delaware, a land-grant institution in Newark, is appealing a state Supreme Court decision in which it was held that forbidding campus religious services infringes on the guarantee of freedom of religion in the federal Constitution.

If the Supreme Court refuses to act on the university's appeal, the case will go back to the county Chancery Court to see whether the university can justify its rule against worship. Fears of a state institution becoming excessively involved with religion could be a reason for the high court to deny the school's appeal.

THIS IS THE first lawsuit at the university level since the U.S. Supreme Court decisions in the early 1960s against officially sponsored prayers and Bible-reading in public schools. Those decisions led to efforts to amend the Constitution, change state laws, and mobilize pro-prayer sentiment in a "Back to God Movement."

The Delaware case arose when the Rev. William F. Keegan, without seeking permission, celebrated a Sunday morning mass for Roman Catholic students in the Christiana Commons, a student center between two high-rise residence halls. The university sued to stop the practice when its protests were ignored.

The defendants, joined by Thomas J. Mardaga, Roman Catholic bishop of Wilmington, filed a countersuit seeking to bar the university's interference with the mass.

The First Amendment prohibits laws respecting an establishment of religion or interfering with free exercise of religion. The Supreme Court has held that in order to pass muster, a state law in this area must have a secular purpose; must have a primary effect that neither inhibits nor advances religion; and must avoid "excessive government entanglement with religion."

If a law permitting prayer required extensive use of state personnel and funds for regulation or oversight, for example, it could be struck down as entangling.

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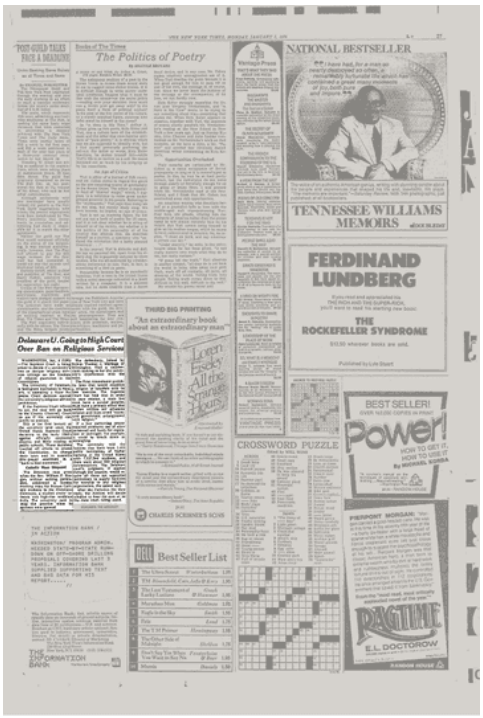
The New York Times

https://www.nytimes.com/1976/01/05/archives/delaware-u-going-to-high-court-over-ban-on-religious-services.html

Delaware U. Going to High Court Over Ban on Religious Services

Jan. 5, 1976



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WASHINGTON, Jan. 4 (UPI) —The Supreme Court is being asked to decide if a university's ban on campus religious services infringe on the freedom of religion guarantee in the Constitution.

The University of Delaware, a landgrant institution in Newark, is appealing a State Supreme Court decision against the university's religious service prohibition.

If the Supreme Court refuses to act, the case will go back to the County Chancery Court tO see if the university can justify its position.

This is the first lawsuit at the university level since the United States Supreme Court decisions in the early 1960's against officially sponsored prayers and Bible reading in public schools. Those decisions touched off efforts to amend the Constitution, to change state laws and to assemble pro — prayer sentiment in “back to God movement.”

Catholic Mass Disputed

The Delaware case arose when the Rev. William F. Keegan, without seeking permission, celebrated a Sunday morning mass for Roman Catholic students in the Christiana Commons, a student center between two highrise residence flails. The university sued to stop the practice when its protests were ignored.

The defendants, joined by Bishop Thomas J. Mardaga of Wilmington, filed a counterclaim seeking to bar the university's interference with the mass.

The First Amendment prohibits laws that would establish a religion or interfere with its free exercise. The Supreme Court has held that in order to pass muster, a state law must have a secular purpose, must have a primary effect that neither inhibits nor advances religion and must avoid “excessive government entanglement with religion.”

If a law permitting prayer required extensive use of state personnel and funds for regulation or oversight, for example, it could be struck down as entangling.

The university told the Justices that there were 1,410 public institutions of higher learning in the United States with 7,127,544 students, and there were about 300 religious denominations. The Delaware court's judgment, if applied ‘through the country, would require all these tax supported institutions to supply facilities for worship to any religious organization, the appeal said.

After the Catholics file their reply, the Justices will decide whether to hear the case or let the state court ruling stand.

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High court asked to rule on prayer ban in college

WASHINGTON (UPI) — The Supreme Court is being asked to decide for the first time whether its historic ban against prayers in public schools should be applied to voluntary worship services on university campuses.

In apparently the first case of its kind, the University of Delaware, a land-grant institution in Newark, is appealing a state Supreme Court decision that forbidding campus religious services infringes on the freedom of religion guarantee in the Constitution.

IF THE SUPREME COURT refuses to act on the university's appeal, the case will go back to the county Chancery Court to see if the university can justify its rule against worship. Excessive entanglement of a state institution with religion could be a reason for the high court to deny the school's appeal.

This is the first lawsuit at the university level since the U.S. Supreme Court decisions in the early 1960s against officially sponsored prayers and Bible reading in public schools. Those decisions sparked efforts to amend the Constitution, to change state laws and to assemble pro-prayer sentiment in a "Back to God Movement."

Mrs. Rita F. Warren of Brockton, Mass., was arrested in a protest at the Supreme Court building last November after the justices refused to hear her prayer case. Brockton school authorities had refused to give Mrs. Warren's daughter, Teresa, an opportunity to recite prayers in the school building.

IN 1975, NEW HAMPSHIRE passed a law authorizing the Lord's Prayer to be said by students, despite the high court's ruling.

Connecticut legislators confined themselves to providing a period of silence for pupils at the start of the school day.

Florida proponents of school devotionals are hoping they can get the Supreme Court to reverse itself.

The Delaware case arose when Father William F. Keegan, without seeking permission, celebrated a Sunday morning mass for Roman Catholic students in the Christiana Commons, a student center between two high-rise residence halls. The university sued to stop the practice when its protests were ignored.

The defendants, joined by Thomas J. Mardaga, Roman Catholic bishop of Wilmington, filed a counterclaim seeking to bar the university's interference with the mass.

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It's True and Old Hat—Artificial Island Tip's in Delaware

By WILLIAM P. FRANK

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Court Lets UD Mass Rule Stand

WASHINGTON — The University of Delaware yesterday lost a bid for Supreme Court review of a state court decision allowing the celebration of Catholic Mass in a campus dormitory.

The justices let stand a Delaware Supreme Court decision refusing to grant the university an order prohibiting the religious services at the Christian Towers high-rise dormitories.

Justices William J. Brennan Jr. and Harry A. Blackmun dissented.

The state Supreme Court held that unless the university could show a "compellinmg state interest" its policy against such services was a violation of the religious freedom of university students.

A spokesman for the university said the Supreme Court's decision was still under review by legal advisers, who will determine the school's next move.

The case arose after two Catholic priests celebrated Mass at the Christiana Commons room in September 1973 at the request of students. The commons is a recreational and social facility.

The university spokesman reiterated the school's position that the commons area is for the use of all students in the twin 17-story towers, "and shouldn't be reserved for the exclusive use of any group at any time."

The university, which is partially supported by state funds, had argued that it would violate the constitional separation of church and state if religious services were allowed in the dormitory.

But the state Supreme Court ruled last fall that a state activity which incidentally promotes religion is not unconstitutional. Thus a commons room incidentally used for religious services was not the state "establishment of religion."

The two priests involved, the Rev. William F. Keegan and the Rev. Michael Szupper, have been conducting Mass at the dormitory since Feb. 15.

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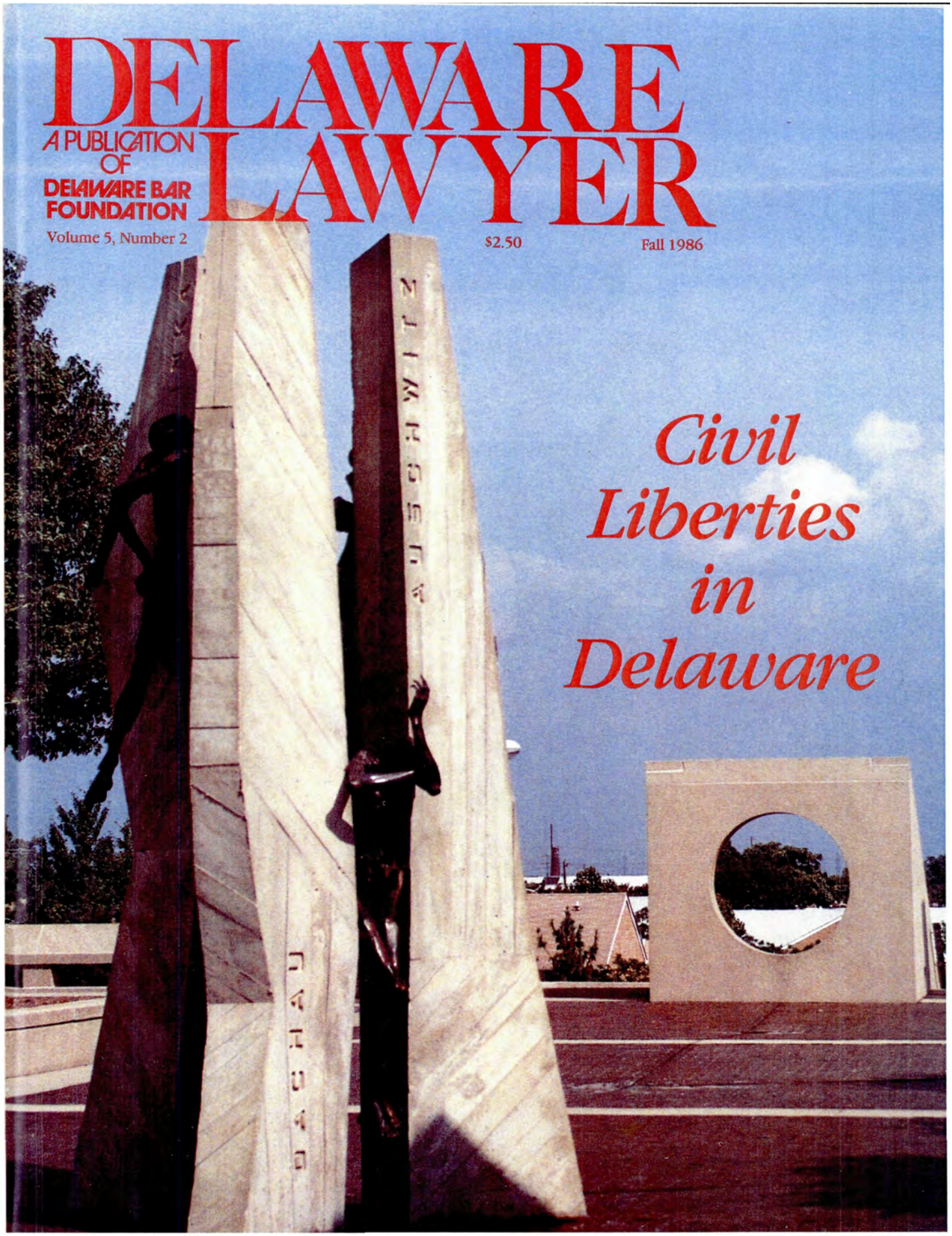
A PUBLICATION OF DELAWARE BAR FOUNDATION

Volume 5, Number 2 $2.50 Fall 1986



Civil Liberties in Delaware

DELAWARE LAWYER
A PUBLICATION OF DELAWARE BAR FOUNDATION

VOL.5 NO.2
FALL 1986

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Cover: In Wilmington, halfway between the Carvel State Office Building and the City/County Building stands an eloquent reproach for the grossest denial of liberty and life ever committed by a "civilized" government: the Holocaust. It is a wholesome thing for those who govern to be thus reminded of their obligation to the governed. In this issue we recount the works of civil libertarians who confront authority abused.

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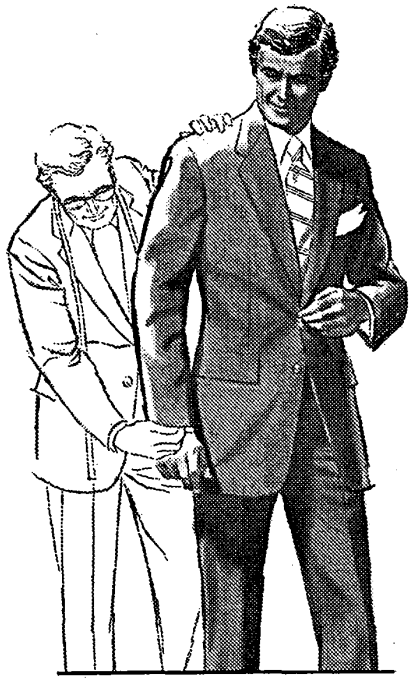

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EDITORS' PAGE

There are many more vivid ways of celebrating freedom than of preserving it. On the weekend of the Fourth of July this year we enjoyed a succession of visual treats on television, as the Statue of Liberty shone forth again. It was a major spectacle, beautiful, stirring, and productive of honest sentiment. But on Independence Day I took a much deeper patriotic satisfaction in learning that a Federal Judge had ordered Edwin Meese and his merry men to cut out their sinister practical jokes at the expense of the publishers of *Playboy* and the folks who operate the 7-Eleven Stores. That fine ruling drew a lot less attention than the Tall Ships, but it was far more important to our always menaced right to say, to print, and to read what we please.

Freedom has many celebrants, but few soldiers. The soldiers appear in this issue. Their articles testify to an extraordinary amount of hard work, scholarship, and courage in defending constitutional freedoms in the face of unenlightened hostility. Much of this would go unnoticed if we did not periodically remind ourselves that a few dedicated people maintain the eternal vigilance to which the rest of us pay lip service.

The opening paragraph of one of the articles in this issue annoyed me a little, but stimulated what I hope is a useful reflection. In this issue Professor Bill Conner and Selma Hayman, describing the ACLU presence at Delaware Law School, suggest a conservative antipathy to civil liberties. Presumably, conservatives are those who chuckle evilly every time the Florida electric chair lights up and who refuse to buy Paul Newman's salad dressing because he once appeared on President Nixon's list of enemies. For all I know these stereotypes have swaztikas on their pajamas. Well now, really! When the Delaware Affiliate of the ACLU put on a membership drive last year, it employed an acute slogan: Join The Most Conservative Organization In America. The preservation of two hundred year old liberties is conservative. There is nothing more conservative (or libertarian) than mossback insistence that government, no matter how superficially benevolent in the spread of its welfare tentacles, keep the hell off our backs. Joan Rosenthal, until recently Executive Director of the Delaware Affiliate, tells me that many Republicans are active members. The Republican candidate for Congress this year, Tom Neuberger, who is not exactly the darling of the New Left, has done splendid work for civil liberties. Integrity transcends slipshod ideological labeling. This is a peculiar excellence of the American experience. People of highly diverse political views who espouse liberty can be courteous over minor differences because they are united in core principles. Alexis de Tocqueville is doubtless smiling in heaven.

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Prayer in the Public Schools

Jack B. Blumenfeld and Lawrence A. Hamermesh

The First Amendment to the United States Constitution declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof... " It has long been established that this provision applies to the States as well, by virtue of the due process clause of the Fourteenth Amendment. *See, e.g., Cantwell v. Connecticut,* 310 U.S. 296 (1940).

A provision of the Delaware Constitution tracing back to original statehood mandates that "no man shall or ought to be compelled to attend any religious worship...against his own free will and consent, ...nor [shall] a preference [be] given by law to any religious societies, denominations, or modes of worship." Constitution of 1897, Article I, Section 1.

A fundamental corollary of these constitutional provisions is that teachers and other officials at public schools must not promote one particular set of religious beliefs or impose observance of them upon students who do not share them. Yet there have been—and continue to be—repeated efforts to use the public schools as a forum for the promotion of religious observance. These efforts have been rebuffed in the courts, particularly in the last twenty-five years. In response, the proponents of school prayer have now turned their attention to the constitutional amendment as a means to accomplish their goal.

The Supreme Court Precedents

The United States Supreme Court has considered the effect of the Establishment Clause on school prayer on three occasions—each time striking down the state action at issue.

Engel v. Vitale, 370 U.S. 421 (1962), examined the requirement by a New York state school district that the following prayer be said aloud by each class at the beginning of the school day:

> *Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessing upon us, our parents, our teachers, and our Country.*

That prayer, composed by state officials, was recommended for public schools as part of a "Statement on Moral and Spiritual Training in the Schools." The parents of several students brought suit in state court challenging the constitutionality of mandatory recitation. The New York courts upheld the power of the State to use the prayer in public schools so long as no student was compelled to participate. The Supreme Court reversed in a 6-1 decision. Justice Black wrote for the Court:

> *We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity...[W]e think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.* 370 U.S. at 424-25

Remarkably, the Supreme Court did not cite a single legal authority. Instead, the Court relied on "a matter of history": the practice of government-composed prayers was one of the reasons many colonists left England and sought religious freedom in this country. The Court concluded that the First Amendment was added to the Constitution to guarantee that government have no power to control prayer. Because "government...should stay out of the business of writing or sanctioning official prayers..." 370 U.S. at 436, the fact that the prayer was voluntary and denominationally neutral could not save it.

In holding that government officials could not compose official prayers for recitation in public schools, the Supreme Court left open the question of whether the states could require the reading of traditional religious texts in public schools. It addressed that issue the following term in *School District of Abington Township v. Schempp,* 374 U.S. 203 (1963).

Schempp dealt with a Pennsylvania statute and a Baltimore school commissioners' rule requiring that schools begin each day with readings of verses from the Bible and the recitation of the Lord's Prayer. As in *Engel v. Vitale,* such readings were voluntary in that no student would be compelled to participate. Stressing the "neutrality" that the government must accept in matters of religion, the Supreme Court struck down the Pennsylvania statute and the Baltimore rule in an 8-1 decision. It held that "to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion." 374 U.S. at 222. Justice Clark concluded that the challenged actions could not pass that test because the states were endorsing, not acting neutrally with respect to, religion:

> *Applying the Establishment Clause principles to the cases at bar we find that the States are requiring the selection and reading at the opening of the school day of verses from the Holy Bible and the recitation of the Lord's Prayer by the students in union. These exercises are prescribed as part of the curricular activities of students who are required by law to attend school. They are held in the school buildings under the supervision and with the participation of teachers employed in those schools... [S]uch an opening exercise is a religious ceremony and was intended by the State to be so... Given that finding, the exercises and the law requiring them are in violation of the Establishment Clause.*

The Supreme Court did not decide another school prayer case until 1985. *Wallace v. Jaffree,* ____U.S.____, 86 L.Ed. 2d 29 (1985), challenged the constitu-

AR078

tionality of three Alabama statutes. The first authorized a one-minute period of silence "for meditation" in all public schools, the second a period of silence "for meditation or voluntary prayer". The third authorized teachers to lead "willing students" in the following prayer:

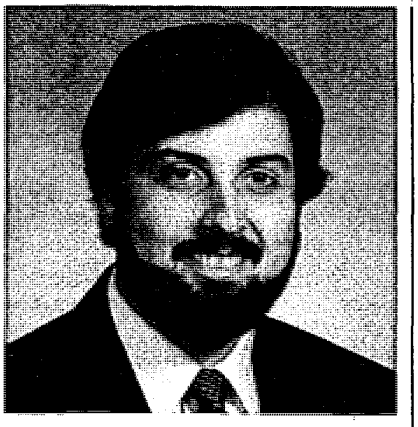
> *Almighty God, You alone are our God. We acknowledge You as the Creator and Supreme Judge of the world. May Your justice, Your truth, and Your peace abound this day in the hearts of our countrymen, in the counsels of our government, in the sanctity of our homes and in the classrooms of our schools in the name of our Lord. Amen.*

By the time the case was decided by the Supreme Court, only one of the statutes remained at issue. The first statute, authorizing a moment of silence, was no longer challenged as unconstitutional. The third statute, authorizing the prescribed prayer, had been summarily held to be unconstitutional. *Wallace v. Jaffree*, 466 U.S. 924 (1984). The narrow question remaining was whether a statute authorizing a period of silence "for meditation or voluntary prayer" violated the Establishment Clause of the First Amendment. In a 6-3 decision, the Court held that it did.

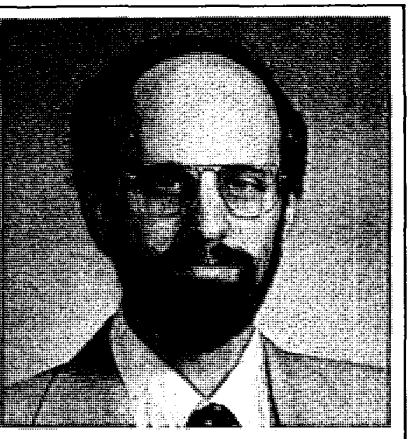
The Court held that in order to survive the constitutional challenge, the statute would have to have "a clearly secular purpose." 86 L.Ed. 2d at 43. The sponsor of the Alabama legislation had testified that the bill was an "effort to return voluntary prayer to our public schools...[I]t is a beginning and a step in the right direction." Relying primarily on that testimony, the Court concluded that "the statute had no secular purpose." 86 L.Ed. 2d at 43-44. By endorsing religious activities, Alabama had violated the Establishment Clause. Justice Stevens also noted that this was not "an inconsequential case involving nothing more than a few words of symbolic speech on behalf of the political majority", 86 L.Ed. 2d at 46. He stressed the potential influence on school children (quoting *McCollum v. Board of Education*, 333 U.S. 203 (1948)):

> *The law of imitation operates, and non-conformity is not an outstanding characteristic of children.*

Separate concurring opinions written by Justices Powell and O'Connor in *Wallace v. Jaffree* suggest (as does Justice Stevens) that some state moment-of-silence statutes may be constitutional. A majority of the Court recognized that a moment of silence in schools is not inherently religious. As Justice O'Connor wrote:



Jack Blumenfeld and Larry Hammermesh are partners with Morris, Nichols, Arsht & Tunnell. Jack's areas of practice include intellectual property and corporate litigation. He is a director of the Jewish Federation of Delaware and he is the chairman of the Jewish Community Relations Committee.



Larry's practice is primarily devoted to corporate takeover and stockholder class and derivative litigation. He also serves on the Board of Directors of the Delaware Affiliate of the American Civil Liberties Union.

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Prayer in Public Schools
(Continued)

By mandating a moment of silence, a State does not necessarily endorse any activity that might occur during the period...Even if a statute specifies that a student may choose to pray silently in a quiet moment, the State has not thereby encouraged prayer over other specified alternatives. Nonetheless, it is also possible that a moment of silence statute, either as drafted or as actually implemented, could effectively favor the child who prays over the child who does not. For example, the message of endorsement would seem inescapable if the teacher exhorts children to use the designated time to pray. Similarly, the face of the statute or its legislative history may clearly establish that it seeks to encourage or promote voluntary prayer over other alternatives, rather than merely provide a quiet moment that may be dedicated to prayer by those so inclined. The crucial question is whether the State has conveyed or attempted to convey the message that children should use the moment of silence for prayer. The question cannot be answered in the abstract, but instead requires courts to examine the history, language, and administration of particular statute to determine whether it operates as an endorsement of religion.

Engel v. Vitale and *School District of Abington Township v. Schempp* proscribe state-sponsored recitation of either state-composed or traditional prayers in the public schools as violative of the Establishment Clause because of state endorsement of religion. *Wallace v. Jaffree* suggests that the legality under the Establishment Clause of a statute requiring a moment of silence in public schools would turn upon whether the purpose or effect of the statute is the endorsement of religion.

The Delaware Statutory Scheme

From at least the early 1920s until 1971, Delaware had a statutory regulation mandating prayer in public schools. *See* 32 Del. Laws, c. 182; 34 Del. Laws, c. 179; Code 1935, §2758; 14 Del. C. 1953, §4101; 58 Del. Laws, c. 162. For example, a 1925 statute provided:

> *In each public classroom in the State, and in the presence of the scholars therein assembled, at least five verses from the Holy Bible shall be read at the opening of such school, upon each and every school day, by the teacher in charge thereof...*34 Del. Laws, c. 179, §2.

However, in 1971, the reading from the Bible was replaced by a moment of silence. The statute (14 Del. C. §4101) was amended to provide:

> *Pupils in the free public schools of this State shall be given the opportunity to devote, during the initial period of classroom time each school day, a moment for moral, philosophical, or patriotic meditation.*
> 58 Del. Laws, c. 162.

In 1975, Section 4101 was amended again to permit "two or three minutes" for voluntary participation "in moral, philosophical, patriotic or religious activity." 60 Del. Laws, c. 50. In 1978, it was amended to make clear that such "religious activity" included prayer. Thus, as of 1978, Section 4101 provided:

> *During the initial period of study on each school day all students in the public schools of Delaware shall be granted 2 or 3 minutes to voluntarily participate in moral, philosophical, patriotic or religious activity. For purposes of this section, "religious activity" shall include voluntary prayer at the beginning of each school day.* 6 Del. Laws, c. 547.

Eight days after the Supreme Court's 1985 decision in *Wallace v. Jaffree,* the General Assembly recognized that the Supreme Court had "invalidated an Alabama statute which could be construed as a State endorsement of prayer activities" and that "Delaware has never intended, nor does it now intend, to mandate any activity which is violative of the First Amendment." At the same time, the General Assembly determined that "a brief period of quiet reflection at the beginning of the school day...is an appropriate pause between the rush to school and the activities of the day," in that "it promotes an orderly environment conducive to learning." Accordingly, 14 Del. C. §4101 was amended to read:

> *During the initial period of study on each school day all students in the public schools in Delaware may be granted a brief period of silence,*

not to exceed two minutes in duration, to be used according to the dictates of the individual conscience of each student. During that period of silence no other activities shall take place.

There can be little question that the current version of Section 4101 conforms to First Amendment requirements as set forth in *Wallace v. Jaffree.*

A Proposed Constitutional Amendment

In contrast to the response by Delaware General Assembly to *Wallace v. Jaffree,* proponents of school prayer in the United States Senate have chosen simply to press for constitutional change. That change, embodied in Senate Joint Resolution 2, would add to the Constitution the provision that:

Nothing in this Constitution shall be construed to prohibit individual or group silent prayer or reflection in public schools. Neither the United States nor any State shall require any person to participate in such prayer or reflection, nor shall they encourage any particular form of prayer or reflection.

Read literally, this proposal appears superfluous: under the Constitution as it is now interpreted, individuals and groups are free to pray silently in public schools. Opponents of the proposal, however, fear that it is a pretext to permit state and local authorities to establish prayer as a norm. They point out that proponents of S.J. Res. 2 view it as a device to "restore discretion to State or local authorities to structure a religious exercise," including exercises with prayer cards and rosary beads for students who wish to use them.

In explaining his dissenting Judiciary Committee vote against S.J. Res. 2, Senator Howard Metzenbaum summarized his perception of the threat posed by S.J. Res. 2 as follows:

The sponsors of this amendment argue that the wording of the provision prohibits the Government from coercing any child to pray. But how is an eight year old to respond when the teacher conducts "an organized religious activity" each morning in which other children are involved?

What if the great majority of the class uses written prayer cards prepared by a particular denomination? What if the teacher discusses the types of prayer students may wish to give without "encouraging" a particular form of prayer? What if the school officials provide that students who do not wish to be a part of the morning devotional event must leave the room? All these types of conduct are apparently allowed by this amendment, but it is ludicrous to argue that these situations are "neutral" in regard to religion.

Such Government-sponsored activity in a public school classroom inevitably promotes religion. Moreover, in most cases it will promote a particular type of religion—the religious practices of the teacher and the majority in the community. It is impossible to believe that a child whose religious faith differs from majority of his classmates will not frequently feel embarrassed, coerced or ostracized when these Government sponsored religious activities occur.

The wisdom of a constitutional amendment relating to school prayer will be debated, perhaps for years to come. In the meantime, the experience in Alabama reviewed in *Wallace v. Jaffree* demonstrates the importance of vigilance by groups like the American Civil Liberties Union and their recourse to the courts.* In 1981, the Alabama legislature authorized public school teachers to lead students in vocal prayer—even though such a measure had been invalidated by the United States Supreme Court nearly twenty years earlier in *Engle v. Vitale.* The Alabama vocal prayer legislation even survived scrutiny by the Alabama District Court—a result the Supreme Court, with exemplary restraint, characterized in *Wallace* as "remarkable." Only on appeal did the courts restore the rights previously announced in *Engel.* As well as any incident, the 1981 Alabama school prayer legislation demonstrates that consitutional rights cannot be vindicated without constant attention and dedication to the task.

*The American Civil Liberties Union submitted an *amicus curiae* brief in *Wallace v. Jaffree.* The ACLU or its affiliates have appeared in numerous other cases successfully challenging state and local efforts to promote school prayer. *E.g., Walter v. West Virginia Bd. of Educ.,* 610 F.Supp. 1169 (D.W. Va. 1985); *Alabama Civil Liberties Union v. Wallace,* 456 F.2d 1069 (5th Cir. 1972); *Lubbock Civil Liberties Union v. Lubbock Indep. School District,* 669 F.2d 1038 (5th Cir. 1982); *American Civil Liberties Union v. Albert Gallatin Area School District,* 307 F.Supp. 637 (W.D. Pa. 1969), *aff'd* 438 F.2d 1194 (3d Cir. 1971).

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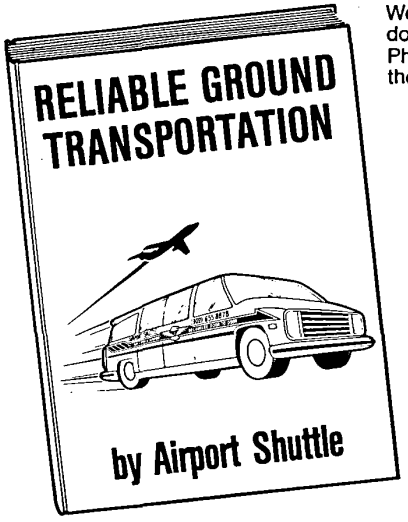

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ACLU vs. ACLU
A House Against Itself

Gary W. Aber

On Sunday morning, September 23, 1973, Father William F. Keegan and Father Michael Szupper, Catholic priests assigned as Chaplains to the University of Delaware student body, conducted worship services on the driveway outside the Commons Room of the Christiana Towers, a University residential complex. This unusual location was required when the Commons Room had been locked to prevent the celebration of Mass for the Catholic residents of the Towers, who had requested and who had participated in such Masses on the preceding weekends. The University administration had decided that the use of University property for religious purposes was contrary to the University Charter, Delaware statutes, and the United States Constitution. Thus, the conflict between the free exercise of religion and the prohibition against the state establishment of religion was joined. It would eventually rise all the way to the United States Supreme Court with the Delaware Chapter of the American Civil Liberties Union at the loggerheads with the National American Civil Liberties Union.

Many persons conceive of the American Civil Liberties Union as a monolithic organization, all of whose members march in lockstep to the same drummer. In reality, it is as diverse as any other organization. Perhaps, because of the interests sought to be preserved and safeguarded, the tenacity of its members and the strength of their convictions, any internal differences tend to be magnified. These differences are numerous, they occur with great regularity, and they are usually fought out with heated discussions within the organizations to determine whether any given complaint is covered by the protection of the United States Constitution.

We need only recall the controversy surrounding the threatened demonstration in Skokie, Illinois, to witness an example of such an internal conflict. In that confrontation, the Illinois Chapter of the American Civil Liberties Union supported the First Amendment right of the American Nazi Party to peaceably march in a residential district where many survivors of the unspeakable Nazi brutality, which had come to be known as "The Holocaust," resided. The Illinois American Civil Liberties Union felt that First Amendment rights to free speech and to peaceable demonstration protected the proposed march. A large number of members, not only of the Illinois American Civil Liberties Union, but members of the American Civil Liberties Union nationally, felt that the intentional instigation of calculated mental distress on the survivors of the Nazi brutality was equivalent to yelling "fire" in a crowded theater and was not constitutionally protected. Although the Courts resolved the conflict in favor of the right to demonstrate, the American Civil Liberties Union in Illinois, nationally, and even in Delaware lost numerous members who resigned in protest for the support given to the demagogues descended from Adolf Hitler. It is only today that some of those members have rejoined their organizations.

The strong emotions that Skokie stirred prevent a critical examination of the legal conflicts between the various factions of the American Civil Liberties Union.

The Delaware ACLU was at one time at loggerheads with the National Board of the American Civil Liberties Union. There was a real likelihood that opposing briefs would be filed in the United States Supreme Court by the Delaware ACLU on one side, and by the National ACLU on the other. This is the analysis of that conflict.

At the beginning of the 1973 school year, Reverends Szupper and Keegan were requested by several Catholic students to hold Masses on Sunday mornings in the Christiana Commons. The Dean of Students informed the priests that such action would violate University policy, but the priests felt duty-bound to serve their students. The *Morning News* headlined the edition on September 24, 1973 with "Mass Held On Driveway In U.D. Ban On Worship", as the University administration threatened to arrest and prosecute the priests and students if they continued their efforts to hold religious services on University property. After jokingly asking the 75 students on that morning whether they knew what was on the jail menu, the priests decided not to jeopardize the students' standing with the University. Ultimately, the University filed an action in the Delaware Chancery Court seeking to prohibit the holding of religious services on University property. The defendants filed a Crossclaim seeking a declaration that their right to hold such services was protected by the First Amendment.

The stage was now set for battle over one of the less precisely drawn portions of the Constitution. The First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ..." United States Constitution, Amendment I.

A cast of characters had also gathered. The University was represented by John P. Sinclair, and Phillip B. Kurland, (Kurland also was later to represent the State in the more recent desegregation battle). The individual defendants, Fathers Keegan and Szupper, were represented by Arlen B. Mekler, and James P. Collins, who was allowed to intervene on behalf of Bishop Thomas J. Mardaga of the local Archdiocese. The American Civil Liberties Union joined the battle as an Amicus Curiae, represented by Joseph A. Rosenthal, and later on appeal by Thomas S. Neuberger, John S. Grady, and Christopher Hall, of California.

The University relied upon the prohibition against the establishment of religion, contained in the First Amendment and provision of the University Charter codified as 14 *Del.C.* §5103, which states: "The University shall never be managed or conducted in the interest of any party, sect, or denomination."

Vice Chancellor William Marvel heard the case initially at the trial level. At the early stages, on October 5, 1973, he entered a temporary restraining order

(Continued on page 30)

AR082

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A House Against Itself
(Continued)

prohibiting the University from interferring with the religious services. Subsequently, on March 28, 1974, the Vice Chancellor reversed his earlier position and issued an opinion supporting the University's position. *University of Delaware v. Keegan,* Del. Ch., 318 A.2d 135 (1974). He recognized the unique and unprecedented conflict presented in the case:

> *While the parties to this litigation concede that they have been unable to find a precise precedent in support of their respective positions, opposing counsel, relying on the provisions of the First Amendment reached directly opposite conclusions. Thus, the University contends that the establishment clause of the First Amendment compels it to ban worship services on its property, while the defendant and intervenors argue that the free exercise clause of the same amendment guarantee them the right to hold and/or participate in the worship services..."*
> University of Delaware v. Keegan, supra., at 138.

The Court incorporated the triparte test mandated by the United States Supreme Court in *Committee for Public Education v. Nyquist,* 413 U.S. 756 (1973). Three hurdles had to be cleared: first, the governmental decision must reflect a clear secular purpose; second, its primary effect could neither advance nor inhibit religion, and, finally, it must prevent excessive government entanglement with religion. Vice Chancellor Marvel concluded that the University, in furnishing such facilities, was not furthering religion, and, what is most important, it was not dealing with a young, impressionable, or captive audience. The banning of all religious services was not discriminatory and there was only an insignificant burden on religion, which did not run afoul of the "free exercise" clause. The Court concluded:

> *(T)hat to compel the plaintiff to permit Roman Catholic worship services to be celebrated in the Christiana Towers merely in order to suit the convenience of the students, intervening defendants, and others, would be unwarranted,*

(Continued on page 31)

it being clear on the present record that Roman Catholic Masses are regularly celebrated in two churches situated in the City of Newark. University of Delaware v. Keegan, supra., at 142.

Not unexpectedly, the priests and the students appealed. Justice John J. McNeilly writing for the Delaware Supreme Court differed with the lower Court's view of the conflict. It had been established that all university students and organizations were given free use of University space for meetings. The University had sanctioned various religious organizations, and allowed them quarters for business and social purposes. The Court concluded that allowing religious groups the same rights as other University organizations would not run afoul of the "establishment clause" and would be a "lawful accommodation". From this it followed that the University must exercise neutrality in the face of the students' desire to conduct religious services. The Court differed expressly with Chancery over the burden placed upon the students by having to go off campus for religious services. The Court noted that the students lived and studied within the University: Any burden upon them would constitute a violation of the "free exercise" clause:

> *Once the individual demonstrates some constitutional burden, whether substantial or incidental, direct or indirect, upon his free exercise of religion, the State must show a 'substantial interest' sufficient to sustain its acts.* Keegan v. University of Delaware, Del. Supr., 349 A.2d 14, 17 (1975).

Instead of measuring the amount of burden, absent a factual record the Supreme Court regarded the University as having discriminated against a religious organization, or as the Court questioned:

> *Can the University prohibit student worship in a common area of a University dormitory which is provided for student use and in which the University permits every other student activity?* Keegan v. University of Delaware, supra., at 17-18.

The Delaware Supreme Court remanded the case for the Court of Chancery to determine in light of its holding that the banning of the religious services created an unconstitutional burden whether there was any "compelling" state justification for such a burden.

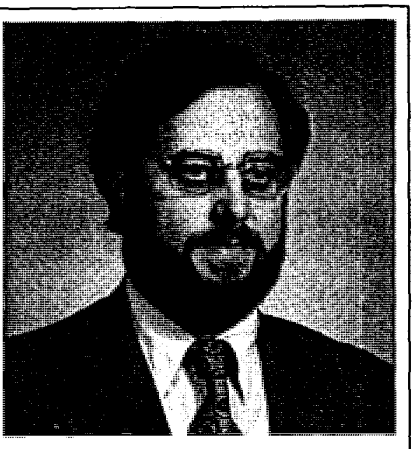
The *News Journal* papers, editorialized at this point that the University should treat everyone the same, or as the papers phrased it: "In Plainer Terms, Treat Everyone Alike." However, the University felt constrained to take the issue to a higher level, and sought to file for certiorari to the United States Supreme Court. On December 23, 1975, *The New York Times* noted the national implications of this case in reporting the appeal.

The stage was now set for the conflict between the Delaware ACLU and the National organization. At that time, the Delaware ACLU was acting as an affiliate of the Philadelphia Chapter of the American Civil Liberties Union. (Subsequently, the local organization voted to form its own independent chapter.) As a part of operating procedures, the Delaware ACLU needed Philadelphia Board approval to litigate in the United States Supreme Court. Philadelphia approved, but upon learning of the Delaware Chapter's position, the National Executive Committee expressed concern that Delaware's position violated the National Board's position. Several meetings were held to discuss the matter. Finally, the National Executive Committee, in February, 1976, voted to authorize the National ACLU to file an amicus curiae brief setting forth the "establishment position" before the United States Supreme Court. If the Supreme Court decided to hear the matter, the Delaware Chapter was going to continue to support the priests' and students' on the "free exercise" position. Thus, the very real possibility of finding the Delaware ACLU and the National ACLU in opposition was on the horizon.

As fate would have it, the battle was never joined between the respective ACLU bodies. The United States Supreme Court on February 23, 1976, voted to deny certiorari, *University of Delaware v. Keegan,* 424 U.S. 934 (1976). Justices Brennan and Blackmun were noted as having voted to grant certiorari.

In retrospect, it is difficult to determine whether the final outcome of this case rests with the liberal or conservative camps in the ongoing controversy over religion and public education. Given the Justices who voted for Supreme Court review, and the potential reversal of the Delaware Supreme Court decision, it might be argued that the Delaware ACLU supported the conservative camp. *Keegan v. University of Delaware, supra.,* has been cited as authority to require state institutions to permit voluntary prayer: *Brandon v. Board of Education of Guilderland Central School,* 635 F. 2d 971 (2nd Cir., 1980).

Several years after the *Keegan* case was put to rest, the federal court system was called upon to analyze the same issues. In *Chess v. Widmar,* 480 F.Supp 907 (W.D.Mo., 1979), the trial court faced a virtually identical set of facts that had infringed the Delaware Courts. Called upon to consider *Keegan,* the Federal District Court explicitedly rejected the Delaware Court's analysis, recognizing that the facts were "indistinguishable". The Court critized the Delaware Supreme Court's conclusion that allowing religious groups the same rights as all other student groups was a "lawful accommodation" and further, such a conclusion was made "without analylsis" of *Tilton v. Richardson,* 403 U.S. 672 (1971).[1] On appeal, the Eighth Circuit of Appeals reversed, *Chess v. Widmar,* 635 F.2d 310 (8th Cir., 1980), holding that the University of Missouri's ban infringed the free exercise clause. The case was then appealed to the United States Supreme



As evidenced by other articles in this issue Gary Aber has fought the good fight for freedom. Gary practices trial litigation in Wilmington, with a particular interest in personal injury cases and civil liberties.

Gary is a native downstate Delawarean, born and raised in Milford. He is a long time member of the Board of Directors of the Delaware affiliate of the A.C.L.U. and a Vice President of the affiliate.

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A House Against Itself
(Continued)

Court. *Widmar v. Vincent,* 454 U.S. 263 (1981). The Supreme Court upheld the right of students to use University facilities for religious purposes. Unlike the Courts below, the Supreme Court did not confront the conflict of "The Establishment Clause" versus the "Free Exercise Clause". Rather, the Court found that the lower courts had "misconceived" the issues and ruled: "The question is not whether the creation of a religious forum would violate the "Establishment Clause." *Widmar v. Vincent, supra.,* at 273. The Supreme Court chose to view the issue as a violation of the students' First Amendment rights of free speech and association. Since the University had allowed all other student groups free access to its facilities, the prohibition as applied solely to religious groups was just such a violation.

> *The basis of our decision is narrow. Having created a forum generally open to student groups, the University seeks to enforce a content-based exclusion on religious speech. Its exclusionary policy violates the fundamental principle that a state regulation of speech should be content-neutral, and the University is unable to justify this violation under applicable constitutional standards.* Widmar v. Vincent, supra., at 277.

As a consequence of the Supreme Court's decision the competing interests have been resolved, but the competing religious questions of "establishment" versus "free exercise" have not. One may assume that the Supreme Court, in expressly basing its decision upon the right of free speech and association, sought to avoid the quagmire of religion and public education.

Although the factual controversy faced by the Delaware Courts has been resolved by the United States Supreme Court on the side of the Delaware ACLU position, the exact conflict in competing issues remains unsettled and in all probability never will be. Whether the local Delaware ACLU or the national ACLU organization was correct, will never be known. The local chapter's position has prevailed, and only the imaginations of the members can visualize the reaction of the United States Supreme Court with the American Civil Liberties Union appearing on both sides of the same case.

[1] In *Tilton,* the United States Supreme Court had held that state monies could not be used to provide facilities for religious teachings at institutions of higher learning.

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The Delaware Declaration of Rights

Parents, Siblings, Vicissitudes

Carroll Poole and Max S. Bell, Jr.

"Novus Ordo Seclorum", a new order of the ages, proclaims the Great Seal of the United States, a proud assertion. Taken in its entirety, there is ample justification for this claim. Toqueville, William Gladstone, and Lord Bryce all agree and many others concede the precedential novelty of the American experiment.

Daring though it may have been when viewed as a complete structure, many of the constituent parts have ancient antecedents. Nowhere was this more true than in the fashioning of the various bills of rights, both state and federal. The idea of the limitation of the power of a sovereign or of an entire government is ancient indeed.

St. Thomas Aquinas, whose working life spanned the middle of the 13th Century, argued that the ruler holds an office or a trust for the whole community. He is justified only to the extent that what he does contributes to the common good.[1] Although St. Thomas approaches the relationship of the governor to the governed from a theological point of view, the thoughts upon which he builds his argument can be traced to Aristotle, who wrote in the Fourth century, B.C.

Not only does St. Thomas present a theory of limitations, he also holds that resistance to tyranny is a justifiable act of a whole people so long as those who resist do so in a way less injurious to the general good than the abuse they would remove.

The thoughts of St. Thomas were neither complete nor original. He set them in a clerical mold. The English *Magna Carta* (1215) had been executed and then re-issued at least three times before St. Thomas wrote.[2] Nothing in the writings of St. Thomas appears to deal with the problem of applying his principles to individual subjects of the sovereign. Nowhere does he present a theory of enforcement of limitations by means other than mass revolt. What St. Thomas did do was to present in well-organized and closely argued form a cluster of ideas, which became the common property of the modern Western world, an inheritance from the Middle Ages.

Important as was the climate of thought of which St. Thomas Aquinas was an exemplar, a more direct link with the thoughts of the 18th Century policians[3] is to be found in England. Mention has already been made of *Magna Carta*. Its famous Clause 39 is well-known to every student of public law:

"No free man shall be taken or imprisoned or dispossessed or outlawed, or banished or in any way destroyed . . . except by the legal judgment of his peers or by the law of the land."

It is possible to refer to only a few of the many who contributed to the controversial literature from the early twelve hundreds to the late seventeen hundreds. William of Occam, writing in the middle of the 14th Century, wrote essentially in the clerical vein of St. Thomas. He, too, reflected continuing prevailing sentiments. "The basis of his political ideas was the rooted and almost universal dislike of arbitrary power, or of force exercised outside the framework of what was felt to be the law." Richard Hooker, writing in the late 16th Century, was in the same tradition as St. Thomas and William. However, in his major work, *The Laws of Ecclesiastical Polity,* he refers to a "... composition and agreement amongst themselves..." that is, amongst the people of the "Polity". This, of course, reinforces the notion of a higher law with the idea of a compact which, if breached by one party (the sovereign), no longer binds the other (the subject).

Only at the very end of the 16th century does a clear distinction between the clerical and the secular appear. Sir Thomas More might be described as the last medievalist and, similarly, Sir Edward Coke one of the early secular thinkers.

There is much doubt whether Coke's dictum in *Dr. Bonham's Case*[4] represented contemporary majority opinion. What is certain is that Charles I recognized it as dangerous to his pretentions (Coke was dismissed as Chief Justice of Common Pleas) and that the dictum was constantly referred to later with powerful effect.

It is impossible to leave the early Stuart and the Commonwealth period without a brief reference to the Levellers. This group—it certainly was not a "party" in any accepted usage of the word—consisted of a number of the private soldiers in the army led by Oliver Cromwell. Sabine, *Op. Cit.* p 489, asserts that they "...tried to secure what in the United States would be a constitutional convention, a special representative body 'not to exercise any legislative powers but only to draw up the foundation for just government.' " Moreover, foreshadowing a later and more famous document, it appears that they argued, "For by natural birth all men are equally and alike born to like propriety, liberty and freedom:..."

John Locke (1632-1704), universally acknowledged as a prime source by the constitutionalists of the later 18th Century, wrote in the *Second Treatise on Civil Government:*

The end of government is the good of mankind and which is best for mankind, that all the people should be always exposed to the boundless will of tyranny, or that the rulers should be sometimes liable to be opposed when they grow exorbitant in the use of their

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Declaration of Rights
(Continued)

power, and employ it for the destruction and not the preservation of the properties of the people?

Thomas Jefferson may have had this passage in mind when he wrote that "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants."

The works of the writers briefly mentioned and those of a legion of others omitted for lack of space were not sterile academic exercises, although the seed was often much delayed in the germination. The Petition of Right, enacted in 1628, reasserted the fundamental importance of the Writ of Habeas Corpus. It dealt also with other popular grievances: taxation without the consent of Parliament, the quartering of troops in private homes in peacetime, the application of martial law to civilians when the common law courts were open. The observance by Charles I of this one statute, to which he had given the Royal assent would probably have saved both his reign and his head.

This statute was the first of many enacted between 1628 and 1690 dealing with diverse subjects: the abolition of the Courts of Star Chamber and High Commission (1641), the Habeas Corpus Act (1679), the Bill of Rights (1689), and others. Throughout, however, there was a common theme — the limitation of prerogative and the liberties of the subject — in modern parlance — civil rights.

Another common theme is discoverable. The practical men of affairs — the leaders of the communities in which they lived — were responding to particular grievances. They were not the captives of abstract doctrine. They molded and used doctrine and, no doubt, were themselves molded by the theories they assimilated. They quoted Hooker and Locke in their speeches; with more immediate effectiveness they insisted that the settlement of grievances must precede parliamentary action upon the demands of the Crown for supply, i.e. money.

In one respect, the colonists in the New World were exceptionally fortunate. Their settlements stabilized and grew during a period of civil convulsions in the land from which they sprang. Civil war, regicide, and restoration so occupied the attention of the Crown and the influential members of the community that little or no attention was paid to those far-away communities, whose very survival was in any case believed to be uncertain. Of necessity they devised ways of regulating their own internal order. The Congregationalist might well have reflected that "Needs must when the Devil drives."

Following the Glorious Revolution, there was no significant change in the attention paid by leaders in the Mother Country. Continental wars absorbed available energies. Louis XIV had ambitions, which were only barely frustrated by the combined efforts of the Dutch and the English (led by William of Orange at home and John Churchill, Duke of Marlborough, at the head of the field forces). There followed a series of continental European dynastic wars — the wars of the Spanish Succession, of the Austrian Succession, and others. The final armed outbreak of the adherents of the Stuart pretenders occurred in 1745. During this time the home government looked to the colonies for help. It was a contingent from the Massachusetts Bay Colony and from the Province of Maine that first captured the French Fortress of Louisbourg in 1745.

Thus, from 1630 to 1763 the colonies were left alone and became more or less self-governing. What then could be less surprising than that self-governing communities, left to their own resources for almost one hundred fifty years, and rather successfully at that, should object to the sudden revival of interest and the efforts of the Mother Country to resume detailed control after the Peace of Paris? Only one thing would be less surprising.

The colonists, or at least their more educated members, knew their history. They had read Milton and Harrington, Hooker and Locke. The true surprise would have been the failure of these leaders to contest the arrogations and intrusions of English government with those very tracts, arguments, and Acts of Parliament that had been so effective in the limitation of Royal Prerogative and the ultimate overthrow of the Stuarts.

To the extent that there are available records, the evidence is clear that from Massachusetts Bay Colony to Georgia constitutions limiting the power of the several local governments were adopted no later than the end of 1777. The Stamp Act Congress had passed its Resolutions as early as 1765. The First Continental Congress had met and had protested a long series of grievances in a Declaration and Resolves dated October 14, 1774. All of these documents dealt with matters of complaint and, like the Declaration of Independence, were in the nature of protests and so were not strictly bills of rights. What they did do was to establish those points to which the colonial assemblies and conventions objected in a remarkable consensus.

That same consensus became even more apparent with the drafting and adoption of bills of rights in the separate states by separate assemblies or conventions reflecting the similar views of separate constituencies. In 1776 and 1777 eleven of the thirteen colonies adopted constitutions. A twelfth, Connecticut, added a short declaration of rights, which was to be read as a part of the existing charter. Every colony except Rhode Island included in its basic instrument of government new and express limitations. In Rhode Island, the Charter of 1663 had already incorporated the language of Clause 39 from *Magna Carta*, as well as one of the earliest colonial guarantees of a measure of religious toleration.

Not only did the colonies act in a very short time; they adopted documents more significant for their similarities than for the differences of detailed provisions. On both counts the public figures in Delaware were in the main stream or in the lead.

We know very little of the inmost thoughts of the delegates to the Convention that met in New Castle in August of 1776. The evidence is both scanty and unindexed. But we do know what they did. On September 11, 1776 the Delaware convention adopted a Declaration of Rights. The first Constitution followed that Declaration nine days later.

The Delaware Declaration of Rights was adopted after the Virginia Bill of Rights, which forms the first part of the Constitution of that Commonwealth, approved on June 12, 1776. Pennsylvania enacted a Constitution and Declaration of Rights on August 16 of that year, also before the Delaware Declaration was adopted. The Maryland and North Carolina Variances appeared in November and December of the same year.

The available evidence suggests that the Delaware Declaration was derived in large measure from the drafts already enacted in Virginia and Pennsylvania, and under consideration in Maryland.

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The delegates to the Delaware convention approved a document, which in its general tenor paralleled the various colonial Declarations enacted during those years. In spite of differences in detail[5] it is the similarity, not the variation, that is striking.

In this context the debates and the controversialist writings produced during the struggle for ratification are enlightening.

Much of the opposition to the new Federal Constitution arose from the absence of express guarantees of rights. A Massachusetts anti-Federalist seized on this in a tract published in the *Boston American Herald* on October 27, 1787.[6]

So also did Patrick Henry on June 5 and June 7, 1788 when he opposed ratification in the Virginia Convention. Thomas Jefferson, a supporter of the main principals of the new Constitution, wrote from Paris on December 20, 1787 to James Madison that he disliked the omission of a Bill of Rights. He was particularly emphatic about this. "Let me add," he wrote, "that a Bill of Rights is what the people are entitled to against every government on earth, general or particular; and that no just government should refuse or rest on inferences."

Although no documentary evidence of the subjective beliefs of the members of the 1776 Delaware Constitutional Convention is available—indeed it may be nonexistent—those beliefs may be fairly inferred from the actions of the delegates in making a statement of reserved rights the first order of their business. That it preceded the adoption of a new fundamental instrument of government by nine days is decisive evidence of the harmony of their thought with that of the leaders of all the other Colonies.[7]

However, the harmony of 18th century thought was incomplete in one particular that excites our curiosity today, and which has caused much litigation: were the 18th Century declarations of rights (U.S., Delaware, *et al.*) intended to be immutable? Even as we celebrate our Constitutional beginnings, we are embroiled in a debate as to whether construction of the rights should be a search for the framers' intentions or a 20th Century meaning for their words. On the one side we have the view that "black ink" is more enduring than brass or stone, a Shakespearean view[8]; and on the other[9], that the wording of the U.S. Bill of Rights was intentionally generalized to accommodate civilizing change as litigants and judges develop a better understanding of the world in which we live.

The Delaware Bill of Rights has not yet been subjected to the same scrutiny as the U.S.; but, when it is, some interesting differences from the federal experience will be apparent.

The Delaware Constitution, dated just nine days after the Declaration of Rights, expressly provided (Art. 30) that "no Article of the Declaration of Rights and Fundamental Rules of this State ... [nor certain provisions in the Constitution] ought ever to be violated on any pretense whatever." The second sentence of Article 30 provided the one means for amending the other provisions of the Constitution (5/7 vote in both branches of the General Assembly), clearly suggesting that the Declaration of Rights and certain provisions in the Constitution were not subject to amendment. However, within less than 16 years, Delaware had a new Constitution and rewritten Rights, and there were significant changes. Two of them merit discussion.

Section 3 of the Declaration provided "That all persons professing the Christian religion ought forever to enjoy equal rights and privileges in this state, unless, under colour of religion, any man disturb the peace, the happiness or safety of society." To confirm the primacy of Christianity, Art. 22 of the Constitution (1776) also provided that everyone elected to the General Assembly or "appointed to any office or place of trust" would have to make and subscribe the following declaration:

I A.B. do profess faith in God, the Father, and in Jesus Christ, His only Son, and in the Holy Ghost, one God, blessed forevermore; and I do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration.

Notwithstanding the obvious expectation that good Christian men would be running the government and enjoying equal rights and privileges, there were numerous provisions against establishment of any *particular* religion. Freedom of worship was guaranteed, and compulsory attendance or maintenance of any ministry was barred (Declaration, Sect. 2). Art. 29 of the Constitution also forbade "establishment of any one reli-

Continued on page 121

Carroll Poole, is a member of the Delaware Bar and an Editor of this publication. His interests include history (he is a member of the Historical Society of Delaware) with a particular emphasis upon maritime and naval history. He has been active in the conservation movement. He was among the organizers of Delmarva Ornothological Society and Delaware Nature Education Society. He is also an accomplished writer. As he puts it with becoming modesty his interests extend "from bird watching to word botching".

Max S. Bell, Jr., co-author of this article, is President of the Delaware Affiliate of the American civil Liberties Union. He served as Chairman of the State Human Relations Commission from 1969 until 1973. Reappointed as a commissioner he has served continuously on that Commission since 1977. This is Mr. Bell's first appearance in these pages.

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gious sect" and provided that no clergyman or "Preacher of the Gospel" could hold "any civil office in this state" or be a legislator "while they [sic] continue in the exercise of the pastoral function." Art. 29 was one of the provisions never "to be violated on any pretense whatever."

In addition, the Declaration (Art. 26) provided that:

No person hereafter imported into this state from Africa ought to be held in slavery under any pretense whatever, and no Negro, Indian or Mulatto slave, ought to be brought into this state for sale from any part of the world.

This too was never "to be violated on any pretense whatever."

In 1792 another Constitutional convention was called, principally because the position of President of Delaware had little authority apart from the General Assembly and a basic revision of the form of state government was needed to strengthen the executive branch. However, the convention also eliminated the specific "rights" quoted above, despite their earlier "[n]ever to be violated" status. Although the 1776 Constitution did not provide for calling another convention this did not prevent its happening. Addressing this conceptual problem, the framers gave the new Constitution a preamble stating that governmental authority was derived from the people, with their consent and to advance their happiness, and concluding with this assertion: "and they may for this end, as circumstances require, from time-to-time alter their constitution of government." So saying, 24 elected delegates (out of a population of 37,000) made substantial changes, and there apparently was no litigation challenging their authority to do so.

Much of the explanation for change lay in accommodation to the new federal government. Between the two Delaware Constitutional conventions, the U.S. Constitution had come into being and the first ten amendments had also been ratified by December 15, 1791. Article VI of the U.S. Constitution provided that no religious test could ever be required as a qualification to office or public trust "under the United States", and Art. IV, Sect. 2 provided that no person held to "Service or Labour" in one state could be discharged from such "Service or Labour" by the law of another state. These Federal declarations ratified, the Delaware framers (1792) were persuaded to delete the contrary provisions from the Delaware Constitution.

Cognizant that two significant provisions had been deleted from the rights previously proclaimed as "[n]ever to be violated", the 1792 framers made a new attempt at perpetuating the rights they declared. The rights were set forth in the Constitution, but as a separate Article, which was followed by this statement:

We declare that every thing in this article is reserved out of the general powers of government here-in-after mentioned.

In addition, provisions were included (Art. X) to make amendment of the Constitution quite difficult. One General Assembly could propose an amendment by a 2/3 vote in each House, the proposal would have to be published before a general election, and the next General Assembly could adopt the amendment by three-fourths vote in each House. As for a constitutional convention, none could be called "but by authority of the people", that is, a vote by ballot for or against a convention. These provisions were carried forward into the Constitution of 1831 (declaration following Art. I, and Art. IX). The 1897 Constitution retained the same "reserve clause" regarding the Bill of Rights, but watered down the amendment process somewhat[10], and gave the General Assembly the right to call a constitutional convention (Art. XVI, §2).

Since the provisions of the 1792 Bill of Rights were unchanged in the 1831 and 1897 constitutions, the question of their susceptibility of amendment was not squarely presented until 1972, when a 1933 amendment to Art. I, §4 ("Trial by jury shall be as heretofore") was challenged on the ground that the Bill of Rights could not be amended, because of the "reserve clause" quoted above. The Court held in *State v. Bender,* Del. Supr. 293 A2d 551 (1972) that the reserve clause did not preclude amendment by the two-step procedure provided for in Art. 16, §1, which applied equally to all parts of the Constitution. Although the Court did not say so, its ruling appears to leave the reserve clause with no meaning at all, surely not what the framers had in mind. Perhaps the decision can better be justified on the grounds that the effect of the amendment "was merely to change the mechanics of the drawing of the Grand Jury" and that to decide otherwise might have invalidated 40 years of indictments.

Should the question arise again, we may still hope that the reserve clause and the "black ink" of our Bill of Rights, with the reserve clause, will be found to have a greater endurance. It could be a serious issue, if other amendments to our Bill of Rights can be adopted as easily as the "right to keep and bear arms" amendment[11] is being added thereto, with so little attention at the 1986 general election. ■

[1]George H. Sabine, *A History of Political Theory,* Henry Holt and Company, New York, 1937, 1946 ed. p. 249.

[2]Richard L. Perry, Ed. *Sources of Our Liberties,* American Bar Foundation, Chicago, Ill., 1959 p.4.

[3]The word "politicians" is used advisedly. The delegates to the Federal Convention in Philadelphia, to the ratification conventions and to the various bodies that drafted the state constitutions were practical men of affairs, fully conversant with the dominant opinions of their constituents. All the documents show that these men had a constant concern with what they thought would be acceptible in their differing communities. See Madison's *Notes on the Federal Convention* and Elliot's *Debates in the Several State Conventions,* passim.

[4]8 Coke's Reports 107, 118 (1610) "...in many cases, the common law will controul acts of parliament and sometimes adjudge them to be utterly void; ..." Quoted in Perry, Ed. *Op. Cit.* p. 27.

[5]The Delaware Declaration of Rights appears in Volume 1 of the *Delaware Code.* The Delaware Declaration restricts the guarantees of toleration to "Christians". Section 3. It is also the first of the Colonial documents to prohibit retroactive legislation relating to criminal law. See Section 11.

[6]Reprinted in Ketcham, Ralph D., the *Anti-Federalist Papers and the Constitutional Convention Debates, New American Library, New York 1986, Page 189 at pages 195-196.*

[7]Anyone searching for a fuller treatment of the ideas barely touched upon here will do well to consult E. S. Corwin, *The "Higher Law" Background of American Constitutional Law,* Harv. L. Review 42 (Dec. 1928 and Jan. 1929) 149-185, 365-409.

[8]U.S. Solicitor General Charles Fried, *"Sonnet LXV and the Black Ink of the Framers' Intention",* 100 Harv. L. R. 751 (Feb. 1987).

[9]Justice William J. Brennan, Jr., *"Constitutional Adjudication and the Death Penalty: A View from the Court",* 100 Harv. L. R. 313 (Dec. 1986).

[10]The second leg of a legislative amendment required only two-thirds vote. Art. XVI, §1.

[11]65 Del. Laws, Chap. 332 (June 25, 1986).

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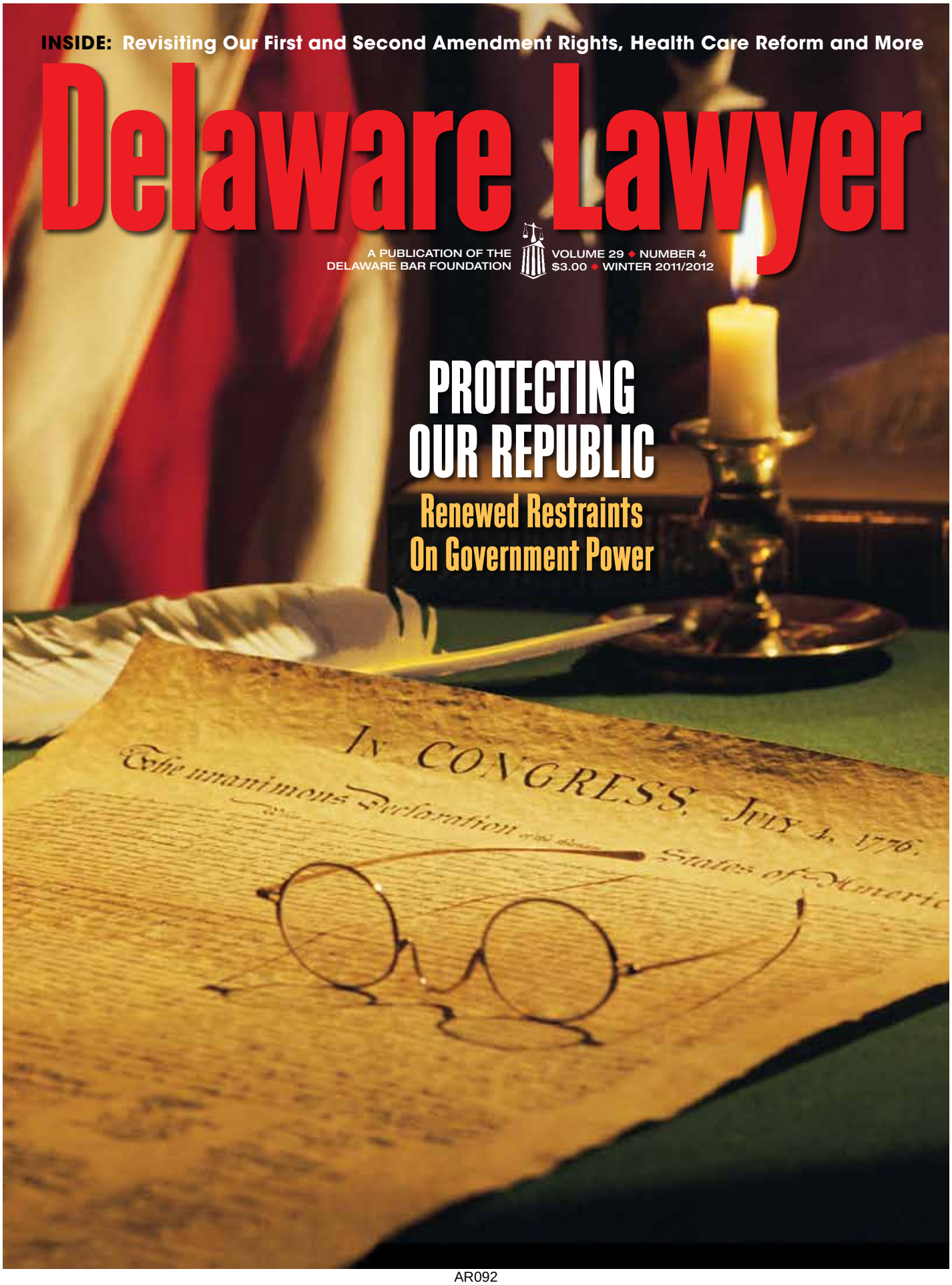
INSIDE: Revisiting Our First and Second Amendment Rights, Health Care Reform and More

Delaware Lawyer

A PUBLICATION OF THE DELAWARE BAR FOUNDATION
VOLUME 29 ◆ NUMBER 4
$3.00 ◆ WINTER 2011/2012



PROTECTING OUR REPUBLIC

Renewed Restraints On Government Power

Delaware Lawyer

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EDITOR'S NOTE

Gregory A. Inskip

The statesmen who designed and implemented our Constitution sought to protect our freedom by several expedients, discussed in the essays that follow. They divided power between state and federal governments, separated powers among executive, legislative and judicial branches, and expressly protected specific liberties in bills of rights in federal and state constitutions.

The result, according to Benjamin Franklin, was "a Republic, if you can keep it." Andrew Jackson later voiced a similar caution "that eternal vigilance by the people is the price of liberty and that you must pay that price if you wish to secure the blessing." *Farewell Address*, March 4, 1837.

Our freedom obviously depends on a military strong enough to deter foreign tyrants and honorable enough to respect civilian rule. Lasting freedom also depends on a civil society honest enough to read and respect the constitutional guarantees, and brave enough to assert them at need.

The rights that the founders bequeathed to us reinforce each other and are strengthened by exercise. Criticism of tyrants is fatal in places like Zimbabwe and unthinkable in North Korea. In the United States we expect people to speak freely and we do so to expose governmental corruption and incompetence. We throw the bums out of office before they become entrenched.

In other cultures, fearless speech is not always enough. The corrupt regimes of Syria and Iran are using their monopoly on armed force to suppress dissent from an unarmed people. Would-be tyrants cannot hope to achieve easy repression here, where the same citizens who enjoy freedom of speech also enjoy the right to keep and bear arms.

But government continues to grow in size and intrusiveness, perhaps most insidiously in electronic surveillance of our travels, habits and communications and associations with others. As Superior Court Judge Jurden commented, "The advancement of technology will continue *ad infinitum*. An Orwellian state is now technologically feasible. Without adequate judicial preservation of privacy, there is nothing to protect our citizens from being tracked 24/7." *State v. Holden*, 2010 WL 5140744 (Del. Super. Ct.) at *8, appeal dismissed *State v. Holden*, No. 30, 2011 (February 1, 2012).

In Holden police had tracked a defendant's movements by surreptitiously placing a GPS device on his car, without obtaining a search warrant. The Superior Court suppressed the evidence, holding that "Delawareans reasonably expect to be free from prolonged 24-hours-a-day surveillance. Use of GPS technology without adequate judicial supervision infringes upon the reasonable expectation of privacy and absent exigent circumstances or a warrant issued upon probable cause, violates Article I, § 6 of the Delaware Constitution." *Id.*

Happily the United States Supreme Court has construed the Fourth Amendment the same way in a case decided as this issue goes to press, *United States v. Jones*, No. 10-1259. (January 23, 2012).

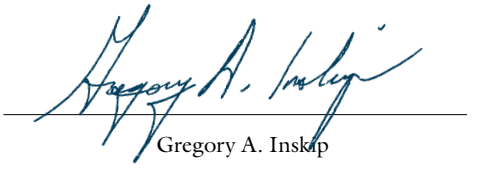
Meanwhile, state and federal bureaucrats have advocated that GPS systems be installed in our motor vehicles to track where and how far we drive, and to tax us based on miles driven:

http://www.cnn.com/2011/11/18/travel/pay-per-mile-transportation/index.html;

http://www.thetruthaboutcars.com/2011/05/white-house-disowns-pay-per-mile-tax-plan/

Many of us would hold that if surveillance is improper when done by a police detective investigating a suspected criminal, then it is far worse when done by a bureaucracy seeking to spy on and control the movements of citizens in private life. Unfortunately we are afflicted with policymakers with different values.

Franklin, Jackson and Orwell warned us: an expansive government is watching. We must maintain countervailing vigilance if we hope to keep our free republic in more than name.



Gregory A. Inskip

We Remember Peter E. Hess

We write to remember our colleague and fellow Board of Editors member, Peter E. Hess, who passed away on January 12, 2012. He was just 52 years old. A graduate of Brandywine High School, Peter obtained his bachelor's degree from The University of Virginia ("The University" as he liked to tell his friends), where he majored in History, Government and Economics. He obtained his J.D. from Tulane Law School in 1984.

A history and war buff, as well as an accomplished diver, Peter developed a specialty in admiralty and maritime law. His love for maritime history preservation and underwater exploration in particular led to his involvement in several underwater shipwreck explorations, including a dive to the USS Monitor. He was very active in the Explorers Club, holding many leadership positions, including Chairman of the Philadelphia Chapter, and Chairman of the Club's Legal Committee. His impact on divers' rights within maritime law is remembered by many of his colleagues.

Peter had the gift of optimism, an infectious smile, and a quick wit. He will be missed by many people who knew and loved him. We extend our condolences to his son, Benjamin, and the rest of his family and friends.

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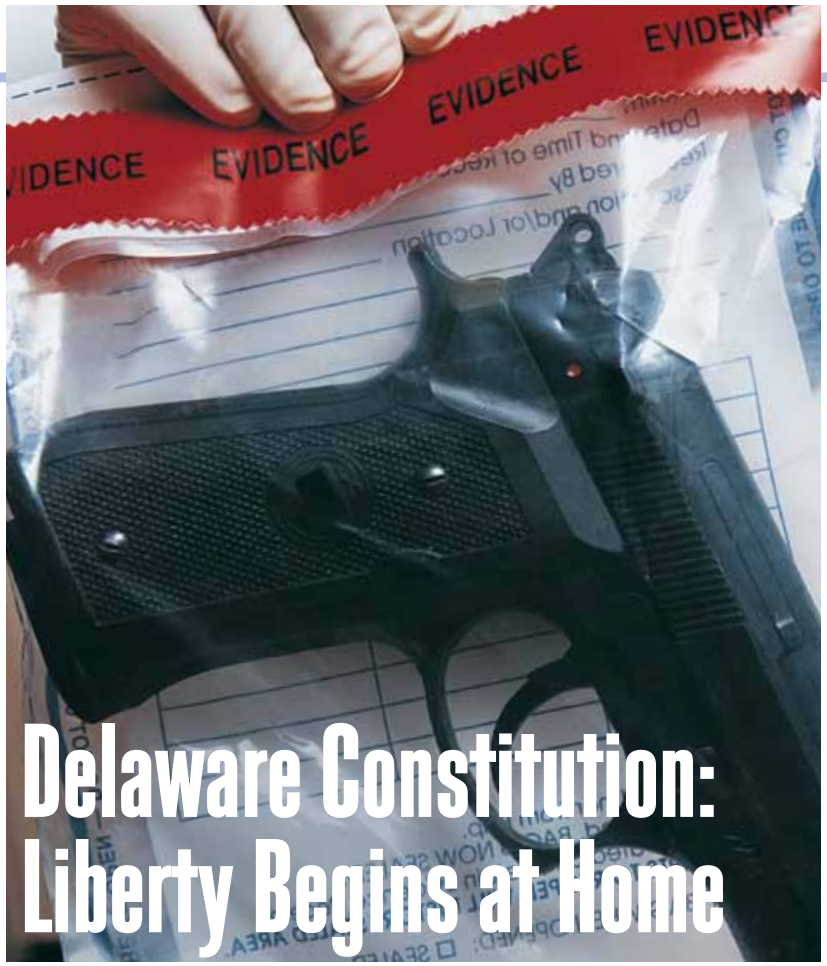
FEATURE

Joy Mulholland, Ph.D.,
and Richard H. Morse



Article I of the Delaware Constitution: Liberty Begins at Home

In many cases, our State constitution may provide more rights and protections than the U.S. Constitution.

In a 1977 article addressing the importance of state courts to the protection of fundamental rights, Justice William Brennan observed:

> *Over the past two decades, decisions of the Supreme Court of the United States have returned to the fundamental promises wrought by the blood of those who fought our War between the States, promises which were thereafter embodied in our fourteenth amendment – that the citizens of all our states are also and no less citizens of our United States, that this birthright guarantees our federal constitutional liberties against encroachment by governmental action at any level of our federal system, and that each of us is entitled to due process of law and the equal protection of the laws from our state governments no less than from our national one.*[1]

He could not say that today. With limited exceptions,[2] the United States Supreme Court has backed away from the role Justice Brennan lauded because of a change in personnel.[3] Thus, for Delaware, it remains for judicial application of the Delaware Constitution to carry that burden. History shows it can.

Days before adopting Delaware's first constitution in 1776, convention delegates adopted the Declaration of Rights and Fundamental Rules of the Delaware State, which guaranteed Delawareans many of the basic liberties they enjoy today: freedom of religion; enjoyment of life, liberty, and property; freedom of the press; free elections; a remedy at law for every injury in goods, lands or person; trial by jury of facts

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where they arise; freedom from search or seizure without a warrant under oath naming or describing the place or person to be searched; and procedural rights in criminal prosecutions, including the right to counsel, the right against self-incrimination, the right to confront accusers and witnesses and to examine evidence, the right to a speedy trial by an impartial jury, conviction only by a unanimous jury, freedom from excessive bail, fines, and cruel and unusual punishment.[4]

New state constitutions were adopted in 1792, 1831 and 1897. Article I of each of those constitutions preserved and expanded these common law rights and added others, *e.g.*, elections shall be free *and equal*; the right of assembly; no criminal proceedings by information; no double jeopardy; no suspension of the writ of *habeas corpus*; guarantee of bail for most prisoners; and consideration of the health of prisoners in the construction of jails.[5]

When the present state constitution was adopted in 1897, the convention delegates understood that if a fundamental right were omitted from the Delaware Constitution, Delawareans would, in most cases, lose that protection from state action.[6] Accordingly, they provided protections against state government power that stand independent from federal court decisions.

Given the system of dual sovereignty established by the United States Constitution and the right of state courts to apply their constitutions as they see fit,[7] scholars have noted that turning to state constitutions for the protection of fundamental rights offers something for both liberals and conservatives: it is a way to continue the expansion of constitutional rights, while at the same time providing the triumph of federalism.[8]

"It is undisputed … that the Delaware Constitution may provide broader protections than the United States Constitution,"[9] and Delawareans "enjoy more rights, more constitutional protections, than the Federal Constitution extends to them."[10] The Delaware Supreme Court has the free and unfettered right to interpret and apply Article I of the Delaware Constitution without deference to federal court decisions.[11] It has established criteria for determining whether a provision of the Delaware Constitution is broader than its federal counterpart,[12] and has repeatedly recognized ways in which the Delaware Constitution provides greater protection of individual liberty than the Bill of Rights.

Scholars have noted that turning to state constitutions for the protection of fundamental rights offers something for both liberals and conservatives.

Examples of Delaware's greater constitutional protection of individual liberty pervade the criminal law. For example, in *Hammond v. State*,[13] the Delaware Supreme Court declined to follow a U.S. Supreme Court ruling that there can be no due process violation for failure to preserve evidence that lacks apparent exculpatory value, unless the police act in bad faith.[14] It ruled instead that under Del. Const. Art. I, § 7, "fundamental fairness, as an element of due process"[15] requires consideration of the entire record whenever police have failed to preserve evidence that *could* have been favorable to the defendant. Police conduct is only one of the relevant facts.[16]

Delaware has repeatedly recognized that Art. I, § 6 provides broader search and seizure protections than the Fourth Amendment.[17] In fact, even the term "seizure" has a broader meaning under Art. I, § 6. A "seizure" occurs for Fourth Amendment purposes only after the state has applied physical force or the suspect submits to the state's assertion of authority, but it occurs for Art. I, § 6 purposes when a reasonable person would believe he or she is not free to ignore police presence.

Post-seizure actions of a suspect may not be used to justify the seizure. Thus, where police did not have probable cause to stop a suspect, Art. I, § 6 prevented the admission of contraband he discarded while running away, although it would not have been excluded under the Fourth Amendment.[18]

In a recent case, *State v. Holden*, Superior Court found Art. I, § 6 to be more protective than three of the four pertinent Court of Appeals decisions had found the Fourth Amendment to be. In *Holden*, the Superior Court ruled that, absent exigent circumstances, Art. I, § 6 requires authorities to obtain a warrant before attaching a GPS transmitter to a private automobile for long-term surveillance.[19]

An appeal in *Holden* was dismissed after the U.S. Supreme Court mooted the Delaware issue by affirming the one Court of Appeals decision that had required a warrant.[20]

The Delaware Constitution gives criminal defendants rights to a twelve-member jury and conviction only by a unanimous verdict.[21] The U.S. Constitution does not, although it requires unanimity for conviction by a six-member jury.[22]

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Requirements for a knowing waiver of counsel are more stringent under the Delaware Constitution. Where police obtain a statement by interrogating a suspect who has received *Miranda* warnings, but has not been told his attorney has contacted the police in an effort to reach him, *Moran v. Burbine*,[23] held that the Fifth Amendment right to counsel did not prevent use of the statement at trial.[24] In contrast, the Delaware Supreme Court ruled in *Bryan v. State* that the Art. I, § 7 right to counsel would bar its use.[25]

The Fifth and Fourteenth Amendment guarantees of due process of law find their analogues in Del. Const. Art. I, §§ 7, 9, which require application of the "law of the land" to criminal prosecutions and actions for civil redress. Numerous Delaware Supreme Court decisions state that "due process" and "the law of the land' "have substantially the same meaning."[26]

However, *Bryan*, like *Hammond v. State*, indicates that, at least in the criminal rights context, Delaware due process protection may be stronger. Its opinion finding a greater right to counsel under Delaware law characterized the "denial of the assistance of counsel [a]s a violation of the due process of law guaranteed by" Art. 1, § 7.

While most decisions recognizing Delaware's stronger constitutional protections are in criminal cases,[27] no doctrine prevents recognition under the Delaware Constitution of broader rights of free speech and religious freedom than have been found under the First Amendment. Recognition of broader protection would be consistent with Delaware's constitutional history.

In the case of free speech rights, it is mandated by that history. Prior to a 2003 amendment, Article I, § 5 of the Delaware Constitution did not explicitly address free speech rights.[28] Delawareans had all of the free speech rights provided by the First Amendment, through the Fourteenth Amendment incorporation,[29] and an Opinion of the Justices stated "it is probable that the free press provision of the Delaware Constitution Art. 1, § 5, has the same scope as the First Amendment."[30]

An individual right provided by the federal constitution that is absent from the Delaware Constitution is the right to equal protection.

Notwithstanding that protection of free speech, the General Assembly, presumed to know of existing statutes when it enacts a new statute on the same subject matter,[31] amended Article I, § 5 to add references to free speech and recognition of the "invaluable rights" of "free communication of thoughts and opinions."[32] This additional language would have no effect if it did not provide protection for free speech beyond that provided by the First Amendment. Under basic statutory construction principles, it must be given effect.[33]

The text of the Delaware Constitution also supports greater protection for religious freedom. While the First Amendment simply states, "Congress shall make no law respecting an establishment of religion …," the drafters of Del. Const. Art. I, § 1 took care to provide that "no person shall or ought to be compelled to attend any religious worship."[34] Would religious observance – prayer – at a governmental meeting violate Art. I, § 1 even if it did not violate the Establishment Clause? The issue is open, particularly where public officials conduct prayer in the context of proceedings involving a significant public interest.

An individual right provided by the federal constitution that is absent from the Delaware Constitution is the right to equal protection. Unlike a majority of states, Delaware has no explicit equal protection clause in its constitution.[35] Like every state, it has an equal accommodations statute, and that statute prohibits state agencies from discriminating in the provision of service on the basis of race, age, marital status, creed, color, sex, disability, sexual orientation or national origin.[36]

But the statute supplies no private right of action, and victims seeking redress under state law may only file complaints before the Human Relations Commission.[37] Review of appellate decisions shows that two-thirds of Commission decisions for claimants have been reversed.[38] The limited statutory right is a poor substitute for a constitutional right that may be enforced in court.

Fulfillment of the "birthright guarantees" recognized by Justice Brennan is essential to continued liberty, especially in these difficult times. Now, more than ever, "[i]t is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."[39]

Cynics may cite the hoary comment that "no matther whether th' constitution follows th' flag or not, th' supreme coort follows th' iliction returns [sic],"[40] but thanks to Delaware's nonpartisan selection process for judges[41] that is not a Delaware problem, and Delaware courts are free to carry out that injunction to the best of their ability. ◆

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FOOTNOTES

1. Brennan, *State Constitutions and the Protection of Individual Rights.* 90 Harv. L. Rev. 489, 490 (1990).

2. *E.g., Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010) (free speech rights of corporations); *District of Columbia v. Heller*, 554 U.S. 570 (2008) (recognizing individual Second Amendment right to keep and bear arms); *McDonald v. Chicago*, 130 S. Ct. 3020 (2010) (Second Amendment applies to states).

3. Justice John Paul Stevens observed in a 2007 interview that, except perhaps for Justice Ginsburg, "every judge who's been appointed to the court since [1971] has been more conservative than his or her predecessor." *New York Times Magazine*, Sept. 23, 2007.

4. *See The Delaware Constitution of 1897: The First One Hundred Years*, (R.J. Holland and H.B. Rubenstein, eds., Delaware State Bar Association 1997), p. 285-87.

5. *See id.*, Appendices.

6. *Id.* p. 83.

7. *Jones v. State*, 745 A.2d 856, 866 (Del. 1999); *Sanders v. State*, 585 A.2d 117, 145 (Del. 1990).

8. Chemirinsky, *Two Cheers for State Constitutional Law*, 62 Stan. L. Rev. 1695, 1696-97 (2010); Mosk, *State Constitutionalism: Both Liberal and Conservative*, 63 Tex. L. Rev. 1081, 1081 (1985).

9. R.J. Holland, *The Delaware State Constitution: A Reference Guide* (2002), p. 42.

10 *Sanders, supra*, at 145. Delaware is not alone in this regard. More than 350 state court decisions have found greater protection in state constitutions than in the Bill of Rights. *See* Brennan, *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y. U. L. Rev. 535, 548 (1986); 1 Joseph G. Cook, *Constitutional Rights of the Accused* § 2:8 (3d ed. 2011).

11. *Dorsey v. State*, 761 A.2d 807, 814 (Del. 2000) (citing Sanders, *supra*, at 145).

12. *See Jenkins v. State*, 970 A. 2d 154, 158 (Del. 2009) ("To present properly an alleged violation of the Delaware Constitution, a defendant must discuss and analyze one or more of the following non-exclusive criteria: 'textual language, legislative history, preexisting state law, structural differences, matters of particular state interest or local concern, state traditions, and public attitudes.'") (quoting *Wallace v. State*, 956 A.2d 630, 637-38 (Del. 2008)).

13. 569 A.2d 81 (Del. 1989).

14. *Arizona v. Youngblood*, 488 U.S. 51, 57-58 (1988).

15. *Hammond*, 569 A.2d at 87.

16. *Id.; see also, Deberry v. State*, 457 A.2d 744, 753 (Del. 1983) (stating that "when loss of evidence has severely prejudiced the accused, the degree of culpability of the State is immaterial").

17. *E.g., Jones v. State*, 745 A.2d 856, 865-66 (Del. 1999); *Dorsey, supra* at 817.

18. *Jones, supra*, 745 A.2d at 862, 869, 874.

19. *State v. Holden*, 2010 Del. Super. LEXIS 493, *13-14 (Del. Super. Ct. December 14, 2010). One of the authors of this article submitted an *amicus* brief supporting the warrant requirement in the Delaware Supreme Court.

20. *State v. Holden*, No. 30, 2011 (ORDER) (February 1, 2012); *U.S. v. Antoine Jones*, No. 10-1259 (decided January 23, 2012).

21. *Claudio v. State*, 585 A.2d 1278, 1301 (Del. 1991).

22. *Burch v. Louisiana*, 441 U.S. 130 (1979).

23. 475 U.S. 412, 422-23 (1986).

24. *Bryan v. State*, 571 A.2d 170, 177 (Del. 1990).

25. *Id.*

26. *E.g., Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247 (Del. 2011); In *the Matter of Carolyn S.S.*, 498 A.2d 1095 (Del. 1984). See also, R.J. Holland, *supra* n.9, at 47.

27. Greater protection has been recognized in the civil context as well. *See, e.g., Opinion of Justices*, 216 A.2d 668 (Del. 1966) (Article X, Section 3 of Delaware Constitution prohibits use of state funds for transporting students to parochial schools); *In matter of Tavel*, 661 A.2d 1061 (Del. 1995) (right of incompetent persons to refuse medical intervention).

28. R.J. Holland, *supra* n. 9, p. 35; 74 Del. Laws ch. 112 (1972)).

29. *Schneider v. New Jersey*, 308 U.S. 147 (1939).

30. *Opinion of the Justices*, 324 A.2d 211, 213 (Del. 1974).

31. *State v. Fletcher*, 974 A. 2d 188, 193 (Del. 2009).

32. 74 Del. Laws ch. 112 (2003).

33. *See, e.g., State, Dep't of Labor v. Minner*, 448 A.2d 227, 229 (Del. 1982). *But see, 896 Associates, LLC v. Gillespie*, 2008 Del. Ch. LEXIS 264 (not acknowledging the additional language).

34. Del. Const., Art. I, § 1.

35. Review of all fifty state constitutions indicates that twenty-seven explicitly provide for equal rights. In *Hughes v. State*, 653 A.2d 241, 243 n.3 (Del. 1994) the Court acknowledged an opinion finding equal protection to be embodied in Maryland's "law of the land" constitutional provision, which is similar to Del. Const., Art. I § 7, but concluded that it was unnecessary to reach the question under Delaware law.

36. 6 Del. C. §§ 4502, 4504.

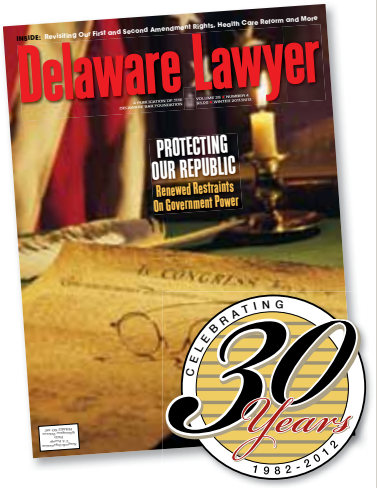
37. *Miller v. Spicer*, 602 A 2d 65 (Del. 1991).

38. A Westlaw search shows six out of nine rulings for claimants were reversed.

39. *Mapp v. Ohio*, 367 U.S. 643, 663 (1961) (quoting Boyd v. U.S., 116 U.S. 616 (1886).

40. *The Partisan of Nonpartisanship: Justice Stevens and the Law of Democracy*, 74 Fordham L. Rev. 2187 (quoting Finley Peter Dunne, *Mr. Dooley's Opinions* 26 (1901)).

41. *See* Del. Const. Art. IV, § 3; Executive Order Number 4 (March 27, 2009).



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