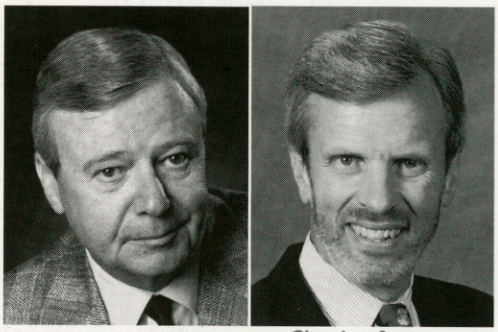
As the Court Turns

Columbia Union College Wins State Funding

By Sasha Ross

The case of *Columbia Union College v. Edward O. Clarke, Jr., et al.*, is a particularly complex case that involves church-state relations in the United States. The college's eleven-year quest to qualify for state funding terminated at a denial of certiorari by the U.S. Supreme Court in June 1999, which allowed a controversial appeals holding to stand in favor of the college. The case is legally complex because of the contested applicability and definition of the concept of "pervasively sectarian," one of the central principles in the case. Judicial interpretation of that concept shifted at the U.S. Supreme Court level in the midst of this case. Moreover, *Columbia Union College v. Clark* is of particular interest because it affirms a decision by the U.S. courts to allow public monies to flow directly into the general operating budget of a religious institution. Despite the long-standing relationship that the Seventh-day Adventist Church officially has with a number of prominent religious liberty advocacy groups, several (such as Americans United for Separation of Church and State and the American Jewish Committee) submitted amicus curiae briefs against Columbia Union College, and certain religious liberty groups within the Seventh-day Adventist Church also expressed hesitancy over CUC's course.

Presidents of Columbia Union College



William Loveless Charles Scriven

- William Loveless 1978-1990
- N. Clifford Sorensen 1990-1992
- James Cox (interim) May 15-August 15, 1992
- Charles Scriven 1992-2000
- Randal R. Wisbey 2000-present

Board Chairs of Columbia Union College

- Ron Wisbey (1990-1994)
- Ralph W. Martin (1995-1998)
- Harold L. Lee (1998- present)

Case Summary

In 1971, the Maryland General Assembly created a state program to aid nonpublic higher education institutions. It became known in 1993 as the Joseph A. Sellinger Program (named after a Roman Catholic priest). Administered by the Maryland Higher Education Commission (MHEC), the program entitles eligible institutions to receive direct, annual payments of state tax money for nonsectarian educational programs. Eligibility rules require that the applying college or university be a nonprofit private institution established in Maryland before July 1970; that it be

accredited and have awarded associate of arts or baccalaureate degrees to at least one graduating class at the time of application; and that it maintain at least one non-seminarian or theological program leading to such degrees. Once approved by the MHEC, the subsidized institution must submit each new program or major modification of existing programs to the MHEC for approval and provide pre- and post-expenditure affidavits by its CEO. These reports must detail both the intended and actual use of the money to ensure that Sellinger funding does not advance sectarian purposes.[1]

Columbia Union College (CUC) applied for Sellinger funding in January 1990. The school is a nonprofit, private, four-year liberal arts college in Takoma Park, Maryland. The General Conference of Seventh-day Adventists established the college in 1904 as Washington Missionary College, at the same time it founded an adjacent sanitarium now known as Washington Adventist Hospital. Columbia Union College is accredited by the Commission on Higher Education of the Middle States Association of Colleges and Schools, located in Philadelphia.[2] It currently offers thirty-seven baccalaureate degrees and six associate degrees, of which three are related to religion. Its student body consistently averaged around 1,175 during the development of its case against the MHEC, according to court documents.

The MHEC denied CUC's request for state funding in March 1992 on grounds that the religious nature of the institution would incur a violation of the Establishment Clause of the First Amendment, which explicitly forbids any law (or state action) "respecting the establishment of religion."[3] The MHEC acknowledged that CUC satisfied the criteria necessary to qualify for funding, except where Sellinger funds cannot be used for sectarian purposes.

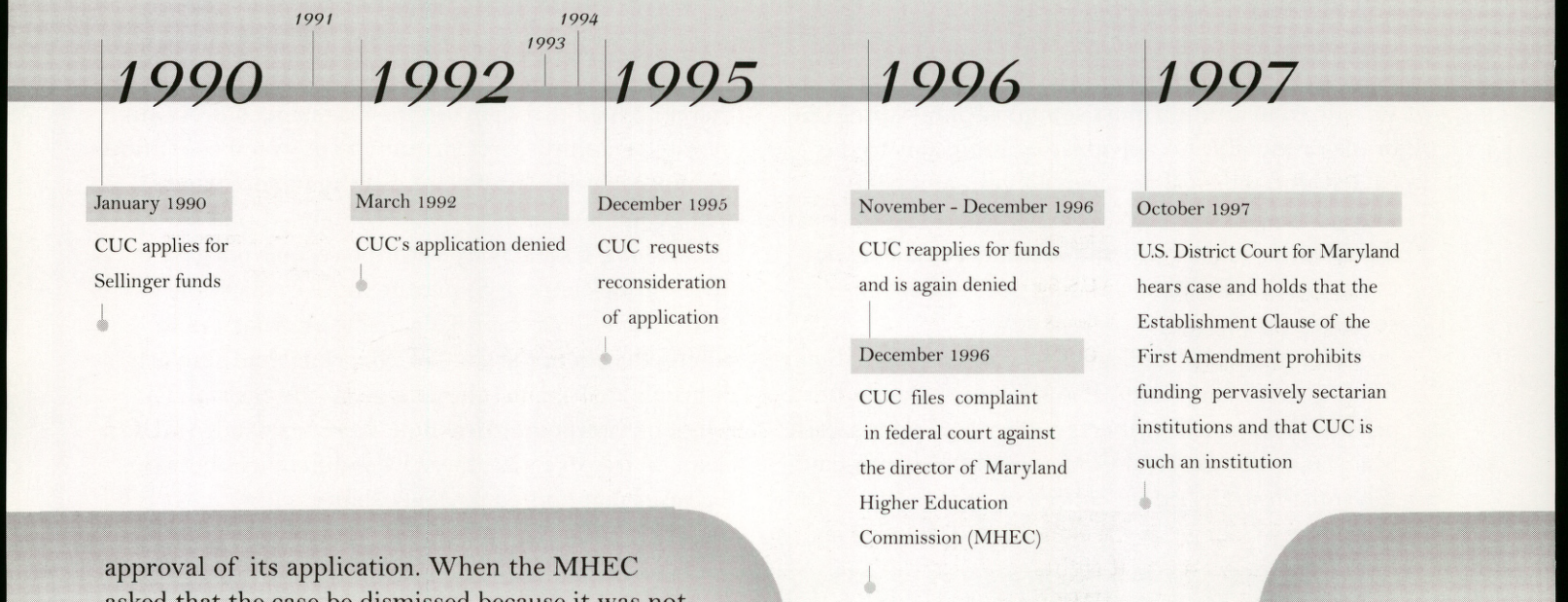
In December 1995, CUC requested the MHEC to reconsider its original application after the then-recent U.S. Supreme Court ruling in *Rosenberger v. the University of Virginia*.[4] In that case, the Supreme Court found that the University of Virginia had inappropriately denied the indirect support of a student-run, Christian-oriented magazine, *Wide Awake*. The Supreme Court deemed as irrelevant the religiosity of the student organization that applied for funding once the university had established a limited public forum, and therefore held that denying the magazine indirect aid by way of a third-party printing firm would constitute an impermissible "viewpoint discrimination" against that group. For its part, CUC contended that by establishing a state body with the secular purpose of distributing funding to private higher education institutions so as to provide viable alternatives to public education, the state of Maryland had similarly discriminated against the college on the basis of its religious viewpoint. Although *Rosenberger* aided CUC's claim of free exercise, there were differences between the cases that limited its applicability.

Like the dissenting justices in *Rosenberger*, the MHEC maintained that the Establishment Clause required it to deny CUC funding because the college's religiosity was not just one viewpoint tolerated among many, but because evangelism was an indistinguishable part of its academic mission.[5] For this reason, the MHEC felt that any state monies—even in their limited scope and heavily monitored use—would effectively advance religion because "the college's religious mission permeated even its assertedly secular educational functions." One month after receiving its request for reconsideration, the MHEC notified CUC that "unless the nature and practices . . . have changed very substantially since 1992," there was no justification for its reapplication of aid, and it denied CUC's application again.[6]

Columbia Union College then filed suit in U.S. District Court against the MHEC, seeking to force an

The debate within the Seventh-day Adventist Church over CUC's successful application for state funding under the Sellinger Program exemplifies disagreement between two mutually exclusive views within the Church.

Columbia Union College Court Case History



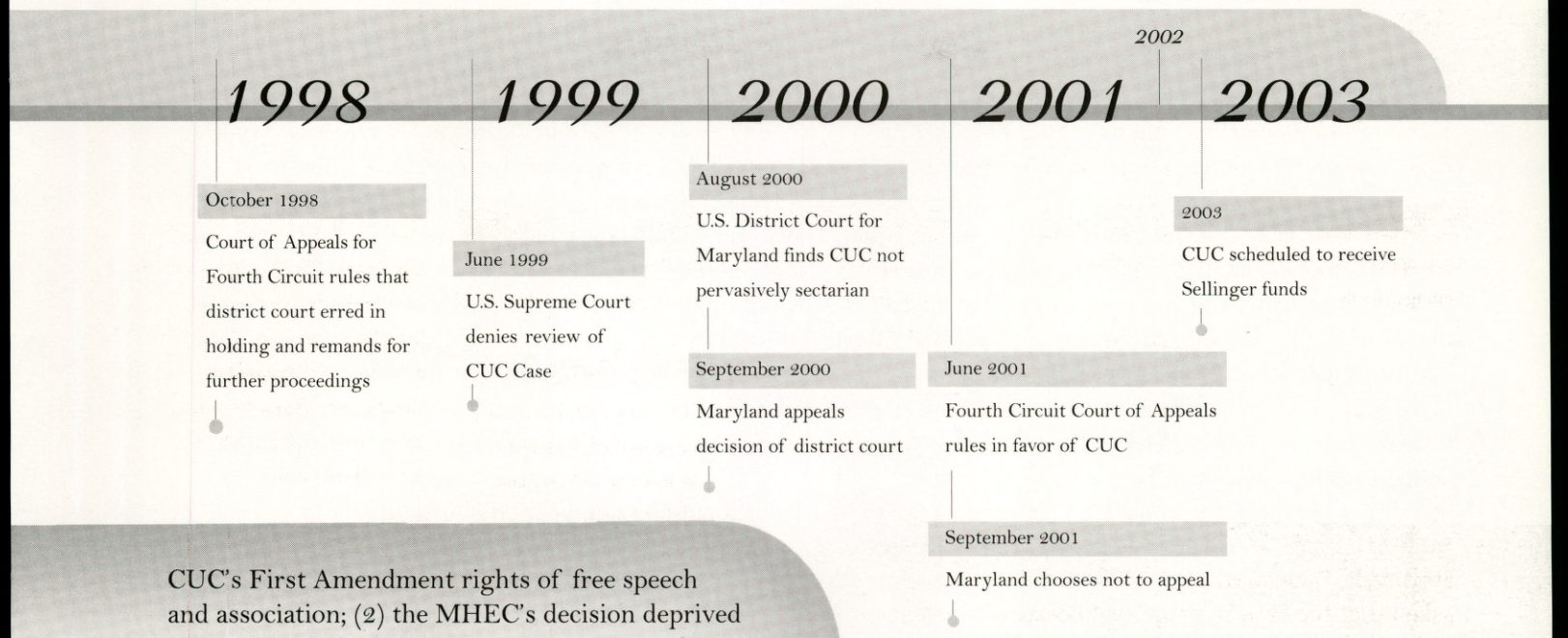
approval of its application. When the MHEC asked that the case be dismissed because it was not yet "ripe" (the college had not formally reapplied), CUC reapplied for $807,079 to fund programs in mathematics, computer science, clinical laboratory science, and respiratory care, as well as 40 percent of its nursing program. Again, the MHEC held that CUC was too "pervasively sectarian" to permit state funding. [7]

"Pervasively sectarian" and its defining criteria come from the text of *Roemer v. Board of Public Works of Maryland* (1976), in which the U.S. Supreme Court held that "the Establishment Clause permits the state to provide direct money payments ('non categorical in nature') to a church-affiliated college to fund its secular educational purposes only if the college is not so 'pervasively sectarian that secular activities cannot be separated from sectarian ones.'"[8] Thus, *Roemer* gave precedent that, under the Establishment Clause, a state may not directly fund institutions whose religious nature permeates even their secular functions.

The "Lemon test," once imposed by the U.S. Supreme Court, provides a framework for evaluating permissible state action. Named after the ruling in *Lemon v. Kurtz*, it determined that government involvement should have a nonreligious purpose, that the primary effect of state funding should be neither to advance nor inhibit religion, and that there should be no "excessive entanglement."[9] The Supreme Court reduced this precedent in *Agostini v. Felton* (1997) to a two-pronged consideration of whether a federal action has a secular purpose, and whether or not it has the primary effect of advancing or inhibiting religion.[10] "Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission," the U.S. District Court quoted from *Hunt v. McNair* (1973), a Supreme Court decision three years previous to *Roemer*.[11] The U.S. District Court therefore affirmed the MHEC's decision not to grant funding to CUC because, although the program had a secular purpose, the court thought that any money given to CUC would indeed advance religion.

In CUC's claim that the MHEC had committed statutory wrongs, the college argued in part that its repeated denial of funding was a violation of the Religious Freedom Restoration Act (RFRA) of 1993, a legislative bill the Seventh-day Adventist Church had strongly supported. However, by the time CUC made its claim in the U.S. District Court, the U.S. Supreme Court had already decided in *Boerne v. Flores* (1997) that RFRA was unconstitutional—specifically, that it exceeded Congress's constitutional authority because RFRA's intent and application on the states was not solely "remedial"—and therefore, the District Court did not allow this argument to stand.

When argument under the Establishment Clause failed, CUC changed course and tested the other First Amendment clauses. Its appeal of the MHEC's decision claimed that such involved three constitutional violations: (1) the MHEC's denial of funding violated



CUC's First Amendment rights of free speech and association; (2) the MHEC's decision deprived CUC of its federal right to free exercise, made applicable to agents of the state of Maryland (that is, the MHEC) under the Fourteenth Amendment; and (3) that the MHEC's decision violated the Fourteenth Amendment's Equal Protection Clause.[12]

In its first findings, the U.S. District Court affirmed MHEC's decision that CUC was indeed a "pervasively sectarian institution," despite CUC's charge that, to date, the U.S. Supreme Court had never found any college or university "pervasively sectarian." To sidestep the "pervasively sectarian" issue, CUC contended that *Roemer* (through which government is allowed to fund religious institutions so long as they are not "pervasively sectarian") had been overruled by three subsequent U.S. Supreme Court decisions: *Rosenberg, Witters v. Washington Department of Services for the Blind*, and *Agostini v. Felton*.[13] It argued that these cases together provided that state funding was permissible even to pervasively sectarian schools as long as the criteria used to allocate the aid was neutral.

Although the U.S. District Court admitted that the three cases qualified and "unquestionably undermine the *Roemer* dicta," it was not convinced that the cases overruled *Roemer*. The court disputed application of *Rosenberger* to the CUC case on the first issue of free speech because of differences in funding methods. In *Rosenberger*, the U.S. Supreme Court had found in favor of a religious student organization's claim to a free speech violation, based on the issue of indirect funding. However, the MHEC's decision regarding compliance with the Establishment Clause involved direct funding.

Taking a position that interpreted the Establishment Clause strictly, the U.S. District Court noted that the U.S. Supreme Court had recently chided the lower courts and specifically reaffirmed the principle that "any direct money payments to pervasively sectarian institutions offend[s] the Establishment Clause." The U.S. District Court quoted Supreme Court Justice Sandra Day O'Connor: "The Court's decision today therefore neither trumpets the supremacy of the neutrality principle nor signals the demise of the funding prohibition in Establishment Clause jurisprudence."[14]

In *Witters*, the U.S. Supreme Court had allowed a blind student to use state funds to finance pastoral studies at a Christian college because, as set forth in *Zobrest v. Catalina*, it held that state aid ultimately flowing into the religious institution came "only as a result of the genuinely independent and private choices" of the aid recipient.[15] In *Agostini*, the courts again challenged *Roemer* by allowing public school teachers to provide remedial classes for disadvantaged children of "pervasively sectarian" grade schools. However, that aid was allowed because it was separate and "supplemental to the regular curricula" of those schools, and the state gave the aid directly to the

students, not into "the coffers of religious schools."[16]

On the subsequent free exercise and equal protection claims made by CUC, the U.S. District Court found at first that, even with strict scrutiny, MHEC was right in its complete denial of CUC's application for Sellinger funds on the grounds of the Establishment Clause. Such was a compelling state interest that justified the alleged burden on the free exercise of religion. The U.S. District Court did not find unequal treatment between CUC and other colleges previously granted Sellinger Program monies, despite the fact that several were admittedly sectarian. By 1997, fifteen institutions in Maryland received Sellinger funds, three of which were affiliated with the Roman Catholic Church: Loyola College, Mount St. Mary's College, and the College of Notre Dame. In fact, *Roemer* had direct applicability to the CUC lawsuit against MHEC because it had specifically allowed Sellinger funding to go to Catholic-affiliated colleges on the grounds that they "were not so pervasively sectarian that secular activities could not be separated from sectarian ones."[17]

The U.S. District Court found several differences between the Catholic institutions and CUC, particularly CUC's relationship to the Seventh-day Adventist Church. Unlike CUC, the Catholic colleges enjoyed a high degree of "institutional autonomy" because they did not report directly to the Catholic Church or require students to attend religious services. Furthermore, the court had found mandatory religion courses merely supplemental to a broad, primarily liberal arts program, and nontheology courses were taught in an atmosphere of "intellectual freedom" without "religious pressures." Although some classes began with prayer, there was no explicit policy at the Catholic colleges that required it. some instructors at the Catholic colleges wore clerical garb and that some classrooms contained religious symbols, the determining point was the fact that the Catholic colleges hired faculty and admitted students without regard to religion.

The college did not significantly refute any of the charges or comparisons. Instead, CUC submitted profiles of other institutions to defend its claim that it was not significantly different from—or more sectarian than—the Catholic colleges to disqualify for state funding. It also pointed to *Hunt*, in which Charleston Southern College was deemed not pervasively sectarian, despite the fact that the South Carolina Baptist Convention elected its board of trustees and gave approval to certain financial transactions and all amendments to the college's charter. In addition, CUC cited Catholic organizations at issue in *Tilton v. Richardson* (1971), which the U.S. Supreme Court had not found pervasively sectarian either, because their predominant educational mission was to provide a secular education for their students.[19]

Opponents of CUC's position argued that in a highly religious institution like CUC the secular and religious natures of the college were so "inextricably intertwined" that direct funding, "even if designated for specific secular purposes, may nonetheless advance the pervasively sectarian institution's 'religious mission.'"[20] In fact, the MHEC contended that CUC did not have a high degree of "institutional autonomy" because about 21.5 percent (or $2.5 million) of the institution's 1996 revenue came from the Seventh-day Adventist Church, and almost 90 percent of the voting members of its board of trustees was required to belong to the Seventh-day Adventist Church.

In October 1997, the district court dismissed CUC's

"The only way [CUC] could receive such aid is by compromising or abandoning its religious views. That to me is impermissible inhibition of religion, impermissible discrimination under our Constitution's religion clauses, and a violation of the First Amendment right to express religious beliefs." Judge J. Harvie Wilkinson III

Judge Marvin Garbis wrote that "Plaintiff [CUC] is quite different from the colleges in *Roemer* which, rather than requiring church attendance, merely provided religious services for those students who were interested in voluntarily attending."[18] The court noted that although suit against the MHEC. Columbia Union College then appealed the case to the Fourth Circuit Court of Appeals, which set aside the ruling of the district court judge, reinstated the lawsuit, and ordered further study.[21] The appeals court found sufficient room to doubt the MHEC's

characterization of CUC as "pervasively sectarian" to remand the case back to the district court for further discovery in order to clarify applicability of the term. Thus, on appeal, CUC bore the responsibility to demonstrate it was not "pervasively sectarian," as the MHEC had contended. Without such evidence, the appellate court could not bypass the impending establishment violation and award CUC Sellinger funding any more than the district court could.

Photo: Columbia Union College

In his final plea to the MHEC, CUC's then-president Charles Scriven is quoted in the appellate court documents: "If we recant, would we qualify?" With this in mind, Chief Judge J. Harvie Wilkinson III of the U.S. Court of Appeals for the Fourth Circuit dissented from the majority, which had decided to vacate and remand the case back for further discovery. According to him, the majority "effectively dumps at the state's doorstep the volatile tasks of distinguishing between religious institutions and drawing controversial and delicate lines. . . . The three Catholic colleges currently receiving funding . . . must now worry about whether they will at some indefinable point offend the state by stepping over the sectarian edge." Wilkinson continued: "the only way [CUC] could receive such aid is by compromising or abandoning its religious views. That to me is impermissible inhibition of religion, impermissible discrimination under our Constitution's religion clauses, and a violation of the First Amendment right to express religious beliefs."[22]

Sympathetic to the Catholic schools already funded, Wilkinson did not want to rule in a manner that forced them to look over their shoulders at every turn for fear of losing their funding because they were considered too sectarian. Fearing that a retrial would become "a witch hunt," he argued that the evidence in the case was sufficient to uphold the U.S. District Court's judgment without ordering an intrusive investigation into minutiae of the college's operations. However, the majority of the Fourth Circuit Court maintained that, although *Roemer* had been effectively challenged, the U.S. Supreme Court had expressly not given lower courts the prerogative to overrule it and ignore the Establishment Clause issue altogether.[23]

Following the outline set forth in the first appellate ruling, the U.S. District Court held a full trial, this time to "paint a general picture of the institution, composed of many elements."[24] It found that the MHEC had wrongly contended that CUC was too "pervasively sectarian" to qualify for state funding. Specifically, the court concentrated on four issues: (1) whether the college mandated religious worship; (2) whether academic courses were implemented with the primary goal of religious indoctrination; (3) whether there was an express preference in hiring and admitting members of the SDA Church as faculty and students, for the purpose of deepening the religious experience on campus and/or furthering religious indoctrination; and (4) to what degree the Seventh-day Adventist Church dominated CUC and its affairs, as illustrated by its control over the board of trustees and financial expenditures. The U.S. District Court decided that to be "pervasively sectarian," CUC needed to exhibit three of the four specified characteristics in a "rather substantial degree."[25]

On the first count, CUC did not deny that it required some students to attend worship, but the college argued that it only required attendance from "traditional" students, namely those between the ages of 18 to 24 (calculated as 350–400 of 1,172 students in the appeals court document, and 675 of 1,172 on remand before the U.S. District Court). The appellate court had basically argued CUC's case and found that a requirement affecting less than half the student body was not determinative toward CUC's "pervasive" nature, so the district court disregarded further evidence from the MHEC that indicated "serious efforts" on the part of CUC to expose students to Adventist beliefs, practices, and moral standards. According to the U.S. District Court, "a fact finder could reasonably infer

that [CUC's] mandatory prayer policy has a limited reach, suggesting that while religious principles are important to the college, they are not . . . more than a 'secondary objective.'"[26]

The appellate majority mandated a high threshold of proof for the second inquiry regarding the degree of religious indoctrination, as well. The U.S. District Court could not actually sit in on classes (the appellate court had cautioned it against doing so), nor did it take into account CUC's "Christocentric vision," its course syllabi statements and faculty records on the intended integration of faith and learning, its use of Ellen G. White's writings as course textbooks, or a faculty directive to "bear in mind their peculiar obligation as Christian scholars and members of a [Seventh-day Adventist] college." These points were deemed by the majority opinion insufficient to demonstrate a pedagogy too religious for state funding. Instead, the U.S. District Court used such evidence as the fact that only 17 percent of the syllabi reviewed contained religious references. It found competency in a major field of (secular) study the college's "primary goal" instead of simply one of its goals, as stated in the college's mission statement. The implication of CUC's arguments and the U.S. District Court's ruling was that, notwithstanding the college's official statements to the contrary, religion did not significantly influence the teaching of the majority of courses at CUC.

As for the third issue, the U.S. District Court found that CUC did satisfy the criteria for being "pervasively sectarian." In viewing the evidence of CUC's policy that reserved the right "to give preference" in hiring and admitting Adventists, the court considered it "no coincidence" that during the academic year 1998-99, fifty-six of the fifty-nine full-time faculty members were Seventh-day Adventists, as were fourteen department chairs and eight members of the administrative committee. Because of recruiting efforts targeted primarily at Seventh-day Adventist feeder schools, approximately 80 percent of the student body is consistently Adventist—a statistic that MHEC (not CUC) presented.

On the last count, the U.S. District Court also found against CUC, maintaining that the college was not "characterized by a high degree of institutional autonomy." The two pieces of evidence cited were $2.5 million in annual revenue from the Seventh-day Adventist Church (most likely through its governing office for the Columbia Union) and a board of trustees whose membership was almost 90 percent Seventh-day Adventist. Although the court counted this evidence as a "factor to be weighted in favor of finding [CUC] pervasively sectarian," it did not consider the evidence "a dispositive factor" that merited further discussion or consideration.

After weighing the four criteria, the U.S. District Court reversed earlier findings and determined that CUC was actually not pervasively sectarian because it met only two of the four criteria. In response, the MHEC tried to appeal to the U.S. Supreme Court, but was denied certiorari. When the appellate court made its final ruling in 2001, after the case was remanded and tried in detail, CUC continued to claim a right to Sellinger funding, arguing partly that the U.S. Supreme Court's recent decision in *Mitchell v. Helms* had changed the circumstances under which sectarian schools were considered eligible for government aid. According to CUC, the "pervasively sectarian" inquiry was no longer relevant to determine a violation of the Establishment Clause.[27] Furthermore, CUC argued "in the alternative that the district court correctly found that the college was not pervasively sectarian."[28]

At issue in *Mitchell* was Chapter 2 of the Education Consolidation and Improvement Act of 1981, which grants federal funding (through state educational agencies) to local educational agencies. Under the act, local agencies can lend educational materials and equipment, such as library and media materials and computer software and hardware, to public and private elementary and secondary schools to implement "secular, neutral, and non-ideological" programs. In *Mitchell*, U.S. Supreme Court Justices Clarence Thomas, William Rehnquist, Antonin Scalia, and Anthony Kennedy concluded that Chapter 2, as applied in Jefferson Parish, Louisiana, did not lead to an establishment of religion although many of the private schools that received federal aid in that case were religiously affiliated.

The appeals court found in June 2001 that the MHEC had impermissibly discriminated against CUC in denying funding specifically because of the college's religious nature (its "alleged pervasively partisan religious viewpoint"). The appeals court avoided dealing with the issue of state aid to pervasively sectarian institutions by upholding the district court's most recent finding and by agreeing with CUC that the college was not a pervasively sectarian institution. For the appeals court, the problem was solved when the U.S. Supreme Court determined that state funding for religiously affiliated institutions was not necessarily unconstitutional. Writing for the majority, Wilkinson asserted, "[W]e affirm the judgment of the district court that Columbia Union [College] qualifies for

Sellinger Program funds." He concluded:

> Columbia Union's use of Sellinger Program money to fund secular educational programs does not violate the strictures of the Establishment Clause. The program has a secular purpose, it uses neutral criteria to dispense the aid, there is little risk of actual diversion of the aid for religious indoctrination, and the college is an institution of higher learning. And even if a pervasively sectarian analysis were necessary, the district court was not clearly erroneous in finding Columbia Union not to be pervasively sectarian.[28]

For the appeals court, the problem was solved when the U.S. Supreme Court determined that state funding for religiously affiliated institutions was not necessarily unconstitutional.

Adventists and Religious Liberty

The debate within the Seventh-day Adventist Church over CUC's successful application for state funding under the Sellinger Program exemplifies disagreement between two mutually exclusive views within the Church on the proper relationship between church and state. Some observers say that the General Conference Department of Education and other Adventist educational institutions tend to express an accommodationist perspective—that church and state can and should work together to some degree, respectful of constitutional limitations. Those of a more separationist perspective can generally be found in the Public Affairs and Religious Liberty (PARL) departments within the North American Division and the General Conference.[30]

Generally, the separationist position among PARL members dissenting from CUC's position in its case against the MHEC can be characterized thus: "If CUC is secular enough to qualify for state aid, then it is too secular for tithe monies." Accommodationists respond that if Adventist institutions do not receive neutrally distributed state aid, the state is treating them unfairly and they risk being unable to maintain current operations without that funding. Accommodationists also claim that Ellen G. White never advocated strict separation between church and government. As a result, the Church takes a position that tries to walk both lines, but follows neither wholeheartedly.

The debate within the Church over its position on religious liberty started in the 1880s, during the Church's first fledgling decades. At that time, Ellen G. White and Elder A. T. Jones, a outspoken separationist and early critic of government gifts to the Church (land, money, and so forth), disagreed over a grant of land from the South African government on which the Church later built Solusi College, in accordance with White's recommendations.

In 1948, Adventist Church leaders voted to "reaffirm our full belief in the historic doctrine of the separation of church and state." Shifting slightly from that position, the Religious Liberty Association (an organization within the global church's centralized headquarters in Washington, D.C.) changed its Declaration of Principles in 1956. No longer did it declare separation of church and state its first principle, but instead it affirmed belief in religious liberty as "best exercised when there is separation between church and state."[31]

As Church historian and chair of the department of history and political science at CUC, Douglas Morgan is intimately familiar with the winding pathway the Church has walked in relation to the state and the identity crisis it has faced within the larger American society during the past several decades. In his recent book *Adventism and the American Republic*, Morgan demonstrates that on the issue of religious liberty the Church has not always been consistent. As in the case between CUC and the MHEC, the Church has sometimes asked the state to step in and rule in its favor, yet in other cases it has asked the government to remain totally uninvolved in church business. The latter tendency can be seen in the cases of Merikay Silver and Lorna Tobler, for example, who won lawsuits against the Pacific Union Conference and

Pacific Press in the 1970s after claiming sexual discrimination in hiring and payment practices. In both cases, the Church claimed freedom from government regulation but the courts rejected its claim.[31]

Morgan's book speaks specifically to the double line the Church has tried to walk:

> The expanding role of government . . . combined with Adventism's deepening institutional stake in society, led to conflict within the Church over whether and to what extent government funds should be used for church institutions. While the leaders of the Church's work for religious liberty continued to uphold the separationist banner, others, particularly administrators of educational institutions, advocated a more accommodationist approach that would allow the Church to accept some government funds.[33]

Morgan contends that the debate surrounding changes to the Religious Liberty Association's Declaration of Principles continued into the 1960s and climaxed in a panel discussion reprinted in the *Adventist Review* in 1968. The panel involved the sitting presidents of three major Adventist colleges and universities—clear advocates of a relatively liberal policy on government aid—and two other individuals committed to upholding a separationist policy, Roland Hegstad, then editor of *Liberty Magazine*, and attorney Warren Johns, in-house legal counsel to the Church for many years. According to Morgan, although Hegstad and Johns conceded that some cooperation between church and state was permissible within original church ideology and the writings of Ellen G. White, Adventist principles and the Church's self-identity as part of the "divine remnant" conflicted with any direct collaboration with the state. It would even be "criminal," in Hegstad's words, "for men with the prophetic insight of the Adventist ministry uncritically to involve the church in confederacy with government for the sake of financial aid."[34]

The debate has continued with this case. Members of the General Conference's Public Affairs and Religious Liberty Department met several times with supporters of the college's quest for state money during the eleven-year course of CUC's case in order to caution it about the methods and implications of its strategy. Such counsel echoed General Conference advice made first in 1971, when Maryland initially established a program to assist private institutions in providing higher education.[35] The minutes of a meeting on October 4, 1971, read: "Voted, that we counsel the Columbia Union Conference and Columbia Union College to refrain from accepting funds provided by the State of Maryland to colleges offering bachelors degrees."[36] Two decades later, CUC's case had already been filed by the time a North American Division committee established to review the Sellinger Program issued a recommendation that CUC not pursue such funding.[37]

What has changed over the course of the CUC case is not the two sides within the Church, but the courts, attitude toward the concept of "prevasively sectarian." As discussions of church state relations continue within the Church, participants need to understand this legal climate and the implications it carries in the United States.

Notes and References

1. Statements made by the courts apply "secular" to areas of academic study where traditional religious questions need not apply, whereas "sectarian" denotes a distinctly religious nature. Countering definitions of "secular" as nonreligious, antireligious, or areligious are more than a question of semantics, but rather depend on the context.

2. Columbia Union College also received full accreditation in 1999 from the Adventist Accrediting Association, according to "Columbia Union College and the State of Maryland: Questions and Answers." <www.cuc.edu/cucinfo/sellinger.html>, accessed Nov. 6, 2001.

"Pervasively sectarian" and its defining criteria come from the text of *Roemer v. Board of Public Works of Maryland* (1976)

3. Amendment 1 of the U.S. Constitution reads, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

4. 515 U.S. 819, 132 L. Ed. 2d 700, 115 S. Ct 2510 (1995).

5. Its mission is as follows: "The heart of Columbia Union College is a Christocentric vision that affirms the goodness of life, the value of earth, and the dignity of all peoples and cultures. The mission of the college, carried out in the spirit of this vision, is: to develop talent through an ethos of excellence; to embrace the adventure of truth; to make learning a pleasure and joy; to link

scholarship and service; to seize the challenge and opportunity of the nation's capital; and to produce graduates who bring competence and moral leadership to their communities." From the Columbia Union College Web site, "General Information" <www.cuc.edu/cucinfo/general_info.html#som>, accessed Nov. 12, 2001.

6. *Columbia Union College v. Edward O. Clarke Jr., et al.*, 159 F.3d 151 (4th Cir. 1998), 5.

7. *Columbia Union College v. Edward O. Clarke Jr,. et al.*, 988 F. Supp. 897 (U.S. Dist. 1997), 3.

8. *CUC v. Clarke*, quoting from *Roemer v. Public Works* 426 U.S. 736, 49 L. Ed. 2d 179, 96 S. Ct. 2337 (1976), 740. At issue in *Roemer* is the same assistance program at issue in this case, *CUC v. Clarke*. Four individual Maryland citizens and taxpayers challenged the Maryland statute granting funds as violative of the Establishment Clause of the First Amendment, arguing that the four colleges affiliated with the Roman Catholic Church were constitutionally ineligible for the state aid. The court disagreed, contending that despite their formal affiliation with the Roman Catholic Church, the colleges were not "pervasively sectarian," that aid was in fact extended only to "the secular side" of the college's organization, that "there is no necessity for state officials to investigate the conduct of particular classes of educational programs to determine whether a school is attempting to indoctrinate its students under the guise of secular education," and that "excessive entanglement" does not necessarily result from the fact that the subsidy is on an annual basis.

9. *Lemon v. Kurtz*, 403 U.S. 602 (1971). The court found that the parochial school system aimed at benefiting under Rhode Island's 1969 Salary Supplement Act was "an integral part of the religious mission of the Catholic Church," and that the act allowed a disproportionate and impermissible amount of subsidy to go to Roman Catholic elementary and high schools. A related complaint challenged the constitutionality of Pennsylvania's 1968 Nonpublic Elementary and Secondary Education Act. It authorized the state superintendent of public instruction to "purchase" certain "secular educational services" from nonpublic schools, directly reimbursing those schools. The complaint alleged that religious organizations controlled the church-affiliated schools, which have the purpose and effect of propagating and promoting a particular religious faith. The U.S. Supreme Court held that both statutes are unconstitutional under the religion clauses of the First Amendment, because the cumulative impact of the entire relationship arising under the statutes involves excessive entanglement between government and religion.

10. *Agostini v. Felton*, 521 U.S. 203, 138 L. Ed. 2d 391, 117 S. Ct. 1997 (1997).

11. *Hunt v. McNair*, 413 U.S. 734, 743, 37 L. Ed. 2d 923, 93 S. Ct. 2868 (1973).

12. The relevant portion of the Fourteenth Amendment reads: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws."

13. *Rosenberger*, *Agostini*, *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481, 88 L. Ed. 2d 846, 106 S. Ct. 748 (1986).

14. *CUC v. Clarke*, quoting from *Rosenberger*, 515 U.S., 852.

15. *Zobrest v. Catalina Foothills School District*, 509 U.S. 1, 125 L. Ed. 2d 1, 113 S. Ct 2462 (1993). "By according parents freedom to select a school of their choice," the decision to provide sign language interpreters to a deaf student who attended Catholic school was "only as a result of the private decision of individual parents" and "cannot be attributed to state decision making." See also *Witters*, 474 U.S., 488.

16. *Agostini*, 117 S. Ct., 2013.

17. *Columbia Union College v. John J. Oliver, Jr. et al.*, 254 F.3d 496 (4th Cir., 2001). Note: this is the same case as that of *CUC v. Clarke*. The primary defendant's name changed after the second district court decision due to a personnel change in the director of the Maryland Higher Education Commission.

18. *CUC v. Clarke*, 988 F. Supp. 897, 13.

19. *Tilton v. Richardson*, 403 U.S. 672, 678, 29 L. Ed. 2d 790, 91 S. Ct. 2091 (1971).

20. *Bowen v. Kendrick*, 487 U.S. 589, 101 L. Ed. 2d 520, 108 S. Ct. 2562 (1988).

21. "Court OKs probe of religious college," *USA Today*. <cgi.usatoday.com/news/court/nsco1061.htm>, accessed June 14, 1999.

22. *CUC v. Clarke*, 159 F.3d, 87.

23. *CUC v. Clarke*, quoting from *Bowen v. Kendrick*, in which the U.S. Supreme Court reversed and remanded a lower court's decision for additional fact finding in a case that involved a federal statute providing funds for programs to reduce teen pregnancy. The statute was challenged on the ground that it "violated the Establishment Clause both facially and as applied." The majority in *CUC v. Clarke* wrote: "The court criticized the district court for failing to explore with 'an particularity' evidence that would 'warrant classification' of the institutions as 'pervasively sectarian.'"

24. *Roemer v. Public Works*, 426 U.S., 758.

25. *CUC v. Oliver*, 2000 U.S., 21.

26. *CUC v. Clarke*, 159 F.3d, 24, quoting from *Roemer*, 387 F. Supp., 1293.

27. *Mitchell v. Helms*, 530 U.S. 793, 147 L. Ed. 2d. 660, 120 S. Ct. 2530 (S. Ct., 2000)

28. *CUC v. Oliver* (2001).

29. Ibid., 36.

30. Organized in 1901, PARL supports religious liberty internationally as a fundamental principle of the Seventh-day Adventist Church and a God-given right. It represents the world headquarters of the Church on government issues, maintains an office at the United Nations, and hosts diplomatic meetings to reinforce relations between the Church and various governments. It also initiates communication with religious leaders (within and external to the denomination) and government officials to broaden understanding about the Church's beliefs and principles on religious liberty.

31. Quoted in Douglas Morgan, "Reservations about Religious Liberty," *Spectrum* 29.2 (spring 2001), 47-48; excerpted from *Adventism and the American Republic: The Public Involvement of a Major Apocalyptic Movement* (Knoxville: Univ. of Tennessee Press, 2001).

32. *Equal Employment Opportunity Commission v. Pacific Press Publishing Association*, 676 F. 2d 1272 (9th Cir. 1982), aff'g 482 F. Sup. 1291 (N.D.Calif. 1979).

33. Morgan, *Adventism and the American Republic*, 47.

34. Ibid., 142.

35. Telephone interview with Vernon Alger (Berrien Springs, Mich.), attorney and consulting editor of *Liberty Magazine*, Nov. 15, 2001.

36. Telephone interview with Robert Nixon (Silver Spring, Md.), attorney and in-house legal counsel to the General Conference of Seventh-day Adventists, Nov. 26, 2001.

37. Ibid.

Sasha Ross is a graduate of La Sierra University and a masters student at the J. M. Dawson Institute of Church-State Studies at Baylor University. Law school is next on her educational agenda. Sashaross@hotmail.com