ween a 'community' and an 'institution' is that in the former members retain their freedom to choose, while in the latter it is to some degree taken away from them." For example, there is quite a difference between a typical neighborhood and a maximum-security prison. One is a community. The other is an institution.

As one reads the New Testament's record of the early days of the church, it becomes quite clear that the members of the church are personally involved in its activities, decisions and problem-solving processes (cf. Acts 7, 15; 1 Tim. 3, etc.). The church was not a tightly run institution controlled by dictatorial rule. Yet, often the twentieth century church has become precisely that. Instead of shepherds who lead by the example of sacrificial service, one finds a board of elders delivering pompous edicts about everything from theology to cosmetology, fully expecting the institution's patrons to jump with prompt response.

If the essence of the church is to be "community," then it doesn't matter how many points of "identifying marks" we are able to show on the veneer of our reproductions. As long as that which we have remains an "institution," we have not yet come close to bringing about the restoration of the New Testament church.

Restoration is an on-going process. One of the great needs today is that of restoring once again the essence of "community" within our fellowships so that we, indeed, may be the body of Christ.

Constitutional Issues In The Appeal Of The Collinsville Church Of Christ

Part 3: Freedom Of Speech and Other Issues

By FLAVIL R. YEAKLEY, JR.

In two previous issues of *Mission*, Part 1 of this article presented the facts in the case of *Guinn vs. the Collinsville Church of Christ;* and Part 2 presented the religious freedom issues raised by the church in its appeal. This three-part series is here concluded with a discussion of other constitutional issues raised in the appeal and comments on the implications of this case.

The Freedom of Speech Clause

The First Amendment protects religion through the establishment clause, the free exercise clause, and the general requirement of church-state separation. Religious speech, however, is also protected in the First Amendment by the more general statement that "Congress shall make no law . . . abridging the freedom of speech."

The recent case of *Widmar vs. Vincent*[1] clearly demonstrates the view of the Supreme Court in regard to the protection of religious speech. This case concerned a student religious group at the University of Missouri at Kansas City. This state university denied a student religious group the use of its buildings for their meetings, although nonreligious student groups were allowed to use the buildings for their meetings. The student religious group argued that its right to free speech and association prohibited the University from denying them the use of the buildings. The University also based its case on the First Amendment. They claimed that because of the separation of church and state, they could not allow religious groups to use the buildings at a state university. The Supreme Court, however, argued with the student religious group thus showing that freedom of speech and association outweigh the admittedly important principle of separation of church and state. The Court said, "Here, UMKC has discriminated against student groups and speakers based on their desire to use a generally open forum to engage in religious worship and discussion. These are forms of speech and association protected by the First Amendment."[2] The Court went on to explain specifically that reading Scripture and teaching biblical principles are protected as religious speech.[3]

In sharp contrast to this ruling, the judgment of the trial court against the Collinsville Church of Christ and its elders was based on objections to certain forms of religious speech. When the elders went to

A graduate of the University of Illinois with a Ph.D. in Speech Communication, Flavil R. Yeakley, Jr. taught First Amendment studies at the University of Tulsa for ten years.

talk to Marian on three occasions about her fornication, that was an exercise of their religious freedom and of their freedom of speech. The trial court's judgment, however, classified this as "invasion of privacy by intrusion upon seclusion." When the elders told Marian that the fellowship of the church would be withdrawn from her if she refused to repent, that was an exercise of their religious freedom and their freedom of speech. But the trial court punished that exercise, classifying it as "intentional infliction of emotional distress." The message the elders read to the congregation explaining why they must have no further association with Marian Guinn was religious speech in the form of a sermon with Scripture reading and biblical teaching. As such, it was not actionable in civil courts. The speech occurred in church. All of the speech involved internal religious discipline. But the trial court's judgment punished the church and its elders for this exercise of religious freedom and freedom of speech, classifying it as "invasion of privacy by publication of private facts."

In the case of *Heffron vs. International Society for Krishna Consciousness,*[4] the Court found that the distribution of religious views to and the solicitation of money from nonbelievers at a public fair constituted religious speech. If religious speech is protected in that circumstance, how can it be punished in the case of the Collinsville Church of Christ? The conduct for which the Collinsville Church of Christ and its elders have been punished was simply an exercise of their freedom of speech and freedom of religion. Their speech—religious speech—is protected. The District Court's judgment infringes on that freedom and chills the type of speech at issue here. Because of that infringment on the protected religious speech, the judgment is clearly unconstitutional and must be reversed.

The Freedom of Association Clause

The First and Fourteenth Amendments protect the freedom to associate for religious purposes. In *NAACP vs. Alabama,*[5] the Supreme Court recognized the constitutional right to associate for the advancement of beliefs. In the *Widmar vs. Vincent* case discussed earlier, the Supreme Court clearly stated that gathering to engage in religious worship and discussion are forms of association protected by the First Amendment clause guaranteeing the right of the people "peaceably to assemble . . . ."

In the Collinsville case, the members of a congregation came together as a religious assembly to withdraw the fellowship of the church from a member who refused to repent of her fornication. Although this action took place at the time of a regular Sunday morning worship assembly, this specific action is generally viewed by Churches of Christ as being an assembly separate from the worship assembly. Churches of Christ generally regard the teaching of 1 Corinthians 5:4 as suggesting an assembly called for the purpose of withdrawing fellowship from a rebellious member, rather than being a regular worship assembly function.

The effect of the District Court's decision in this matter, however, is to impose a chilling effect that would discourage other congregations from having similar assemblies called for the purpose of withdrawing fellowship from a rebellious member. To deny the right of a congregation to have such an assembly is to deny their constitutional rights—both in regard to their religious freedoms and in regard to the freedom of assembly.

The association or gathering of a congregation is necessary to advance and effect its beliefs concerning church discipline. A withdrawal of fellowship is not possible if the congregation is not notified of the decision so that they can act accordingly. The elders of the Collinsville Church of Christ believe that the statement of Matthew 18:17, "tell it to the church," requires an explanation of the reasons when a congregation is instructed to withdraw its fellowship from a rebellious member. For a civil court to punish a congregation for having such an assembly is to deny their constitutional rights in regard to the religion clauses, the freedom of speech clause, and the freedom of assembly clause of the First Amendment.

When the elders told Marian that the fellowship of the church would be withdrawn from her if she refused to repent, that was an exercise of their religious freedom and their freedom of speech. But the trial court punished that exercise, classifying it as "intentional infliction of emotional distress."

Implications

Because of the unchecked review by a civil court of the mode and manner of religious discipline in the case of *Guinn vs. the Collinsville Church of Christ,* the floodgates appear to be open as wide as the courthouse doors. Unless this judgment is reversed, the potential exists for review by civil courts of Roman Catholic excommunication for the multitude of grounds contained in canon law. The potential also exists for civil courts to review theological disputes that arise in seminaries, divinity schools, univer-

sities, and colleges. Church-related schools are allowed, under current federal law, to discriminate in the hiring and retention of faculty in a manner that insures conformity with the church's doctrines and its moral code. That kind of action could now be subject to review by civil courts if this decision is not reversed. The potential also exists, if this decision is not reversed, for civil courts to review the meaning and application of biblical commands. The religious problems which would be capable of civil judicial review are endless. The judgment opens a boundless Pandora's box.

Furthermore, the effect of this judgment tends to inhibit several forms of religious communication. It tends to put the church into a passive role in regard to counseling wayward members since active pastoral counseling in this case was judged to be "invasion of privacy by intrusion upon seclusion." This judgment inhibits any practice of church discipline—whether in the churches practicing a withdrawal of fellowship, as in this case, or in churches practicing shunning as the Mennonites do or excommunicating as the Roman Catholics do. Clearly, the judgment inhibits the kind of religious communication that threatens any withdrawal of fellowship or that announces such action, since in this case that was judged to be "intentional infliction of emotional distress" and "invasion of privacy by publication of private facts." Indeed, if this judgment is not reversed, the precedent could be used to sue religious teachers who warn sinners that they will go to hell if they do not repent. Religious teachers could be called into civil court to defend their theology—as was the case in the Collinsville trial and as a result of Marian Guinn's objections to the strict moral code and the discipline taught by the Collinsville Church of Christ.

This case involves more than one small conservative religious group upholding an unpopular religious doctrine and practice. Public opinion was clearly on the side of Marian Guinn in this case. The idea of active pastoral counseling that seeks out wayward members to admonish them is not popular with most non-Christians and even with some Christians. Most denominations in America no longer follow the practice of withdrawing fellowship from members who sin and refuse to repent, although this practice was a part of the heritage of virtually all denominations. But as Chaffee points out in his monumental work on freedom of speech, it is only the unpopular views that need protection since no effort is made to restrict the expression of popular views.[6]

The primary implication of this case for Christians, however, goes beyond constitutional issues. What is at stake here, from a Christian perspective, is the right of a religious community to insist that its members live disciplined lives. If the church is denied this right, it cannot long endure as the light of the world and the salt of the earth.

NOTES

[1]454 U.S. 263, 269, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981)
[2]454 U.S. at 269
[3]454 U.S. at 269 n.6
[4]452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981)
[5]357 U.S. 419, 78 S.Ct. 1163, L.Ed.2d 1488 (1958)
[6]Zechariah Chaffee, Jr., *Free Speech in the United States* (New York: Atheneum, 1969), p. 4.——MISSION

(**BURNOUT**, continued from p. 5)
great sacrifice.

The second defense is like unto the first, but opposite. The minister must affirm that it is acceptable to be a mere human in service to the holy. While our hands are defiled, there are not other sorts of hands. The tongues of fire at Pentecost deigned to dwell atop the very heads of those who had earlier denied their Lord. As Professor Ray Petry of Duke used to tell his students, "Ailing physicians are we all. But *we will do*, for God has chosen us to do so" (Wayne Oates, *The Presence of God in Pastoral Counseling*, p. 126).

Because the Burning is not controllable by persons, I assume that it is possible for its sovereign power to relieve a minister of his or her ministry. The intensity with which one minister prayed, "Do not cast me from your presence/Or take your Holy Spirit from me" (Ps. 51:11) indicates to me that God *could* find a minister's services no longer required. The only way I know for one to tell if this is the case is to sharpen her powers of introspection, to share the issues in the more objective forum of caring members of the Body, and to wrestle with God in prayer.

But it is far more likely that burn-out inheres in the mistaken ways we handle the Fire. For despite its holy heat, it is more of the nature of the divine flame to heal than to consume those who truly long to serve before it. As Tillich put it, the divine fire is more likely to produce life than ashes.

Only we must confess that this life is human while the calling is divine. Unconfessed, uncleansed humanity, daring to serve before the Consuming Fire, can only be burned out.——MISSION