United States

National Affairs

THERE WAS NO SHORTAGE OF crucial challenges for the United States in 2003: the continued threat of terrorism at home and abroad; a controversial war in Iraq; a vast and growing array of domestic demands; and a mounting federal budget deficit that brought into question how these challenges could be met. For the Jewish community, these national and global issues were juxtaposed with developments—both negative and positive—affecting the status and concerns of American Jews.

THE POLITICAL ARENA

President Bush and the Jewish Community

In late December 2003, President George W. Bush hosted Jewish communal leaders for a Hanukkah party, the third such White House event in as many years. As the six-year-old sons of two Jewish marines lit the menorah, the University of Maryland's Kol Sasson chorale led those assembled in a gospel version of *Maoz Tzur,* the traditional holiday song, as kosher latkes and *sufganiyot* (jelly donuts) were enjoyed by all. In his remarks that evening, the president praised the role of American troops in Iraq and expressed concern about the rise of anti-Semitism.

At a meeting that preceded the party—described by participants as cordial but serious—a number of Jewish leaders reviewed with President Bush the import of Prime Minister Ariel Sharon's recent warning that Israel would set its own border with the West Bank and Gaza if the Palestinians did not crack down on terrorist groups and return to peace negotiations (see below, pp. 189–90). Speaking without attribution, one of those leaders told the Jewish Telegraphic Agency that Bush said Sharon had "a job like mine. His job is to protect his people." Nonetheless, the president reportedly called on Israel to exercise patience and adhere to

the "road map" peace plan in the expectation that a new, more moderate Palestinian leadership would emerge.

The White House holiday soiree was not the only occasion in 2003 when the president hosted leaders of the Jewish community. In June, some 120 members of the community came to a dinner marking the opening of an exhibit on Anne Frank at the U.S. Holocaust Memorial Museum. Reports in the Anglo-Jewish press noted that the cast of characters among the invitees was somewhat different than in previous administrations. To be sure, there were two representatives of the Conference of Presidents of Major American Jewish Organizations, the key umbrella organization of American Jewry. But figures from lesser-known groups were invited, presumably because they were viewed as more in sync with the White House on domestic, as well as international and Israel-related, issues. In late September, just after Rosh Hashanah, President Bush once again met with a selected group of leaders from the Jewish community, this time about 15 rabbis from the Orthodox, Conservative, and Reform movements. In addition to discussing issues ranging from Iraq and the Palestinian-Israeli conflict to his plan for funding programs run by faith-based agencies, the president also spoke on a more personal level about the role that faith played in his life, including how it helped him overcome his past drinking problem, and the impact of his trip to the site of the Auschwitz death camp some months earlier.

The year 2003 also saw turnover in the sensitive post of administration liaison to the Jewish community. Adam Goldman, who had served with Bush while he was governor of Texas and had come to Washington with little prior experience in interacting with the organized Jewish world, left in midyear for a job in the private sector. His replacement, Tevi Troy, a domestic policy adviser to the president and former policy director for then Sen. John Ashcroft, was a staunch political conservative whose views—on the domestic front at least—mirrored those of the president he served, but were clearly at odds with many of the Jewish organizations with which he would deal. Even so, his earlier jobs and his strong personal roots in the Jewish community ensured Troy's acceptance as someone familiar with its perspectives and concerns.

As President Bush's supporters began to look to his reelection campaign, they found themselves raising—with remarkable ease—amounts of money from the Jewish community that were unprecedented for a Republican candidate. Both the president's partisans, such as the Republican Jewish Coalition, and outside observers ascribed this phe-

nomenon to a perception of the president as forceful in the war on terrorism and as a strong supporter of Israel in a world where Israel and Jews generally were under attack. Thus Jack Rosen, president of the American Jewish Congress and a longtime supporter of Democratic candidates, contributed to the president's campaign, explaining, "We need to recognize what this president has done for Israel." At year's end, however, with almost another year to go until the 2004 election, it was far from clear whether this portended a shift in Jewish electoral support to the Republicans, even acknowledging his good record on Israel, given the discomfort of many Jews with the president's positions on domestic issues.

An American Jewish Committee poll taken in late November and early December showed that approximately 30 percent of a national sample of Jews preferred President Bush over possible Democratic candidates Wesley Clark, Howard Dean, or Richard Gephardt, though not over Sen. Joseph Lieberman, who fared about five points better among Jews than the other Democratic hopefuls. This level of support for Bush was certainly an improvement over the 19 percent that he garnered in 2000, but would likely drop once there was an identified, official Democratic candidate. Much would turn on the identity of the Democratic nominee and whether Republicans could convince Jewish voters that he was less reliable on Israel than the incumbent.

Run-Up to the Democratic Primaries

Sen. Joseph Lieberman (D., Conn.), had made history in 2000 by running for vice president, the first Jewish nominee for national office of a major political party. He made history once again in 2003 by announcing that he would seek his party's nomination for president in 2004. Although two other Jews had, in earlier years, briefly sought their respective parties' nomination—Sen. Arlen Specter (R., Pa.) and the late governor Milton Shapp (D., Pa.)—Lieberman was the first, by virtue of his status as a national nominee in the previous election, to have a serious chance of success.

At the news conference that opened his campaign, Lieberman stressed that while Jewish consciousness and beliefs were central to his identity, his campaign would not be based on faith but on "the ideas I have for our nature's future and how to make it better." As he pursued his candidacy throughout the year, Lieberman maintained, as he had when he ran

for the second slot in 2000, that being Jewish was not a barrier. But a poll released early in the year by the Institute for Jewish and Community Research suggested that the matter was so not so easily resolved, as nearly one-third of Americans said they were "concerned" that a Jewish president might have split loyalties between the U.S. and Israel. Even though institute president Gary Tobin softened the blow for the candidate by pointing out that voters holding these attitudes might still vote for a Jewish president, Lieberman dismissed the findings, asserting, "I've seen other polls that say just the opposite. I don't believe it's true."

Lieberman's candidacy did not catch fire during 2003, but there was no evidence that his Jewish faith was the reason. Far more important was the strong opposition to the war in Iraq among committed Democrats, those likely to give money to the party and ultimately to come out to vote in large numbers in the primaries. For such Democrats, Lieberman's vote for the 2002 resolution giving the president the authority to go to war, compounded by his unapologetic defense of that vote—and, indeed, of Bush's decision to use that authority—made him less than the perfect candidate. Though Lieberman may have won points for integrity in standing firm, as 2003 progressed it was former Vermont governor Howard Dean who, in his unabashed anger and condemnation of the war, seemed, to many rank-and-file Democrats, the best representative of their views.

As the year ended and the first primaries approached, Lieberman expanded his outreach to the Jewish community, hoping to stem the accelerating support for Dean, the apparent front-runner. In mid-December, faced with disappointing fund-raising—especially in the Jewish community that had been expected to be his base—Lieberman held a telephone press conference for Jewish journalists. He said that American Jews should not support him because he was Jewish, but neither should they fear to have a Jew hold the highest office in the land.

Lieberman was far from the only presidential candidate with a Jewish connection. It was already well known that rivals, both potential and announced, had their own *yichus.* The wife of Howard Dean was Jewish (both doctors, the two met when they were students at Yeshiva University's medical school), and the couple said that their children were being raised "as Jews." Retired general Wesley Clark, former supreme allied commander of NATO, had a Jewish father. Although the general himself was raised as a Baptist, converted to Catholicism, and did not know of his Jewish background until he was in his twenties, he now claimed to be descended "from generations of rabbis." In early February, the *Boston*

Globe revealed that a genealogist it had hired to look into Sen. John Kerry's family background had discovered that Kerry's paternal grandfather, Frederick Kerry, was born as Fritz Kohn, a Jew, in what is now the Czech Republic, and had changed his name to Kerry when he converted to Catholicism several years before immigrating to the U.S. in 1905. Kerry, a practicing Catholic, told the *Globe* that he had learned some 15 years earlier that his paternal grandmother was born Jewish, but had not known about his grandfather. And for good measure, Cameron Kerry, the senator's brother, had converted to Judaism when he married a Jewish woman. Even Rep. Dennis Kucinich (D., Ohio), a long-shot candidate, had a Jewish girlfriend, and the couple limited its diet to "vegan kosher" food.

These Jewish connections were the subject of frequent human interest stories in the Jewish media. In December, for example, the Jewish Telegraphic Agency ran a piece about then front-runner Howard Dean's Hanukkah celebration with campaign staffers ("It's just a regular Hanukkah for Dean, the former Vermont governor says, 'except there's usually only four of us, instead of 54 of us' "), and noted that the candidate knew the Hebrew holiday blessings.

On a more substantive note, the Dean organization had some difficulty fending off suggestions that the candidate's support for Israel was less than firm, notwithstanding the presence in his campaign of a former president of the American Israel Public Affairs Committee (AIPAC), Steve Grossman. The governor's remark in September that it was time for the U.S. to take a more "even-handed" approach to the Israeli-Palestinian conflict—a turn of phrase usually associated with those who believed that the U.S. should reduce its support of Israel—immediately raised a furor. Dean met with Jewish leaders in mid-October to confirm his pro-Israel credentials.

He received mixed reviews, however, not over whether he was a friend of Israel, which was not in doubt, but rather over whether it was wise to criticize President Bush for "not doing enough" to move toward peace. Jewish Council for Public Affairs (JCPA) executive director Hannah Rosenthal suggested that a "more aggressive" approach to pushing for peace sounded like a "good thing," but Anti-Defamation League (ADL) national director Abraham Foxman expressed concern that doing "more" than Bush could become a prescription for pressuring Israel. And yet even with Foxman's caveat, when an e-mail campaign surfaced in late 2003 questioning Dean's commitment to Israel, the ADL considered the alle-

gations so baseless that it took the highly unusual step of publicly pronouncing the e-mails a "distortion."

Congressional Elections—Toward 2004

With the retirement of longtime Rep. Benjamin Gilman (R., N.Y.) from Congress at the end of 2002, there was uncertainty whether the House International Relations Subcommittee on the Middle East and Central Asia that he had headed would survive. Initial reports indicated that Middle East matters might be folded into the overall committee, with responsibility for this area falling under the scope of chairman Henry Hyde (R., Ill.). But a senior committee member, Rep. Ileana Ros-Lehtinen (R., Fla.), a Cuban American, fought to retain the subcommittee and to assume the position of chair, so that she might use the opportunity to work in support of Israel. For advocates on behalf of Israel, the feeling was of having dodged not one, but two bullets. The desire to maintain a subcommittee that was a valued focal point for pro-Israel forces had been overshadowed by concern that Rep. Dana Rohrabacher (R., Calif.), often a strong critic of the Jewish state, might take the helm.

The incoming 108th Congress saw a halving of the Republican Jewish House contingent, from two to one. The departure of Gilman left only Eric Cantor (R., Va.) in that category, albeit in the influential post of deputy whip. There was one new Jewish Democratic member, Rahm Emanuel of Chicago, and he came with an unusually high profile for a freshman congressman. Active in party politics from a young age and involved in Jewish affairs, the Israeli-born Emanuel served as an adviser to Bill Clinton's initial presidential campaign and then as a senior White House adviser on domestic affairs, attaining recognition both for his in-depth knowledge of the issues and for his combative style.

Even as Jewish Democrats looked to one potential rising leader, they looked on with mounting concern about the political fate of a current leader, Rep. Martin Frost—ranking member on the influential House Rules Committee, the only Jewish House member from Texas, and a longtime champion of Israel. After weeks of contention that brought national headlines when Democratic members of the Texas state legislature fled to Oklahoma to avoid the creation of a quorum, Texas Republicans succeeded in implementing an unusual postelection remapping of House districts, expecting that the new boundaries would favor the election of Republicans. The new lines saw Frost's district carved up in a fashion that cast great doubt on his chances for reelection.

THE POLICY ARENA

Terrorism

In October 2001, in the immediate aftermath of September 11, Congress passed the USA-Patriot Act, which expanded law enforcement surveillance authority, strengthened penalties for those engaged in or helping terrorism, and allowed for the detention of noncitizens suspected of national security violations for up to seven days (see AJYB 2002, pp. 162–63).

In a speech at Quantico, Virginia, on September 10, 2003, President Bush presented his plan for expansion of the USA-Patriot Act. The new proposal allowed federal law enforcement agencies to issue "administrative subpoenas" in terrorism cases without obtaining approval from a judge or grand jury; expanded the death penalty to include various terrorism-related crimes; and authorized judges to deny bail for terror suspects. This followed the leaking, earlier in the year, of a Justice Department document purporting to be a draft of "Patriot II," a sweeping extension of law enforcement authority well beyond that provided in the original Patriot Act—extending even to provisions for the removal of citizenship under certain circumstances. Civil libertarians—including the Religious Action Center (RAC) of Reform Judaism—were quick to protest this document as yet another threat to fundamental liberties, and the administration almost as quickly shrugged it off as a working draft, not an actual proposal.

Even before the president began urging extension of the 2001 measure, several members of Congress on both sides of the aisle raised concerns about earlier administration proposals to expand the Patriot Act, as well as to enact on a permanent basis provisions of it that were due to expire at the end of 2005. These concerns were founded in part on assertions by some congressional leaders that the administration had failed to cooperate adequately with requests for oversight in implementing the existing law.

The president's initiatives and congressional responses to them were paralleled by a number of congressional initiatives to amend provisions of the Patriot Act in order to address civil liberties concerns. On July 22, the House passed, 309-118, an amendment to the Commerce-Justice-State Appropriations bill, H.R.2799, which would have nullified, for fiscal year 2004, the provision of the Patriot Act allowing police to conduct "sneak-and-peek" investigations—the search and seizure of evidence

without previously notifying the subject of the investigation, so long as the subject is notified within a "reasonable" period after the search. But the anti-sneak-and-peek amendment did not appear in the final appropriations package that emerged from the House in late December, which was expected to pass in the Senate in early 2004.

Several bills were introduced in the Senate during 2003 to address the same or related concerns, such as amending "sneak-and-peak" provisions by defining the time within which notice of a search must be given (absent judicial authorization otherwise), and amending the 2001 act's provisions allowing roving wiretap surveillance. Notable bills in the Senate included the Protecting the Rights of Individuals Act, S.1552, introduced by Sens. Lisa Murkowski (R., Alaska) and Ron Wyden (D., Oreg.); the Reasonable Notice and Search Act, S.1701, introduced by Sen. Russ Feingold (D., Wis.); and the Security and Freedom Ensured (SAFE) Act, S.1709, introduced by Sens. Larry Craig (R., Idaho) and Richard Durbin (D., Ill.).

By and large, the remedial approach represented by these bills was acceptable to Jewish organizations. In the months after passage of the 2001 Patriot Act, communal response had ranged from sharp criticism of at least portions of the measure by the RAC, to the acknowledgement by groups such as the ADL and the AJCommittee—both of which supported passage—that the hastily enacted law merited reexamination and, potentially, amendment. Thus these Senate bills satisfied at least some in the Jewish community, even thought there was hardly a Jewish consensus on the specifics of the proposed amendments.

The Benjamin Franklin True Patriot Act, H.R.3171, was another matter. Introduced on September 24 by Reps. Dennis Kucinich (D., Ohio) and Ron Paul (R., Tex.), this bill would have repealed entirely all the controversial sections of the Patriot Act, as well as reversed a number of administrative actions taken by the Justice Department post-9/11. A number of Jewish groups rejected this approach for failing to address the difficult choices posed by the ongoing possibility of further terrorist acts directed at Americans, including specific threats to the Jewish community. Pointing to provisions of the Patriot Act that could protect Jewish institutions—such as the freezing of terrorist assets and the enhancement of border controls—Michael Lieberman, the ADL's Washington counsel, commented to the Jewish Telegraphic Agency, "Every congregant who walks through a synagogue will walk past security guards and cameras. This has an impact on the analysis we do on tools we want law enforcement to have."

The RAC did the calculus somewhat differently. It joined with the ACLU, the NAACP, and the Council on American-Islamic Relations in endorsing the Kucinich-Paul initiative, arguing that the bill addressed the concerns that the Reform movement had previously raised about the Patriot Act. Nevertheless, the RAC's associate director, Mark Pelavin, made a point of noting that his organization's endorsement of the overall bill did not mean that it necessarily supported every provision in it.

Soviet Jewry, Refuges, and Immigration

The U.S. freeze on refugee admissions after September 11, 2001, continued to have a profound impact on Jews seeking to enter the country, primarily from the former Soviet Union. While some refugees were allowed in, screenings for terrorists cut the number of refugees from 68,000 in fiscal year 2001 to only 27,000 in fiscal year 2002—far lower even than the presidential target figure for refugee admissions in 2002, 70,000. A number of Jewish organizations, signing on to a letter written by the Hebrew Immigrant Aid Society (HIAS), urged the Department of Justice and the Immigration and Naturalization Service (INS) to work with the State Department to ensure that even as security concerns were addressed, the nation's commitment to refugee protection and resettlement did not become another casualty of terrorism.

Jewish organizations also advocated adequate funding to support the government's refugee service and resettlement programs for refugees, as well as programs for those seeking asylum, torture victims, human trafficking victims, and unaccompanied alien children. Also, in December, Jewish organizations joined together with other groups in writing to Congress and the Department of Homeland Security to urge repeal of "arbitrary limitations" on the number of asylum-seekers and public-interest parolees who could apply for permanent-resident status each year. Because of these caps, the groups argued, asylum-seekers—already certified as bona fide refugees and living in the U.S. legally—had to face a 15-year waiting list to become permanent residents, the first step toward full citizenship.

In August, 15 Jewish organizations—brought together, once again, by HIAS—urged, in a letter to Attorney General John Ashcroft, that U.S. federal attorneys halt the prosecution of asylum-seekers for trying to enter the country with false papers—before their claims for asylum could be processed—since the associated detention severely limited their ability to pursue their claims. A spokesperson for the American Jewish Com-

mittee noted the irony that while Raoul Wallenberg was recognized as a hero for saving Hungarian Jews during World War II by issuing them false papers, a refugee from persecution today seeking to use similar papers would be treated as a criminal.

While efforts to move toward comprehensive reform of the nation's immigration system saw little progress, there was some movement in building support for bipartisan initiatives directed at specific issues. Thus on April 9, Reps. Chris Cannon (R., Utah) and Howard Berman (D., Calif.) introduced H.R.1684, the Student Adjustment Act, and on July 31, Sens. Orrin Hatch (R., Utah) and Richard Durbin (D., Ill.) introduced S.1545, the DREAM (Development, Relief, and Education for Alien Minors) Act. These measures would permit states to determine who qualified as a "state resident" (and was thus eligible for in-state college tuition rates), and would allow for federal regularization of the status of alien students who were long-term U. S. residents. On September 23, Sens. Larry Craig (R., Idaho) and Edward Kennedy (D., Mass.), and Reps. Berman and Cannon introduced the Agricultural Jobs, Opportunity, Benefits and Security Act of 2003 (AGJOBS), S.1645/H.R.3142. Under this bill, undocumented agricultural workers could, after passing background checks, earn legalization through past agricultural work in the U.S., upon assuming a prospective work requirement.

The measures dealing with alien students and agricultural jobs, both of which had built substantial bipartisan support by year's end, garnered endorsements from Jewish organizations. They looked favorably upon these initiatives not only as efforts to afford equitable treatment for vulnerable individuals, but also as an important avenue toward developing good relations with the growing Latino community.

Communal Priorities for Domestic Policy

Soaring federal budget deficits—the product of large tax cuts and extraordinary expenses for security and war—combined with burgeoning demands for federal funding from a variety of sources, posed enormous challenges during the year for the Jewish federation system, which had come to rely upon a steady infusion of government dollars, both federal and state, to maintain its programs. According to estimates from the United Jewish Communities (UJC), the combined federation agencies—which funded programs for the elderly, immigrants, and refugees, the needy, and much else on the domestic agenda, not to mention programs directed at Israel—received between $5 billion and $7 billion in federal

and state grants, amply supplemented by contributions from the Jewish community and other private sources.

As the year ended, the new head of the UJC's Washington Action Office, Charles Konigsberg (he replaced Diana Aviv, who moved on to head up Independent Sector, a national convenor of nonprofit organizations) signaled his intention to think "strategically and smartly about how to partner with the federal government." He said that rather than emphasizing massive federal programs, such as Medicare, to which the entire service community already looked for funding, he would seek help for discrete and innovative programs.

Aside from the ongoing issue of how much funding service-providers might expect from Medicare, a sweeping reform of that national health program for the elderly, signed into law by President Bush in December, posed fresh challenges for the Jewish community, and especially for its oldest members. As amended, Medicare for the first time extended its reach to cover prescription drug costs. But this complex piece of legislation had already given rise to contending voices while it was pending. B'nai B'rith International opposed it, maintaining that it left a large gap in prescription drug coverage for certain of the elderly, particularly those who were not among the poorest, while the Association of Jewish Aging Services of North America supported the new plan because it afforded Jewish seniors some relief and would make a difference for Jewish and other nursing homes. Almost as soon as the new rules were passed, groups displeased with them spoke of amending the measure.

Foreign Aid and U.S.-Israel Relations

On February 13, Congress passed the long overdue Omnibus Appropriations bill for fiscal year 2003, H.J.Res.2, which, among its provisions, funded foreign aid for a fiscal year that had already begun on October 1, 2002. President Bush signed the bill into law a week later. Pursuant to the president's request for aid to Israel, the bill provided $2.1 billion in military aid, $600 million in economic assistance, and $60 million for refugee resettlement. However, the bill did not include a supplemental package of $200 million to support Israel in its battle against terrorism nor $50 million in humanitarian aid for Palestinians in the West Bank and Gaza, additional aid that had been bruited about since a promise made by President Clinton when Israel agreed to leave Lebanon in 2000. (Ultimately, as noted below, Israel received the funds as part of the Iraq supplemental spending bill.)

In addition, under the leadership of Sen. Mitch McConnell (R., Ky.) and Reps. Jim Kolbe (R., Ariz.) and Nita Lowey (D., N.Y.), the omnibus bill contained landmark language codifying as U.S. policy the conditions for Palestinian statehood that President Bush had laid out in his speech of June 24, 2002: Before the U.S. would endorse a Palestinian state, the Palestinians must elect a new leadership committed to peaceful coexistence with Israel, dismantle the terrorist infrastructure, and join in the creation of a new, cooperative security entity. Additionally, the bill contained provisions requiring a report on the activities of the UN Relief and Works Agency (UNRWA), and expressing the sense of Congress that the Arab League boycott and secondary boycott directed at Israel constituted "an impediment to peace in the region and should be immediately and publicly terminated." Because they were part of an appropriations bill, the foregoing provisions were effective only for fiscal year 2003.

The federal budget for fiscal year 2004 submitted by President Bush in February 2003 called for a total of $28.5 billion for the international affairs account, including $18.8 billion for foreign operations. In the course of the budget and appropriations process, numerous efforts were made in the Congress to decrease the international affairs portion of that budget. In March, the Senate and House each passed a budget for fiscal year 2004; these included $2.64 billion for Israel, composed of $2.16 billion in military assistance and $480 million in economic support.

Also in March, the administration sent to Congress a supplemental budget request, primarily to pay for the war in Iraq. For Israel, the request included $1 billion in military aid and $9 billion in U.S. loan guarantees. AIPAC, joined by a number of Jewish organizations, wrote in support of the supplemental aid for Israel. Thus, the American Jewish Committee stated: "[T]he emergency supplemental aid will make a critical difference both in helping [Israel] defend against ongoing terrorist threats and regional hostility, including the peril posed by rockets from Iranian- and Syrian-backed terrorists and by missiles and other longer-range weapons from Iraq, and in coping with the severe impact of those threats on the Israeli economy." On April 3, the bill passed the House by 414-12 and the Senate by a unanimous 93-0 vote. On April 19, President Bush signed the $79-billion supplemental bill into law.

Throughout the 2004 fiscal year appropriations process, which continued even without a budget in place, AIPAC and Jewish organizations, in addition to advocating for Israel, urged Congress to allocate at least the amount President Bush had requested for overall international af-

fairs funding. When, in July, the House Appropriations Committee reported out a bill that significantly cut international affairs allocations, these groups called on the full House to restore the funding. Ultimately, the House passed an Omnibus Appropriations bill, H.R.2673, on December 8, (by 242-176), with the Senate slated to consider the package in early 2004. The final bill, as passed by the House and expected to emerge from the Senate, appropriated $26.7 for International Affairs, $1.8 billion below the administration's original request but $1.4 billion above the amount Congress had appropriated for fiscal year 2003—and this in a year of extraordinarily tight budget constraints. The bill included $17.4 billion for Foreign Operations—$1.4 billion less than the president had requested, but $1.3 billion more than Congress had appropriated for fiscal year 2003. Congress approved the president's request for aid to Israel.

Even with fiscal year 2004 appropriations still pending, by November 2003 attention was already turning to the international affairs budget for 2005. Sens. Mike DeWine (R., Ohio), Dianne Feinstein (D., Calif.), Gordon Smith (R., Oreg.), and Richard Durbin (D., Ill.) sponsored a letter to President Bush "urging a robust increase" in funding for this purpose. A similar letter came from the House, initiated by Reps. Amo Houghton (R., N.Y.) and Howard Berman (D., Calif.). Jewish organizations weighed in as well, calling for a substantial allocation for international affairs that would include steady support for Israel.

A portion of U.S. aid to Israel, in the form of loan guarantees, seemed imperiled during the summer, when an administration spokesman suggested that money Israel spent in the construction of its security barrier might be considered expenditures in the West Bank and Gaza. Under legislation that authorized up to $9 billion in loan guarantees to Israel over three years, the president was obligated, by September 30 of each year, to inform Congress how much Israel has spent in the territories, and that amount was subject to deduction from the loan guarantees. During the 1990s, the U.S. had deducted over $770 million.

Meeting with a group of visiting rabbis on September 29, President Bush said he supported building the barrier provided the door was left open for resuming negotiations with the Palestinians. September 30 came and went with no report on Israeli spending in the territories, much less a reduction in loan guarantees. But on November 25, the White House announced a reduction of nearly $290 million, and an official was quoted as saying that "a little" of it was attributable to the fence.

THE *COLUMBIA* DISASTER

In a year when Israelis and many Jews around the world felt under assault, early February promised a ray of hope. Ilan Ramon, part of the seven-member crew of the *Columbia* shuttle that flew into space in mid-January for a 16-day visit to the U.S. space station, was the first Israeli to participate in such a mission.

The son of a mother who survived the Holocaust and a father who fought in Israel's War of Independence—and himself already a national hero for his reported role in bombing the Iraqi nuclear facility at Osirak—Ramon was well aware of his symbolic importance for Jews and Israelis. Nor religiously observant in his private life, he insisted on kosher food for his sojourn in space, sought counsel from a rabbi about how to observe the Sabbath there, and carried with him a tiny Torah scroll that had been used in the Bergen-Belsen concentration camp.

The shuttle descended to earth on Sabbath morning, February 1, but there was to be no hero's welcome. As a result of damage to its shielding incurred on take-off, the *Columbia* broke into pieces upon reentry, killing the entire crew. There was shock and mourning around the world.

Some believed that the shared tragedy drew the U.S. and Israel closer together. At a memorial service in Israel a few days later, Prime Minister Sharon reflected on "the common fate of the team" that "poignantly strengthened the staunch partnership between our nations." At a cabinet meeting earlier that day, Sharon promised that "the day will come when we will launch more Israeli astronauts into space. I am sure that each and every one of them will carry in his heart the memory of Ilan Ramon, a pioneer in Israeli space travel."

THE POLLARD CASE

With no prospects for clemency from the Bush administration, convicted spy Jonathan Pollard continued to pursue his case for a new hearing. He argued, as he had for a decade and a half, that he had been wrongfully sentenced to life imprisonment for having provided classified information to Israel. He claimed that his plight was due to a combination of two factors: ineffective assistance of counsel, and the failure of the U.S. government to live up to the terms of a plea bargain when it urged the court to impose a life sentence. On September 2, 2003, afforded a hearing by U.S. District Judge Thomas Hogan, Pollard ap-

peared in public for the first time in 16 years. At the hearing, Pollard's pro bono attorneys asked for a reduced sentence and for a chance to see the secret documents—ostensibly demonstrating the vast damage done to U.S. interests by Pollard's espionage—on which the life sentence was based.

Also present, outside the hearing room, and declaring their support for Pollard's release after 18 years in custody were Rep. Anthony Weiner (D., N.Y.), former Israeli chief rabbi Mordechai Eliyahu, and Seymour Reich, former chairman of the Conference of Presidents. Separately, a spokesman for the Israeli prime minister's office indicated that Israel was continuing to work for Pollard's release. Judge Hogan reserved decision on the application.

HATE CRIMES AND DOMESTIC TERRORISM

Old Business: Los Angeles Airport and Crown Heights

On July 4, 2002, Egyptian-born Hesham Mohamed Hadayet shot to death two Israeli-Americans at Los Angeles International Airport before being killed himself by an El Al security guard (see AJYB 2003, pp. 89–90). In April 2003, the FBI released its finding that the shootings were an act of terrorism, albeit carried out by a "loner" with no connection to any Islamic extremist group. The finding, reflecting the conclusion that Hadayet had carried out the killings in response to Israeli treatment of Palestinians, came only after months of contention, as victims' families, Israeli officials, representatives of Jewish organizations, and at least one member of Congress responded angrily to initial statements by the FBI that the case might be treated as a random crime, rather than the targeting of innocent civilians for political purposes.

On May 28, 2003, the prosecution of Lemrick Nelson for stabbing Yankel Rosenbaum to death during the 1991 Crown Heights riots reached what many observers in the Jewish community regarded as a distinctly unsatisfying conclusion. In this, Nelson's third trial in connection with the incident, he was convicted of violating the victim's civil rights, but acquitted of second-degree murder; the jury apparently accepted the defense argument that Nelson had been drunk at the time and had not singled out Rosenbaum because he was a Jew. In August, Nelson was sentenced to ten years in jail (see also below, pp. 72–73).

Legislative Activity

On May 1, Sens. Edward Kennedy (D., Mass.) and Gordon Smith (R., Oreg.) reintroduced S.966, the Local Law Enforcement Enhancement Act (LLEEA). This would strengthen the ability of local and federal officials to prosecute crimes motivated by bias on the basis of the victim's race, religion, sexual orientation, gender, ethnicity, or disability. It would also enhance federal penalties for hate crimes, provide grants to help state and local governments prosecute hate crimes, and allow the Justice Department to prosecute such cases when local authorities chose not to do so. However, the measure also included provisions imposing strict certification requirements before federal jurisdiction could be invoked, and provided additional grants for personnel, investigation, and prosecution of hate crimes at the local level, so that federal authorities would not interfere in situations where local officials were acting effectively. By year's end the bill had 49 cosponsors, and a version had been introduced in the House. (Twice in previous years, the Senate had passed hate-crimes legislation, albeit as amendments to other bills, which did not survive conference with the House versions.)

Soon after September 11, 2001, there were reports of crimes directed at Arab Americans, Muslim Americans, South Asian Americans, and Sikh Americans because of their actual or perceived religion or ethnicity. Congress considered responding to one such case that resulted, tragically, in a fatality. On March 6, Rep. Rush Holt (R., N.J.) introduced H.R.867, a private bill to provide relief for the wife and daughters of Waqar Hasan, a Pakistani immigrant who was murdered in a post-9/11 hate crime. Since his family's legal residency in the country was based on Hasan's employment status, his wife and daughters now faced the threat of deportation. In September 2003, 19 national and local Jewish organizations joined with other communities in urging the full House Judiciary Committee to act expeditiously on the bill.

Jewish groups also lent their support to S.Res.133 and H.Res.234, sponsored, respectively, by Sen. Richard Durbin (D., Ill.) and Rep. Darrel Issa (R., Calif.), condemning bigotry and violence against Americans of Arab, Muslim, South Asian, or Sikh origins. The Senate measure received unanimous approval on May 22, and the House version passed on October 7.

INTERGROUP RELATIONS

Black-Jewish Relations

In 1978, a substantial number of Jewish groups filed friend-of-the-court briefs in the Supreme Court case of *Regents of the University of California v. Bakke,* opposing—to a greater or lesser degree—the use of racial quotas in admissions to institutions of higher education. This position, which grew out of the unhappy experience of Jews with numerical limits that for decades had kept them out of universities, was unfairly characterized by some as emblematic of Jewish opposition to "affirmative action," and for many years served as an ongoing irritant in black-Jewish relations.

In 2003, a generation after *Bakke,* the organized Jewish community viewed matters quite differently. During the year, the U.S. Supreme Court heard argument in two consolidated cases challenging the University of Michigan's reliance on race, among other factors, in making admissions decisions for its law and undergraduate schools. The university cited as justification its compelling educational interest in bringing together a diverse student body. Not a single major Jewish organization filed a brief of outright opposition to the programs. The ADL came closest, submitting a brief on "neither side" that supported the goal of a diverse student body but took issue with the particulars of the university's admissions procedures.

The weight of the Jewish community was behind the challenged programs. A brief prepared by the American Jewish Committee and joined by such groups as the Union of American Hebrew Congregations and the National Council of Jewish Women came out in full support of both the diversity goal and the university's policies, which the brief treated as consonant with the "race-as-a-plus-factor" approach advanced by Justice Lewis Powell in his concurring opinion in *Bakke.*

Various explanations were tendered for this dramatic shift of the Jewish consensus. It clearly reflected changed conditions: Jews were now confident that admissions policies would not operate to keep them out of schools; the legal environment was such that the only types of race-conscious admissions policies the court had any chance of endorsing were of a scope that some Jewish advocates had long advanced; and the Jewish community was conscious of the importance of the challenged policies to the African American and Latino communities at a time when

Jews hoped for greater sensitivity from those groups about Israel and other core Jewish concerns.

In June, as the court moved to close out its term, it issued opinions that walked a narrow line, voting 6-3 to strike down the undergraduate program as too similar to a quota system and "not narrowly tailored to achieve the interest in educational diversity," but upholding, 5-4, the law school's approach to achieving that result. The decision drew praise from groups that had filed on behalf of the university, such as the American Jewish Committee, whose general counsel, Jeffrey Sinensky, noted the importance of the decision given the court's present-day conservative cast.

Arab American-Jewish Relations

The troubled nature of Jewish relations with Arab Americans and Muslim Americans came to the fore once again in the debate over President Bush's nomination of Middle East Forum director Daniel Pipes to sit on the board of the U.S. Institute for Peace (USIP), a government body created to "foster peace and non-violent conflict resolution." Pipes was perhaps best known for his long-term project—begun well before September 11, 2001—to warn of the dangers posed by militant Islam. When news of Pipes's nomination emerged (for a position so benign that, until Pipes, no such nomination had ever even been the subject of a confirmation hearing) the American-Arab Anti-Discrimination Committee (AAADC) and the Council on American-Islamic Relations (CAIR) were quick to oppose him as an "Islamophobe." CAIR termed the nomination "a slap in the face to all those who seek to build bridges of understanding between people of faith."

Not surprisingly, a number of prominent organizations in the Jewish community had a different view. The American Jewish Committee and AIPAC backed the nomination, with AJCommittee's government and international affairs director, Jason Isaacson, praising Pipes for his "insight and scholarship."

A contentious hearing before the Senate Health, Education, Labor, and Pensions Committee, held in July, made it clear that this was not just another routine USIP nomination. Ranking Democrat Sen. Edward Kennedy (D., Mass.), joined by Sen. Tom Harkin (D., Iowa), spoke out against the appointment, citing statements of the nominee that they viewed as anti-Islamic. Pipes's supporters maintained that his words had been taken out of context and failed to reflect his strong support for moderate Muslims, even as he raised alarms about the dangers posed by

"radical Islam." With a long, hard confirmation process in the offing, President Bush, in late August, named Pipes to the board by recess appointment, a step that avoided the need for Senate action, but also limited his term to the end of the following year. Advocates on each side differed over the implications of the president's action, with Pipes's supporters maintaining that the recess appointment showed the chief executive to be committed to the battle against radical Islam, while opponents asserted that the need for the "backdoor" appointment constituted a victory for their side.

Arab and Muslim American activism in opposing the Pipes nomination reflected the growing political assertiveness of these communities. Some pointed to the perceived excesses of the post-September 11 law-enforcement response to terrorism as a galvanizing event, with many Arabs and Muslims feeling that they had been singled out for unfair treatment. Thus, when a Pentagon official compared Islam to Satanic ritual, Muslim leaders urged their constituents to communicate with the White House and call for the man's dismissal. Public officials regularly spoke before conferences of Arab and Muslim organizations, such as the Arab American Institute (AAI) Conference held in Dearborn, Michigan, in October. In accepted American tradition, these conferences devoted special attention to members of the community who held or were running for public office.

AAI president James Zogby made no secret of his desire to increase Arab-American influence on American policy regarding the Israeli-Palestinian conflict, and noted with satisfaction at the AAI conference that politicians were already "saying things better than a year ago. We are in the process of beginning to change how they talk." Nevertheless, while there was no disputing that Arab Americans were "spending a lot of money and a lot of time organizing," Malcolm Hoenlein, executive vice president of the Conference of Presidents of Major American Jewish Organizations, claimed that the impact of this activity was far from certain because "U.S. foreign policy is driven by U.S. interests."

Interreligious Relations

Catholics and Jews

A major interfaith conference of European Jews and Catholics, with American Jewish leaders in attendance, took place in Paris in mid-April.

It was hailed on all sides as a demonstration of how much relations between the two communities had improved in recent years. European Jewish Congress president Michel Friedman, sharing a platform with cardinals and chief rabbis, termed Jewish relations with the Catholic Church "the strongest links . with any denomination." The event was held at UNESCO headquarters in the French capital, and was organized by the congress in association with the North American Board of Rabbis and the Catholic Episcopal Committee for Relations with Judaism.

The far-ranging two-day meeting dealt with the role of religion in the forthcoming European constitution, varying perspectives on the relationship of church and state, continued inquiries into the role of the Catholic Church during the Holocaust, and the recent resurgence of anti-Semitism in Europe even while the continent had made great strides in assuring equal treatment for members of minority faiths. Differences did emerge on how much attention to devote to the Church's role during the Nazi era, with Jewish representatives pressing for the Vatican to allow greater access to the pertinent archives. More surprising were the sharp differences that emerged over the impending war in Iraq. Friedman stressed that the "enemy is not George W. Bush, but Saddam Hussein," while those speaking for the French Catholic Church strongly aligned themselves with Pope John Paul II's declaration of opposition to the war.

Later in the year, Jewish relations with Catholics took a turn for the worse when it became known that noted actor and producer Mel Gibson was preparing to release a film in 2004, *The Passion of the Christ,* which included anti-Jewish stereotypes that those involved in the Jewish-Catholic dialogue believed had been rejected by the post-Vatican II Church. Jewish anxieties deepened when some Catholic authorities praised the planned movie and others refrained from criticizing it (see below, pp. 75–76).

Mormons and Jews

A long-simmering conflict between the Jewish community and the Church of Jesus Christ of Latter-Day Saints—the Mormons—flared up once more at year's end. Over the years, in line with its theology of posthumous baptism, part of the Mormon mission to convert all non-Mormons, the church had carried out the ostensible conversions of some 200 million deceased persons, including hundreds of thousands of dead

Jews. In 1995, church officials had agreed to cease the practice of adding the names of Holocaust victims to its International Genealogical Index, a preliminary step to conversion. Nevertheless, in late 2003, Ernest Michel, chairman of the American Gathering of Jewish Holocaust Survivors, reported that a researcher had found thousands of names of Holocaust victims still listed in the index, leading Michel to suggest the possibility of legal action.

Church spokespersons denied any violation of the 1995 accord, asserting that, in accordance with their agreement, they had removed from the index the names of all Holocaust victims listed before 1995, that church members had been instructed not to add any more to the list, and that when the church was made aware of "documented concerns" about unauthorized listings, remedial action was taken. Some observers agreed that Mormon authorities did remove names of victims promptly once their presence in the index was noted, but argued that more had to be done to avoid entering such names in the first place. Others, including Jewish genealogist Gary Mokatoff, asserted that no Jew, whether Holocaust victim or not, should be on the list: "Baptism is the second ugliest word in the English language to a Jew. The first is gassed," he said.

CHURCH-STATE MATTERS

The "Faith-Based Initiative"

In December 2002, President Bush began implementing key elements of his faith-based initiative via executive orders and administrative actions by cabinet departments. Beginning then and continuing through 2003, the departments of Housing and Urban Development, Health and Human Services, Education, Justice, Labor, Agriculture, and Veterans' Affairs all issued proposed rules implementing "charitable choice." These provided, among other things, that government could fund pervasively religious institutions, and that religious discrimination was acceptable in hiring for government-funded positions. Some of these proposed rules were finalized, with minor changes, during 2003.

Various Jewish organizations, joining with other critics of the faith-based initiative, filed comments—to little effect—calling for amendments to some of the rules proposed by the cabinet departments. These comments generally opposed, on church-state grounds, any "charitable

choice" or faith-based initiative that gave federal grants or contracts to "pervasively religious organizations," that allowed discrimination in hiring for government-funded positions, and that lacked safeguards to protect beneficiaries from tacit pressure to participate in religious activities.

In Congress, Sens. Rick Santorum (R., Pa.) and Joseph Lieberman (D., Conn.) reintroduced the CARE (Charity Aid, Recovery and Empowerment) bill, legislation that included a number of provisions to enhance the ability of charities, religious and secular, to provide social services. These included an increase in funding for the Social Services Block Grant (SSBG)—a flexible source of resources for vulnerable populations—and making charitable tax deductions available to people who did not itemize their deductions. But the bill still included provisions in its Title VIII purporting to give "equal treatment" to religious organizations in the provision of government-funded social services. While not full-blown "charitable choice," these were problematic for much of the organized Jewish community because they smacked of the "charitable choice" approach. Also, in failing to deal with the administration's regulatory actions, the measure could be seen as ratifying those actions. Sens. Jack Reed (D., R.I.) and Richard Durbin (D., Ill.) organized resistance to the CARE bill. In the end, the contending sides came together by agreeing on a compromise version of CARE that did not include Title VIII. This was passed by the Senate on April 9 by a vote of 95 to 5.

On September 17, the House of Representatives passed, by 408-13, the Charitable Giving Act of 2003, H.R.7, sponsored by Rep. Roy Blunt (R., Mo.). Like the Senate-passed CARE bill, H.R.7 contained incentives for charitable giving, such as making charitable tax deductions available to non-itemizers. Unlike the CARE bill, however, the House version did not increase funding for the SSBG, a CARE provision strongly supported by United Jewish Communities and other elements of the Jewish community. Rep. Ben Cardin (D., Md.) introduced an amendment, both in the Ways and Means Committee and again before the full House, to include SSBG funding in H.R.7, but the amendment failed both times.

Efforts to move the Senate CARE bill forward either through conference with H.R.7 or some other mechanism soon stalled, becoming hostage to an ongoing dispute between Republicans and Democrats about conference procedures. In November, the American Jewish Committee and the Union of Orthodox Jewish Congregations spearheaded—with little effect—a letter to Congress, signed by a broad coalition of Jewish and Christian groups, urging passage of a final version of the CARE

Act that would contain no "charitable choice" amendments and would provide the $1.375 billion in additional funding that the Senate had approved for the SSBG as part of its CARE bill.

The "charitable choice" debate manifested itself in other initiatives as well, as Congress considered the extension of welfare reform and other social-services legislation. Supporters of "charitable choice" sought to remove from long-standing legislation provisions they viewed as inconsistent with the faith-based initiative. On March 13, Rep. Buck McKeon (R., Calif.) introduced the Workforce Investment Act, H.R.1261, which passed the House by 220-204. The Senate passed its own version by unanimous consent on November 13, but there was no further movement on the bill in 2003. The House-passed version, but not the Senate's, would have exempted religious organizations from existing prohibitions on religious discrimination in federally funded job-training programs.

In a similar vein, H.R.2210, the School Readiness Act of 2003, sponsored by Rep. Mike Castle (R., Del.), passed in the House by one vote at the end of July. It would have added new provisions allowing faith-based organizations that ran Head Start programs to make hiring decisions on the basis of religion. Similar attempts were made to amend Medicare and TANF (Temporary Assistance for Needy Families) reauthorization bills so as to further extend "charitable choice." A number of Jewish organizations urged Congress not to repeal long-standing civil-rights protections or add new provisions that would explicitly allow faith-based organizations to make hiring decisions for government-funded positions on the basis of religion.

Vouchers and Zelman

The U.S. Supreme Court's 2002 decision in *Zelman v. Simmons-Harris,* which upheld the constitutionality of the Cleveland City School District's vouchers program, did little to end the divide within the Jewish community over the advisability of government providing funds to religious and other private schools. Opponents of vouchers continued to point out that funding of religious schools remained subject to federal constitutional constraints—including the requirement that any vouchers program must afford parents a true choice of a secular institution—and to state constitutional provisions. They asserted, as well, that vouchers still posed significant policy problems, not the least of which was the diversion of money from public schools.

Much could turn on the court's decision in *Locke v. Davey.* Joshua Davey, a resident of the state of Washington, sued the state for alleged discrimination when it denied him a scholarship to pursue a major in theology—even as other Washington residents received scholarships to pursue secular studies. The state cited its own constitution's prohibition on the use of public money to fund religious instruction. The high court heard argument on December 2, with Jewish groups filing friend-of-the-court briefs that split along the usual fault lines. The American Jewish Congress and the ADL initiated briefs arguing that the state's action did not amount to religious discrimination, the prior year's decision in *Zelman* notwithstanding, while the Union of Orthodox Jewish Congregations and Agudath Israel of America filed in support of Davey.

Several members of the court were clearly concerned about the implications of the plaintiff's argument—which, if accepted, raised the possibility that a state would no longer be able to decline to fund religious programs or institutions on the same terms as similar secular programs or institutions that were receiving funding. To the surprise of some observers, advocates for Davey—including U.S. solicitor general Theodore Olsen, Americans for Civil Liberties, and Justice Department attorney Jay Sekulow—conceded that point rather than offering the palpably troubled justices a narrower basis on which they might rule for Davey. That dynamic led Jewish supporters of the state's policy to assert, after argument, that, in the words of American Jewish Committee legislative director and counsel Richard T. Foltin, it was extremely unlikely that the court would use "this case to reach a far-reaching decision that strips aside all state distinctions that bar funding of religious education."

In the meantime, the legislative battles continued. The administration released a proposed budget for fiscal year 2004 on February 3, 2003, that would cut many domestic priorities dear to the mainstream Jewish organizations—or, at best, hold them at a standstill—while including $75 million for the Choice Incentive Fund, a program intended to move states toward establishing "school choice" programs, as well as underwriting a pilot project for vouchers in the District of Columbia. The Jewish groups made their objections known. The D.C. vouchers project came to fruition, after many years of pitched battle, when Congress included in its year-end Omnibus Appropriations bill, H.R.2673, a provision appropriating $14 million per year, for five years, to provide vouchers of up to $7,500 for low-income children in the district to attend private and religious schools. The omnibus bill passed the House on December 8, with the Senate expected to follow suit early in the new year.

Other Church-State Matters

Rep. Walter Jones (R., N.C.) sought to move forward an initiative he had championed in the previous Congress by introducing, on January 8, the Houses of Worship Free Speech Restoration Act, H.R.235. Houses of worship, like other 501(c)(3) organizations, cannot legally engage in partisan politicking and at the same time retain their tax-exempt status for contributions. Under H.R.235, which by year's end had 165 cosponsors, presentations made during religious services or at gatherings in a house of worship could not serve as a basis for losing tax-deductible status. Unlike its predecessor proposal, this bill specifically disavowed any intent to override the campaign finance laws.

The bill came under substantial attack from the Jewish community and other concerned groups, with Rabbi David Saperstein, director of the RAC, in the lead. The coalition asserted that nothing in current law prohibited a religious leader from using his or her pulpit to address the moral issues of the day, that the bill would politicize houses of worship by injecting them into partisan political campaigns, and that—changes in the bill notwithstanding—the initiative continued to raise significant problems under campaign finance law. Unlike other church-state issues, the Jewish community was united on this measure. No voices in support were heard from the Orthodox community; indeed, the Union of Orthodox Jewish Congregations voiced concern about the implications for synagogues were this measure to be adopted.

Nor did the traditional split between much of the organized Jewish community and the Orthodox manifest itself when Alabama state officials, in August, removed a monument of the Ten Commandments from the front of the Alabama Judicial Building in Montgomery, pursuant to a 2002 federal court order holding that the monument's placement violated the constitutional prohibition on government establishment of religion. The monument had been put there by Alabama chief justice Roy Moore, who then refused to comply with the court order. Various Jewish groups, including the American Jewish Congress and the Commission on Social Action of Reform Judaism, filed briefs urging the monument's removal because it endorsed particular religious beliefs. Agudath Israel of America, which represented Orthodox interests, sat the case out, believing that the structure went beyond an acknowledgement of God and the concept of morality, which would be acceptable, crossing the line to "support of a particular religion," which was not.

The groups that filed briefs were pleased with state officials' enforce-

ment of the federal court order, just as they had applauded the issuance of the order in the first place. Yet there was concern about the depth of support that Justice Moore received from Alabama citizens—and from the U.S. Congress—for defying a duly rendered judicial directive. Earlier in 2003, the House of Representatives included in an appropriations bill a measure that would have barred the federal government from using its funds to enforce rulings like the one at issue in this case. While the Senate did not include a similar provision in its parallel spending measure, and thus the matter died there, Sen. Wayne Allard (R., Colo.) introduced his own bill granting states the authority to place the Ten Commandments on state property.

If the support for Justice Moore was a troubling indication of a deep cultural schism on church-state issues that allowed some even to excuse defiance of the rule of law, observers were pleased to note the extent to which a number of officials who disagreed with the underlying ruling went to enforce that principle. Thus, Alabama attorney general Bill Pryor—whose explicit support for a Christian notion of American law, among other things, had led the ADL and other Jewish groups to object to his nomination to a federal appellate court seat—took steps to enforce the court ruling, and eight of Moore's fellow Supreme Court justices voted to remove the monument the week before that action was taken.

Finally, New York State's kosher consumer protection law, on the books since the early twentieth century, was definitively nullified in February, when the U.S. Supreme Court declined to hear an appeal from a 2002 appellate court decision finding the enactment to be an unconstitutional entanglement in religious affairs. The law—which subjected merchants purporting to sell kosher meat to fines if their establishments did not adhere to Orthodox standards of kashrut—was challenged by the owners of Commack Self-Help Kosher Meats of Long Island, after they were cited for infractions.

The closing of the New York case followed earlier court decisions forcing changes in the kosher laws of New Jersey and Maryland, leaving open the question of what type of kosher enforcement legislation would, in the end, be sustainable. Some pointed to the revised New Jersey law, which allowed vendors to designate the standard of kashrut on which they relied. Agudath Israel of America was among the Jewish organizations that argued for the constitutionality of the New York approach. After the Supreme Court declined to hear the case, its vice president for government and public affairs acknowledged that other states with laws similar to that of New York were "on thin ice." In the wake of the

Supreme Court's determination, various elected officials, including New York governor George Pataki, promised to seek remedial legislation that would once again protect kosher consumers.

"Free-Exercise" Developments

Although it was split over such church-state issues as vouchers and "charitable choice," the Jewish community was united in efforts to ensure the protection of religious rights in the workplace in the wake of unfavorable court decisions. At issue were judicial interpretations of the provision of Title VII of the Civil Rights Act of 1964 that required employers reasonably to accommodate their employees' religious practices, unless doing so would cause undue hardship. From the community's perspective, the courts had read the provision in a way that vitiated the protection Congress intended to afford against religious discrimination. In a 1977 decision, for example, the Supreme Court held that anything more than a *de minimis* (minimal) expense or difficulty for an employer was an "undue hardship."

On April 11, 2003, Sens. Rick Santorum (R., Pa.) and John Kerry (D., Mass.) reintroduced the Workplace Religious Freedom Act (WRFA), S.893, a bill intended, among other things, to clarify that a difficulty or expense must be substantial in order to be considered an "undue hardship." While the bill gathered sponsors at an impressive clip—as of year's end, it had 20 cosponsors—the initiative saw no other movement during 2003.

HOLOCAUST-RELATED MATTERS

Restitution

After many years of litigation and negotiation, resolution seemed closer than ever on restitution payments to Holocaust survivors and for Holocaust education and research. But challenges continued from some quarters, first, as to how much, if any, of the money should be directed to anything other than welfare needs, and second, whether funds slated for distribution were appropriately apportioned to geographic regions where survivors with the greatest needs were living.

The pending settlements—and controversies—mainly involved the discretionary portions (those not being used to pay for proven and doc-

umented claims) of three major restitution funds: a humanitarian fund in excess of $150 million administered by the International Commission on Holocaust Era Insurance Claims (ICHEIC), net of payments on individual insurance claims; a humanitarian fund of $500–650 million, net of payments on individual claims on Swiss bank accounts, to be made available under the auspices of the Swiss Bank Settlement Fund and administered by U.S. District Judge Edward Korman, in restitution of amounts held in unclaimed, dormant accounts; and proceeds from the sale of unclaimed one-time Jewish properties located in the former German Democratic Republic (GDR), amounting to some $100 million per year, expected to continue to be forthcoming over the next several years, administered by the Conference on Jewish Material Claims Against Germany (the Claims Conference).

Throughout the year, ICHEIC—founded in 1998 to seek redress for life insurance claims of Holocaust victims—and its chairman, former Secretary of State Lawrence Eagleburger, continued to face a variety of complaints asserting that the disbursement payments to survivors and heirs were proceeding too slowly, and that—because ICHEIC expenses, including Eagleburger's salary, were paid for by the insurance companies—ICHEIC was not pursuing strenuously enough the insurance companies that had purportedly written the policies. In a legal action commenced in September, three Los Angeles-area Holocaust survivors charged that ICHEIC had improperly delayed or denied payment of more than $1 billion on policy claims; they also sought to have ICHEIC press more strongly for Assicurazioni Generali, an Italian insurance company, to publish the names of still undivulged policy holders, and to protect the rights of claimants to seek redress in court rather than be obligated to submit their claims through ICHEIC.

At its annual meeting in October, ICHEIC defended its—and its chairman's—handling of a task that had proven to be more gargantuan than anyone had expected, and pointed to reforms that were underway to deal with the concerns that had been raised. It also noted the particular difficulty in processing claims for the many cases in which survivors had no proof that they had purchased a remembered insurance policy. For those claimants without documentation, ICHEIC representatives stressed, the ICHEIC process was the only likely avenue for them to receive any recompense at all.

On a separate issue, ICHEIC officials indicated in October that payment of the humanitarian fund—an amount separate and distinct from the funds to be paid to policyholders—would be made to the Claims

Conference for disbursal to Holocaust victims over a five-year period, as opposed to the previously contemplated ten annual installments; the change was in recognition that the intended beneficiaries were rapidly aging. Chairman Eagleburger also decided that $20 million of the humanitarian fund would go to support two educational projects—one administered by the Jewish Agency for Jewish youth in Russia and Ukraine, and the other linking college-age Jewish youth in the U.S. with Holocaust survivors in their local communities. A spokesman for ICHEIC also affirmed that the December 31, 2003, deadline for filing insurance claims would be final. The deadline had already been extended several times; the extension to the end of December was announced in September, when it was revealed that some 120,000 new names of holders of unpaid insurance policies from Eastern Europe, Italy, and Switzerland would be added to the more than 500,000 unpaid policies already posted by ICHEIC.

The search for owners and heirs of unclaimed Swiss bank accounts expanded in September. Up to then, the approximately 32,000 claims against the banks had been assessed only against some 36,000 accounts that were deemed to be "possible Jewish account holders." This assessment had resulted in the identification of owners of 1,666 accounts, with the owners and heirs of those accounts receiving a total of $127 million. Burt Neuborne, chief counsel for the plaintiffs in the negotiated settlement with the banks, announced that action would be taken to assess the claims against an expanded pool of unclaimed accounts, beginning with a test group of 2,000—and, if that yielded results, the claims would be checked against 4.1 million Swiss accounts that were opened between 1933 and 1945.

While these efforts to resolve individual claims continued, so also did an ongoing dispute as to distribution of the humanitarian funds that were part of the Swiss banks settlement. Judge Korman had earlier accepted the recommendation of Special Master Judah Gribetz that allocation of funds should take into account the fact that Holocaust survivors residing in Eastern Europe and the former Soviet Union were "double victims," having suffered under both Nazi and Communist regimes, and unlike survivors living in the West, had no alternative sources of financial or social support.

In 2003, Korman again signaled the same intention, stating that some 75 percent of the remaining discretionary funds would go to so-called "FSU" survivors. But spokesmen for U.S. survivors challenged this distribution, arguing that the judge's determination was based on an undercounting of the proportion of American Holocaust survivors who

were living in poverty. Samuel Dubbin, a Miami attorney representing the Holocaust Survivors Foundation, cited a survey conducted by the United Jewish Communities that, Dubbin claimed, demonstrated that survivors were five times as likely to be living in poverty as their non-survivor contemporaries. Judge Korman found that the foundation had no legal standing to challenge his distribution plan, but nonetheless directed, in November, that alternative plans be submitted by year's end, following which Special Master Gribetz would make a final recommendation in early 2004. Holocaust survivor groups in Israel, supported by the World Jewish Restitution Organization, also lobbied Judge Korman for a greater share of the remaining funds.

At its meeting in July, the Claims Conference affirmed without dissenting vote its long-standing decision to utilize some 20 percent of funds received for unclaimed Jewish property in the GDR for Holocaust research and education, with the remaining 80 percent allocated to social welfare projects benefiting Holocaust survivors and heirs. David Schaecter, president of the Holocaust Survivors Foundation, condemned the decision as coming at the expense of "desperate, needy, and dying survivors." Foundation board member (and Holocaust survivor) Ben Helfgott, however, defended the funding of Holocaust education as fulfilling a "legacy from the dead . not to forget."

American courts, meanwhile, continued to wrestle with the complexities of Holocaust restitution claims. In early August, a U.S. Court of Appeals sitting in New York City reversed two lower federal court opinions that had dismissed, on the grounds of sovereign immunity, claims by Holocaust survivors against the governments of Poland and Austria for property lost during World War II. The appellate court directed the lower courts to seek clarification from the U.S. State Department as to its likely position on the sovereign immunity claim, given the fact that American policy shifted in the 1950s (and was codified by Congress in 1976) so as no longer to recognize sovereign immunity with respect to the commercial acts of foreign governments. Up to the time of the appellate court's decision, the State Department had been siding with Poland and Austria in their claim that the actions were barred because they enjoyed "absolute" sovereign immunity as of the time of the challenged takings, years before the U.S. practice shifted; the court's ruling seemed to open the door to political pressure for a change of position, as well as a legal reexamination.

Holocaust survivors and their heirs did not fare so well when the U.S. Supreme Court heard an appeal in a case that challenged the constitu-

tionality of a California law requiring European insurance companies to disclose—on pain of revocation of their state insurance licenses—the owners and substantial terms of all policies written between 1920 and 1945. In a June ruling that followed a Bush administration filing in support of the insurance companies, the high court found that the California law was an unconstitutional interference with the president's authority to carry out foreign policy. In a sharp dissent, Justice Ruth Bader Ginsburg made clear her dismay that the president had sided with companies that had been complicit in the Nazi looting of Jewish families. The Supreme Court left the door open for congressional action in this area, and Rep. Henry Waxman (D., Calif.) had already introduced the Holocaust Victims Insurance Relief Act in March, a bill that had more than 50 cosponsors by the time the court rendered its decision.

Nazi War Criminals

Almost half a century after the close of World War II, the Justice Department's Office of Special Investigations (OSI) continued to track down and seek to deport Nazi war criminals who had managed to enter the U.S. by hiding the role they played during the Nazi era.

In one of the more unusual cases brought by OSI, the office commenced proceedings in early July to deport a man who had been stripped of his naturalized citizenship in 1987 for being an armed SS guard at a concentration camp. The matter had not yet proceeded to an order of deportation because the alleged war criminal, Johann Leprich, fled to Canada soon after the finding against him. When authorities learned that he had returned to his former home in Michigan from time to time, they managed to arrest him on one of those occasions.

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