

SOUTHERN BAPTIST HISTORICAL
LIBRARY AND ARCHIVES
Historical Commission, SBC
Nashville, Tennessee

A S S O C I A T E D B A P T I S T P R E S S

Phone: (904) 262-6626 Fax: (904) 262-7745 Editor: Greg Warner

April 7, 1994

IN THIS ISSUE:

- * Blackmun announces plans to leave Supreme Court
- * Interpreting religion clauses key part of high court's role
- * Federal judge bars Texas school from leading, promoting prayers
- * U.S. Religious leaders urge school-prayer cease fire
- * Attempts to redefine prayer unworkable, Thomas says
- * D.C. church sues city in order to feed hungry

Blackmun announces plans
to leave Supreme Court

By Larry Chesser

WASHINGTON (ABP) -- Justice Harry Blackmun, author of the landmark 1973 abortion-rights decision, is leaving the U.S. Supreme Court after a quarter century of service.

The court's most senior member announced April 6 his decision to leave the bench at the end of the current term. He had informed President Clinton and Chief Justice William Rehnquist of his plans months ago.

"It has been a special experience to be on the federal bench for over 34 years and on this court for 24 terms," Blackmun, who served 10 years on the 8th U.S. Circuit Court of Appeals, wrote in a memorandum to current and former colleagues.

"I am grateful for the opportunity to have worked with each of you and with nine of your predecessors," he said. "I shall miss the court, its work, and its relationships. But I leave it in good hands."

During a White House ceremony, President Clinton praised Blackmun for exercising his judicial role "with majesty and reason, with scholarship and grace."

Clinton said Blackmun, appointed to the court by President Richard Nixon in 1970, defied labels such as "liberal" and "conservative" and found the "human dimension" in the cases argued before him.

"Justice has not only been his title, it has been his guiding light," Clinton said.

For his part, the 85-year-old Blackmun said serving on the high court "hasn't been much fun on most occasions but it's a fantastic experience which few lawyers are privileged to have. ... It's not easy to step aside, but I know what the numbers are and it's time."

Blackmun, who received more than 60,000 pieces of hate mail over the

1973 Roe vs. Wade decision, said many people forget that the controversial ruling legalizing abortion was a 7-2 decision.

"They always typify it as a Blackmun opinion," he said. "But I'll say what I've said many times publicly -- I think it was right in 1973, and I think it is right today. It's a step that had to be taken as we go down the road toward the full emancipation of women."

The Supreme Court in recent years has permitted some restrictions on abortion but has refused to overturn Roe vs. Wade.

Three Baptist court watchers joined the nation's Baptist president in giving high marks to Blackmun's career on the bench, particularly his support of individual rights and religious freedom. But a fourth, Southern Baptist Christian Life Commission General Counsel Michael Whitehead, criticized Blackmun's reasoning in Roe vs. Wade and his recent decision to no longer support the death penalty.

James Dunn, executive director of the Baptist Joint Committee, said Blackmun "was faithful to the high calling afforded him in the opportunity to serve on the Supreme Court. He never lost sight of the fact that laws exist to protect people, that the court has a responsibility to honor more than the letter of the law and that the Bill of Rights is deliberately counter-majoritarian."

In 1990, Blackmun addressed an editors briefing sponsored by Dunn's religious-liberty agency.

"Mr. Justice Blackmun is a sensitive, caring friend," Dunn said. "A man of his personal stature will be missed."

Brent Walker, BJC general counsel, said Blackmun "represents a voice of human compassion on a court recently dominated by corpse-cold legalism and narrow textualism."

Blackmun, a Methodist, "obviously has taken seriously the biblical injunction to temper justice with mercy," Walker said. "He has not been blinded to the practical impact of judging on litigants."

Walker said he could not recall Blackmun ever voting to deny a legitimate free-exercise claim or to water down the First Amendment's requirement of church-state separation.

"His church-state record is unblemished," Walker said.

Blackmun understood that the Constitution is a "living document," said Stan Haste, who covered the high court as a Baptist journalist for 15 of Blackmun's terms and now heads the Alliance of Baptists.

"His was not a wooden approach to interpreting the Constitution," Haste said.

Haste lauded Blackmun's approach to church-state relations.

"Justice Blackmun understood that a healthy distance between church and state is good for both," he said. "He understood that although the phrase 'separation of church and state' does not appear in the text of the Constitution, it nevertheless was clearly the intention of the founders to put a significant space between these two basic institutions of society for the protection of both."

Taking issue with common references to Blackmun as the court's most liberal sitting member, Haste said Blackmun's position on church-state issues is "the conservative position in a dictionary sense."

Whitehead, whose agency is active in the pro-life movement, called Blackmun a judicial activist who "could invent a constitutional right to kill unborn babies on demand, while also repudiating the death penalty for

convicted murderers.

"It is regrettable that his career will be framed by such extreme views, protecting life for a hardened criminal but not the life on an innocent unborn baby."

Hastey said Blackmun has taken a "bum rap" from those accusing him of "inventing law rather than interpreting it."

Hastey said Blackmun's reasoning in Roe vs. Wade "was not only solid but has proven the test of time" because the high court, now led by a conservative chief justice, has declined to reverse that decision despite numerous chances to do so.

"What Justice Blackmun actually wrote in Roe vs. Wade has been simplified to the point of distortion by those who do not want abortion in any sense to be recognized as a legal right," Hastey said. "It's plainly wrong to say that Justice Blackmun authorized abortion on demand."

-30-

Interpreting religion clauses
key part of high court's role

WASHINGTON (ABP) -- Justice Harry Blackmun, who announced April 6 his plans to step down from the U.S. Supreme Court, believes the First Amendment's religion clauses frequently are in tension with each other.

Reconciling that tension often has been a difficult and divisive assignment for the high court during Blackmun's 24 terms on the bench.

During a 1987 address commemorating the bicentennial of the Constitution, Blackmun outlined his views of the First Amendment's religion clauses.

Those clauses bar Congress (and the states through the Fourteenth Amendment) from establishing religion and from prohibiting the free exercise of religion.

"At first glance, it all seems so clear: We shall not have a specific religion formally established by government," Blackmun said. "Indeed, we shall have the very opposite -- each of us shall be free to exercise his own religion if he cares to profess one."

"But is it really so clear? Is there not tension between the two clauses in their application?"

The free-exercise clause, Blackmun said, "was designed to guarantee freedom of conscience by prohibiting any degree of compulsion in matters of belief. It was offended by a burden on one's religion."

The establishment clause, he said, was designed to "ensure that the advancement of religion comes only from the voluntary efforts of its proponents and not from support by the state. Religious groups are to prosper or perish on the intrinsic merit and attraction of their beliefs and practices."

-30-

-- By Larry Chesser

Federal judge bars Texas school from leading, promoting prayers

By Ken Camp

DALLAS (ABP) -- A federal judge has issued a permanent injunction preventing Duncanville, Texas, school officials from promoting or participating in prayers with students at school-related events, a legal action termed "regrettable but correct" by the associate director of the Texas Baptist Christian Life Commission.

U.S. District Judge Robert Maloney on March 31 signed the injunction which also bars officials of the suburban Dallas school district from allowing Bibles to be distributed to students on school property during school hours or authorizing the performance of religious songs as theme songs of the school choir.

However, Maloney specified, "Students may voluntarily pray together, provided such prayer is not done with school participation or supervision."

He also stated that the school choir could perform religious songs "if presented objectively as part of a secular program of education."

Weston Ware, citizenship associate with the Texas Baptist Christian Life Commission, said the injunction barring school personnel from leading prayers was constitutionally appropriate.

"The First Amendment protects religious minorities from oppression by the religious majority by prohibiting state-sponsored religious exercises," he said.

However, he expressed concern about how school districts and the public at large might misapply the rulings on religious songs and Bibles on school property.

Maloney found that for about 20 years the girls' basketball coach at Duncanville's Reed Middle School had been leading students in reciting the Lord's Prayer in class, praying with team members in the locker room before games and joining the girls in prayer at center court after games.

When plaintiff "Jane Doe" stopped participating in the team prayers, she was "subjected to ridicule and pressure from fellow students and game spectators," Maloney wrote.

As a Duncanville school choir member, the teenage plaintiff also was required to sing "The Lord Bless You and Keep You," which was adopted by school personnel and students as the choir's theme song and sung at every performance.

Among the other religious practices of the Duncanville school district cited by the court were prayers recited and pamphlets containing religious songs distributed at athletic awards ceremonies; prayers at football games; and Gideons placing Bibles in the elementary school lobby so that fifth graders could pick them up after school.

On Nov. 19, 1991, the U.S. District Court had granted a preliminary injunction barring employees of the Duncanville school district from participating in student prayers at school functions.

In issuing the permanent injunction, Maloney ruled that the policies of the Duncanville school district failed to pass constitutional muster under the three-pronged test established in *Lemon vs. Kurtzman*.

Applying the *Lemon* test, he wrote that evidence showed the school district's religious practices had no legitimate secular purpose, had the

primary effect of "advancing, sponsoring, promoting, endorsing and encouraging religion" and were pervasive and fostered excessive entanglement of church and state.

According to the findings issued with the injunction, the school district maintained that its official written policy was one of religious neutrality and that its practices merely accommodated the religious beliefs of students and school personnel.

Furthermore, the district maintained that the prayers in question had "no religious purpose" and "merely solemnize the events" surrounding them.

That position, Ware said, is "contrary both to the Constitution and contrary to what Baptists believe about prayer. Better to have no prayer at all than a prayer with 'no religious purpose.'"

On the other hand, Ware said, the issues surrounding the performance of religious songs and the distribution of Bibles are less clear-cut.

"Praying is a religious exercise. Singing a religious song may not necessarily be a religious exercise," he said.

Courts have ruled, Ware noted, that the Bible is worthy of study for its historic and literary qualities, that sacred music is part of any music curriculum, and that the role of religion is integral to study of the history of civilization.

"The school's approach should be academic, not devotional," Ware said.

Schools should educate students about religions, but they should not either promote or denigrate any religion, impose any particular religious belief, or sponsor religious exercises, he said.

"I am concerned that responsible parties both in the judiciary and the public schools speak out, providing school administrators and teachers with a proper understanding of the appropriate discussion of religion in our public school systems," Ware said.

"Nothing could be further from the truth than the assumption that church-state separation somehow shuts God out of public school discourse."

-30-

U.S. Religious leaders urge school-prayer cease fire

WASHINGTON (ABP) -- More than 400 U.S. religious leaders, including some Baptists, have called for a permanent cease fire in the battle over school prayer.

In an open letter to school board presidents and superintendents on the threshold of spring graduation activities, representatives of mainline religious bodies urged widespread efforts "to prevent our public schools from becoming a battleground over religion and to promote true religious liberty."

The religious leaders oppose attempts to reinstate organized prayer in public schools.

"We write as religious leaders serving millions of Americans of faith to express our opposition to such activities, and we do so on the basis of our faith and our belief in the sanctity of prayer," the letter states.

The letter noted that communities and legislatures across the nation are adopting resolutions urging the return of organized prayer in public

schools. Ten states plus the District of Columbia have passed or are looking at school-prayer legislation. In Texas, more than half of the state's 254 counties and more than 60 cities have approved non-binding resolutions calling for school prayer.

"While such actions may have been undertaken in an attempt to strengthen religion, they will have precisely the opposite effect," the religious leaders said. "These activities not only weaken the principle of the separation of church and state that has ensured religious liberty in our country for over 200 years, they also engender conflict in our public schools and seriously erode religious freedom in America."

Separation of church and state is essential for preserving religious freedom and good for religion, the religious leaders contend in the letter.

"History teaches that religious freedom and practice have flourished when government remains neutral toward religion, as in America today," the letter states. "By contrast, when government seeks to promote religion, as in the state-sponsored churches of Europe, pews have emptied and the free exercise of religion has suffered."

"Even when the purpose is benign, government involvement in ... religious practice inevitably politicizes religion and harms religious freedom."

The religious leaders rejected the notion that prayer by students is prohibited.

"Nothing prevents a student from visiting a place of worship before or after school, or from praying silently in school, ... or from attending prayer groups on school premises before or after classes under the Equal Access Act," the letter states.

Students seeking to solemnize graduation events "may hold private, religious baccalaureate services, where like-minded students and adults can pray, sing hymns, hear sermons, and otherwise worship as they choose," the leaders said.

Leaders signing the letter included Baptist, Roman Catholic, Jewish, United Methodist, Lutheran, Presbyterian, Episcopal, United Church of Christ, Disciples of Christ and Unitarian Universalist representatives.

Baptist signers included Roger Lovett of Birmingham, Ala.; John Buchanan, James Dunn, Brent Walker, Tyrone Pitts and Stan Hasteley of Washington, D.C.; Paul Norcross of Palm Harbor, Fla.; Henry Strube of Fort Lauderdale, Fla.; Melvin E. Schoonover of Miami; John Binder and Charles Weber of Oakbrook Terrace, Ill.; Clara Thompson of Montgomery, Ill.; Dwight Jessup of Upland, Ind.; Sarah Frances Anders of Pineville, La.; Dan Ivins of Silver Spring, Md.; Lamar Wadsworth of Baltimore.

Roger Paynter of Jackson, Miss.; Lee Berg of Meridian, Miss.; Paul Duke of St. Louis; Horace Hunt of Livingston, N.J.; Edward Harper of Newark, N.J.; Carl Flemister of Carmel, N.Y.; James Melvin Washington of New York City; W.W. Finlator of Raleigh, N.C.; George Reed of Cary, N.C.; William Angell of Winston-Salem, N.C.; Dan Weiss and Aidsand Wright-Riggins of Valley Forge, Pa.; Kenneth Burnette of Lancaster, Pa.; Michael Morrill of Philadelphia; George Mason of Dallas; Charles Johnson of Lubbock, Texas; Dean Majette of Chantilly, Va.; and Glenn Hinson of Richmond, Va.

Attempts to redefine prayer
unworkable, Thomas says

WASHINGTON (ABP) -- How can prayer to one's God not be a religious act of worship? And what person of faith would want it to be?

Those touting the return of state-sponsored school prayer are confusing the issue by calling for "non-sectarian, non-proselytizing" prayers, according to one of the nation's foremost church-state experts.

Oliver Thomas, former general counsel of the Baptist Joint Committee, gave a legal overview of public school prayer at an April 5 workshop in Washington. The event, sponsored by 20 groups including the BJC, drew about 50 religious, civic and community leaders from the District of Columbia.

The event was held in response to an initiative proposed by D.C. Councilman Marion Barry that would allow prayer in public schools if it is student-led, non-sectarian and non-proselytizing. Barry attended the event.

Thomas examined those three criteria, saying that none of them make state-sponsored prayer constitutional.

Student-initiated prayer is still unconstitutional because there are some things so essential to what it means to be an American that the nation has protected them from majority vote.

"Constitutional rights are not up for a vote. That is the point of the Bill of Rights. It doesn't matter that the kids voted," Thomas added.

For example, school officials would not allow students to vote whether or not a classmate could exercise her right to free speech, he said.

The student-led criteria is insignificant because it does not really matter who offers the prayer, Thomas said. If prayer is given at a school-sponsored event, it still can be coercive. In fact, if the student giving the prayer is the captain of the football team or student council president, the prayer could be more coercive than if it is a minister, said Thomas, who himself is an ordained minister.

The non-sectarian and non-proselytizing prayer also is a farce, he said.

"Would somebody tell me what a non-sectarian prayer looks like? I thought religion was sectarian. I thought prayer was religious. It's not non-religious.

"What person of faith can be happy about that? What in the world have we won (with a non-sectarian prayer)? If you are a person of faith you ought to be offended by it."

Calling such a description an "oxymoron," Thomas said he would never accept that kind of watered-down religious expression. "I don't think it's any good for religion. I don't think it's any good for schools."

So he offered examples of constitutionally permissible prayer:

- individual student prayer;
- groups of students praying on their own in a non-disruptive manner;
- Bible clubs praying before and after school if there are other non-curriculum clubs at the school;
- church-sponsored, rather than school-sponsored, baccalaureate services.

Instead of treating prayer as a "non-religious religious thing," Thomas recommended that the religious community should sponsor baccalaureate services in which people of faith who want to attend can

pray, sing hymns and preach sermons. This event could even be held at the school as long as it is sponsored and promoted by the religious community, he added.

The issue is broader than graduation prayer, Thomas said.

"The reason we are fighting over graduation prayer ... is because people are fearful and concerned about more than a second, once-a-year prayer."

Those well-meaning persons are concerned about the school that their children attend and what kind of nation America is going to become, Thomas said.

He encouraged district leaders not to just look at graduation prayer because that examination will result in winners and losers. If they look at a whole range of issues in public education and come up with a policy addressing it, then there does not have to be a winner-take-all mentality.

-30-

-- By Pam Parry

D.C. church sues city
in order to feed hungry

WASHINGTON (ABP) -- Western Presbyterian Church in Washington, D.C., filed suit April 6 in federal court to retain the right to feed the homeless.

The congregation, located three blocks from the White House, has run a feeding program for 11 years, serving breakfast to about 150 to 200 hungry people every weekday. That ministry has been jeopardized by the District of Columbia zoning board's vote to ban the program when the congregation moves to a new location April 17.

The 139-year-old church is scheduled to move a few blocks away, and residents there have complained that the feeding program would draw undesirable people to their upscale neighborhood.

Brent Walker, general counsel of the Baptist Joint Committee, joined religious and community leaders at a press conference announcing the suit. Walker said that "under no stretch of the imagination" could the district's action be seen as valid under the Religious Freedom Restoration Act.

The law, signed by President Clinton in November, restored a high level of protection for religious practice that was abandoned by the U.S. Supreme Court in 1990.

Under RFRA the government must have a compelling state interest before it can restrict religious practice, and then it must use the least restrictive means to safeguard that interest, Walker said.

Even if the district government could demonstrate a compelling state interest, and that's a big if, Walker said, it could not pass the least-restrictive means test. To prevent a Christian church from feeding the hungry is to keep it from acting on its beliefs, Walker said, adding that such action is like asking the church to disregard half the gospel.

John Wimberly, the church's pastor, said, "What has happened to our society when a church and individual Christians cannot hand a hungry person a plate of food? Would we even be a church, Christians, if we did not?"

"Indeed, if Christians and this church did not feed the many hungry persons who live on the streets of this neighborhood, we would and should come under attack as being insensitive, unfeeling and not practicing what we preach."

Wimberly said he cannot accept two aspects of this case. First, the only church program that has been singled out by the district is one that ministers to poor people who are primarily minorities.

"The classism and racism inherent in the restrictive actions against us are shocking, astounding."

Second, Wimberly said the financially distressed district has been asking for more money to run homeless feeding programs while it is shutting one down that requires no tax dollars.

Church member Terry Hufford emphasized that the church did not want to sue and would have preferred to move to its new location without "any fanfare," but "our faith and our God will not allow us to do otherwise."

He stressed that this suit is different because the winners and losers will not be those involved in the complaint, but rather they will be the homeless.

Stephen Feldhaus, attorney for the church, said he hopes a decision will be rendered next week. The congregation wants to initiate the feeding program April 18, the day after moving into the new facility.

-30-

-- By Pam Parry

***** END *****