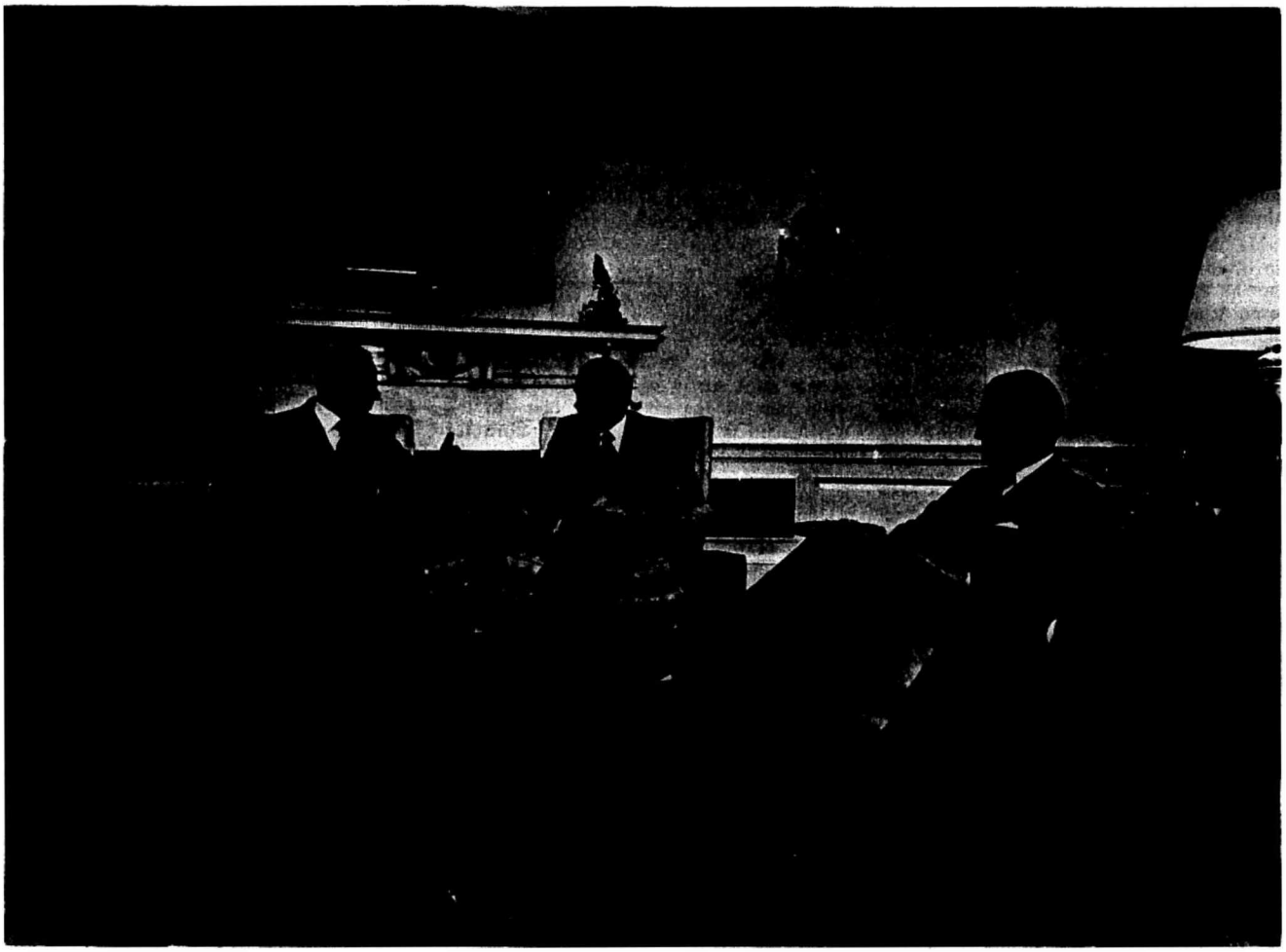
Report from the Capital

JULY
1971



WHITE HOUSE MEETING—This was the scene in President Nixon's office at the White House when he appointed Arthur S. Flemming as Chairman of the 1971 White House Conference on Aging. The President and Dr. Flemming are seated under a portrait of General George Washington painted by American Artist Charles Willson Peale in 1776. At the left is John B. Martin, U.S. Commissioner on Aging, Special Assistant to the President for the Aging and Director of the White House Conference. Seated right are Elliot L. Richardson, Secretary of Health, Education and Welfare and Leonard Garment, Special Consultant to the President.

—Official White House Photograph

Religious 'Lobbying' and Tax Exemption

Church "lobbying" and efforts of religious groups to influence public life and public policy is increasingly being discussed both privately and among government circles. Closely related to such activities is tax exemption for religious and charitable organizations.

One of the finest discussions of "Lobbying and Tax Exemption" as related to churches is found in the June 15, 1971 issue of *Focus*, published twice monthly by the Office of Public Affairs, Lutheran Council in the U. S. A., Robert E. Van Deusen, editor. The editorial office address is 2633 16th St., N.W., Washington, D.C., 20009.

The *Focus* analysis points out some recent crackdowns by the Internal Revenue Service and asks how this is related to churches. Until recently, the Lutheran article says, the IRS has not been overly concerned about the regulations on lobbying and tax exemption for churches. It gives three reasons:

1. "Many church members have felt that involvement in the legislative process is not an appropriate activity for the church, even when it is on behalf of moral and human values."

1. "When the church has ventured into the legislative arena, it has usually not been too effective (an outstanding exception being the enactment of prohibition) until the civil rights struggle of the past two decades."

3. "The Internal Revenue has been hesitant to enforce the code strictly in respect to church groups, because of the thorny potential of the church-state issue."

"Now the situation seems to be changing," *Focus* observes. The churches, churchmen and church-related groups are becoming more active in their roles as molders of public opinion and in affecting public policy. Consequently, churchmen, Congressmen and the IRS are beginning to raise questions. Some want to restrict the churches severely, while others w ant to loosen the regulations to enable the churches to participate more freely in the formulation of public policy.

Van Deusen puts his finger on the problem of the churches in the matter of public influence. "Real concern," he says, "is emerging among church leaders, not over whether church bodies will have their tax exemption withdrawn but whether tax exemption should carry with it a prohibition against attempting to influence legislation."

"With all sorts of self-seeking groups pressuring Congress for their special interests," the Lutheran spokesman asks, "why should not the churches and other groups dedicated to human welfare also have free access to members of Congress to present their convictions?"

He then warns, "To consider tax exemption as 'hush money' to force public-interest groups into comparative silence on important social issues is to introduce a dangerous principle into the exercise of governmental authority."

Van Deusen concludes, "Whether or not a church body decides that 'lobbying' is an appropriate activity for its staff to engage in, the right of the church to speak out on issues that aect the lives and welfare of people must surely be defended. This is a valid part of the church's witness to the world, and is not negotiable in return for the privilege of tax exemption."

Although not always strictly enforced, the Internal Revenue Code on tax exemption defines the terms under which churches and other nonprofit organizations become eligible for tax exemption. Section 501(c)(3) of the Internal Revenue Code spells out limitations (in part) on tax exemptions for corporations as follows:

"No part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office."

The issue may be coming into the open in the Congress with the introduction of identical bills in the Senate (S. 1408) and in the House of Representatives (H.R. 8920). The major thrust of these bills is seen in the following language that relates to tax emept organizations that are restricted by Section 501(c)(3) and other places in the Internal Revenue Code:

"(1) In General— . . . none of the following activities shall be deemed 'carrying on propaganda, or otherwise attempting, to influence legislation':

"(A) appearances before, submission of statements to, or sending communications to, the committees, or individual Members, of Congress or any legislative body of a State, a possession of the United States, or of any legislative body of a State, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the organization.

"(2) Matters of Direct Interest.—For purposes of paragraph (1), matters of direct interest to the organization are those directly affecting any purpose for which it is organized and operated.

"(3) Limitation.—Paragraph (1) shall not apply to any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums."

It will be interesting to observe the response of the churches, the Congress and the Internal Revenue Service to the above proposed legislative eorts to loosen the restrictions on tax exempt organizations in the formulation of public policy.

THE CASE FOR VOLUNTARY PRAYER is a new pamphlet just released by the Baptist Joint Committee. It is a brief summary of Baptist beliefs which deal with voluntary prayer and the nature of prayer. Single copies are available free. Quantity prices will be supplied on request. The pamphlet is timely in light of the continuing debate over Supreme Court decisions against government sponsored prayer and religious exercises in public schools.

REPORT FROM THE CAPITAL—a bulletin published 10 months during the year by the Baptist Joint Committee on Public Affairs, 200 Maryland Ave., N. E., Washington, D. C. 20002. The purpose of this bulletin is to report findings on the interrelations between churches and governments in the United States. It affords church leaders a chance to understand developments, policies and trends affecting public policies and it affords public officials a chance to understand church structures, dynamics and positions. It is dedicated to religious liberty, to free and effective democracy and to equitable rights and opportunities for all.

The views of writers of material for *Report From The Capital* are not necessarily those of the Baptist Joint Committee on Public Affairs or its staff. The bulletin also provides for the sharing of views between leaders of the cooperating conventions and between leaders of various religions and traditions.

The Baptist Joint Committee on Public Affairs is a denominational agency maintained by the American Baptist Convention, Baptist Federation of Canada, Baptist General Conference, National Baptist Convention, National Baptist Convention, USA, Inc., North American Baptist General Conference, Progressive National Baptist Convention, Inc., Seventh Day Baptist General Conference, and the Southern Baptist Convention.

Executive Staff of the Committee: C. Emanuel Carlson, executive director; John W. Baker, associate executive director and director of research; W. Barry Garrett, director of information services; and James M. Sapp, director of correlation services and editor of *Report From The Capital*.

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washington observations

news
views
trends

June 28, 1971

THE NATION'S CAPITAL is agog over publication of Defense Department papers on the study of U.S. approach and involvement in the Vietnam War by major newspapers in the country. The President has released the controversial papers to the Congress. The debate is expected to continue for some time to come.

SUPREME COURT DECISIONS on three key cases in the use of public funds for private schools could be handed down today. If not, with the Court's customary adjournment time in the offing, the Justices may decide to re-argue the cases during the next term, which begins in October.

PLANS FOR THE 1971 White House Conference on Aging are moving ahead rapidly. Dr. Arthur Flemming has been named by the President as Conference Chairman and Webster B. Todd, Jr., has been appointed Executive Director to aid in administration of the conference.

FORTY-TWO STATE-LEVEL White House conferences on aging were held in May, one in June and one more will be held in July. The 20 task forces that represent national organizations interested in aging completed studies in May.

EXTENSION OF THE MILITARY DRAFT for two years received Senate approval after seven weeks of debate. The measure now goes to the Comference Committee from both the House and the Senate to iron out minor differences in the bills passed by the two houses of Congress. The current draft law expires June 30, 1971, but failure to enact the extension does not mean that the President cannot continue to draft men into the armed services if they are needed.

THE SENATE APPROVED a change in the law concerning conscientious objectors to war. Under a recent Supreme Court decision a conscientious objector who does not discover his faith as a conscientious objector until time for his draft must be inducted and then have his case considered.

THE SENATE AMENDMENT on conscientious objectors now reads: "Nothing contained in this title shall be construed to require any person to be subject to induction or to combatant training and service in the Armed Forces of the United States who, by reason of religious training, and belief, is conscientiously opposed to participation in war in any form."

AS REPORTED EARLIER the House and Senate passed different versions of exemption or deferment from the military draft for divinity students. The House version eliminated their exemption. The Senate deferred their draft until age 35 provided they continue the pursuit of their ministerial calling. The Conference Committee must iron out the differences relating to exemption or deferment of divinity students.

Prayers and Constitutional Principles

by Congressman Fred Schwengel

THE RECENT HEADLINES featuring and depicting the tragic events that have plagued Northern Ireland are unfortunate and will never happen here because of our basic law of the separation of church and state. Among other things, these latest incidents of age-old religious antagonisms offer all too vivid support for George Washington University law professor Robert G. Dixon's view that "the story of the West since the breakup of the Roman Empire has been, to a surprising degree, a story of Church-State relations, alternating between Union and Separation, with neither temporary victor inclined to give much quarter. . . ."

One of the relatively few bright spots, if not the brightest spot, in an otherwise bloodstained chapter in human history has been the happy experience of the people of the United States in the area of Church-State relations. Despite some unfortunate early incidents, especially those during the Colonial period, we as a people have enjoyed the dream of countless past generations; namely, the realization of the blessings of liberty within the context of substantial religious diversity.

The First Amendment

A lion's share of the credit for this tranquility must be given to the framers of the Bill of Rights. Their proximity to and awareness of Europe's ruinous religious policies instilled in them the belief that the subjugation of religion to the state or the state to religion has to be avoided at all costs. Accordingly, they enshrined this belief in the very first two clauses of the First Amendment to the United States Constitution. These state that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

Many years later, the principle of separation of Church and State embodied in the amendment and limited to the national government was judicially held to apply with equal vigor to the states by virtue of the guarantee of liberty written into the Fourteenth Amendment.

That the members of the First Congress who drafted and proposed the Bill of Rights, notably James Madison, "wrought better than they knew" finds support in many sources. Not the least of these is the meager number of cases involving the religious liberty safeguards that have reached the courts until recent times.

The fairly high degree of religious toleration, or conversely, the noteworthy absence of religious tensions, particularly at the national level, became a striking feature of the American landscape at an early date. Thus, not surprisingly, the uncannily preceptive and always quotable De Tocqueville was moved to write as follows:

"As a member of the Roman Catholic Church, I was more particularly brought into contact with several of its priests, with whom I became intimately acquainted. To each of these men I expressed my astonishment and I explained my doubts; I found that they differed upon matters of detail alone; and that they mainly attributed the peaceful dominion of religion in their country to the separation of Church and State. I do not hesitate to affirm that during my stay in America I did not meet with a single individual, of the clergy or of the laity, who was not of the same opinion upon this point."

Government Sponsored Religion

The relative calm that was an American tradition for a century and a half was broken in a most unexpected way in 1962. On the last day of the 1961 term, the Supreme Court announced its ruling invalidating what is now known as the New York Regent's Prayer: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our Country."

This prayer is a patriotism and thanksgiving. It was generally intended in the fashion of morning devotionals to accomplish a variety of purposes, including settling the children down. It was found by a majority of the Justices to be a religious exercise, and, therefore, an establishment of religion condemned by the first clause of Amendment One.

A year late, almost to the day, the Supreme Court handed down the Prayer-Bible Reading decision banning, also on establishment of religion grounds, officially sponsored Bible reading and prayers in state controlled and supported schools.

Public reaction to the High Court's decision was swift and overwhelmingly hostile. Indeed, no issue, certainly no issue since the 1954 School Desegregation Cases, has prompted the reaction and the consequent outpouring of constituent mail to the Congress. As might be expected, the peoples' representatives reflecting this concern, inundated the Congressional hopper with proposed constitutional amendments.

Unfortunately the controversy brought on by the Prayer Cases shows no signs of dying out.

Public Anxiety

The school prayer controversy's remarkable tenacity is the result of various factors. To begin with, "we are," as the Supreme Court has frequently observed, "a religious people whose institutions presuppose a Su-

(Continued on next page)

CONGRESSMAN FRED SCHWENGEL, Republican, of Davenport, Iowa, is the hard-working Representative of the First District. He is president of the U.S. Capitol Historical Society. He is the only North American Baptist (NABGC) in the 92nd Congress. Committee assignments include the House Administration Committee and the Public Works Committee.

Supreme Court Upholds Restrictions on Obscenity

In a joint decision, the U.S. Supreme Court upheld two major federal laws against obscenity One action held that Congress may constitutionally prevent the mails from being used for distributing pornography. The other upheld the right of customs agents to seize obscene materials from U.S. citizens at the port of entry.

Both decisions reverse the action of lower courts which had declared the laws unconstitutional.

In a 7 to 2 decision the Court held in United States v. Reidel that the right to read obscene materials in the privacy of one's home does not carry with it the right of someone else to sell it.

Justice Byron White delivered the opinion of the Court. Justice Hugo L. Black and William O. Douglas dissented.

Reidel, the appellee, had advertised in the newspaper a booklet, "The True Facts About Imported Pornography," for sale to persons over 21. He was indicted for mailing copies of the booklet in violation of a law which prohibits the knowing use of the mails for delivery of obscene matter.

In his complaint, Reidel claimed that the First Amendment gave him the right to do business in obscenity and to use the mails in the process.

Citing two earlier opinions of the Court, Roth v. United States in 1957 and Stanley v. Georgia in 1969 the Court affirmed the conviction that "obscenity is not within the area of constitutionally protected speech or press."

The Court asserted again that the State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. "Our whole Constitutional heritage rebels at the thought of giving government the power to control men's minds," the Court quoted from *Stanley*.

The focus of this language, the new opinion declared, "was on freedom of mind and thought and on the privacy of one's home." The right to have and view materials in private "are independently saved by the Constitution," the Court said.

But, the Court continued, the right to have "does not require that we fashion or recognize a constitutional right in people . . . to distribute and sell obscene material."

Commenting on its decision in a "postscript," the Court said that "there is developing sentiment" that adults should have complete freedom to produce, deal in, possess and consume whatever communicative materials may appeal to them and that the law's involvement with obscenity should be limited to those situations where children are involved.

"This may prove to be the desirable and eventual legislative course," the Court said. "But if it is, the task of restructuring the obscenity laws lies with those who pass, repeal, and amend statutes and ordinances," namely, the Congress.

In the other case, United States v. Thirty-Seven Photographs the Court ruled 6 to 3 that customs agents were acting constitutionally when they removed from the luggage of a returning foreign traveler obscene material intended "solely for private use."

Citing the *Stanley* case also, the Court said that "the private user . . . may not be prosecuted for possession of obscenity in his home (but) that does not mean that he is entitled to import it from abroad free from the power of Congress to exclude noxious articles from commerce.

"A port of entry is not a traveler's home," the Court said, reversing the opinion of a lower court.

PRAYERS—continued

preme Being." Judicial recognition of the Christian origins of the vast majority of our people as well as judicial acknowledgement of Christianity as part of our common law is amply supported.

Doubtless contributing to the general discomfort, if not outright annoyance over the decisions, is the fact that they come during a time marked by the apparent erosion of traditional moral and ethical values and an asserted corresponding rise in disrespect for law and order. Said *Time* Magazine on June 28, 1963: "Many religious Americans, while accepting the Court's decision as law, regard it as a loss to religion, to morality and to the children."

Professor of Law Charles E. Rice voiced this concern more eloquently when he said: "In recent decades the schools of America have retreated from the unapologetic inculcation of love of God and country. Perhaps coincidently, the educational philosophy of permissiveness gained supremacy during the same period. Today we are confronted with juvenile disciplinary problems of unprecedented magnitude. It is fair to say that the restoration and advancement of character will be furthered by teaching our children that there is indeed a 'law of Nature and of Nature's God,' which enjoins upon them a rejection of vagrant self-indulgence in favor of an ordered pursuit of a higher good."

Examined realistically, even stalwart supporters of the High Court are forced to acknowledge that the Justices themselves were partly responsible for the public reaction that followed the Regents' Prayer Decision. For instance, I was disappointed with the majority opinion as written.

The members of the Court should have more adequately anticipated the consequences and made comment on what the decision would not do. It is with regret that I noted former Chief Justice Warren's lack of comment. He, who frequently lent the prestige of his leadership position in many of the Court's controversial decisions, joined the majority opinion unfortunately without any exposition of his own personal views.

Conversation With Warren

I have, since his retirement from the Court, visited with former Chief Justice Warren about this decision and I got a feeling of confidence from these visits. He is not an irreligious man. He does recognize the importance of religion in our society. He is not for taking the Bible and Bible reading on the *proper basis* out of schools. In fact, he defends both having the Bible and all versions of the Bible in the public school libraries and indeed all public libraries, and it is his fond hope that they will be used by teachers and students alike.

Warren recognizes, as all of us must, that what we have in freedom rests upon a moral code. This moral code, as we understand it in whatever faith, bears on the conscience of each individual of a group, of a community, and of a nation. In various ways, we have heard it said that the power of the conscience that tells us not to do something because it is morally wrong or to do something because it is morally right is far more powerful than any laws that can be passed at any level of government, any constitution that can be adopted, and/or any Army that any nation can support and direct.

It was Lincoln who, more than any man in public life, rested his faith on what was morally right. He stated it so well in his Cooper Union Address when he said, "Let us have faith that right makes might and in that faith let us, to the end, dare to do our duty as we understand it."

Conclusion

As we travel down the road of life in America, let us *not* believe that the Supreme Court or the Bible reading decisions are anti-religious. Let us understand what this is—a reassertion of the principle of separation of *church* and *state* and will serve to strengthen, rather than weaken, religion and morality if church leaders will accept their areas of responsibility.

Thankfully we can still read the Bible wherever we want to read it, including in the schools. We can still pray wherever we want to pray as individuals in the schools or anywhere else. We can still talk to our friends about our faith, about personal religion, about the importance, the beauty, and the influence of religion.

President's Panel Asks For More Aid To Private Schools

The President's Panel on Nonpublic Education, a unit of the Commission on School Finance, has made its first interim report to President Nixon recommending increased federal aid to private and parochial schools.

The panel, chaired by Clarence C. Walton, president of Catholic Univearsity here, said "it is convinced that some measure of public revenue support for nonpublic pupils is urgently needed" to supplement private funds for these schools.

The panel made six recommendations to President Nixon who had asked the group to study the problems facing private and parochial schools. They are the kinds of recommendations, the panel said, which "will serve to arrest the decline of nonpublic schools." All the interim recommendations fall within existing legislation or program proposals presently under review by the Administration.

Among other things, the panel recommended that present laws and regulations authorizing federal aid for nonpublic pupils "be vigorously enforced by federal agencies." It asked also that nonpublic schools receive a part of the proposed $1.5 billion emergency education funds planned to stabilize racial integration.

Administration proposals for consolidating existing aid to education programs should include guarantees that all currently eligible private school pupils will continue to participate, the panel urged.

Further, the study group asked that a division be established in the Office of Education to deal directly with nonpublic schools.

The recommendations from the four-member panel on Nonpublic Education were presented to President Nixon by Neil McElroy, Chairman of the President's Commission on School Finance. McElroy said the full commission, made up of 16 members, is in "general agreement" with the panel's recommendations.

In its 11-page interim report to the President, the panel identified a number of probable consequences to the "interlocking set of problems" faced by nonpublic schools. Among these, the panel noted the following:

- "Parental choice in their children's education will erode as nonpublic schools vanish in large numbers.
- "Educational diversity will be submerged into educational uniformity which can breed a bland conformity in curricula, teaching methods, teacher incentives, and the like.
- "Creative competition between public and nonpublic schools will decline, rather than being fostered.
- "Moral and spiritual values will receive less attention.
- "The urban disadvantaged will lose the services of many dedicated teachers whose commitment to them remains firm within present institutional arrangements but who may be driven from their posts as the base erodes.
- "Ethnic groups in urban areas will be deprived of schools which have served the community as stabilizing agents and enculturating institutions.
- "Taxes will rise to defray costs for capital investment and for instruction. What is crucial here is taxpayer reaction among those who feel deprived of choice."

The Commission noted the various programs of federal and state aid to private schools that are being tested in courts at the state and federal level and said it is "extremely conscious of two basic and inter-related principles in this area:

"They are 1) that all children in the United States share equitably in the national resources available for education, and 2) that no public program be undertaken that will violate the constitutional prohibition against any governmental establishment of religion, or the guarantee of free exercise of religion."

CONVENTIONS NAME OFFICERS FOR 1971-1972

American Baptist Convention Leaders

Rohlfs

Clark

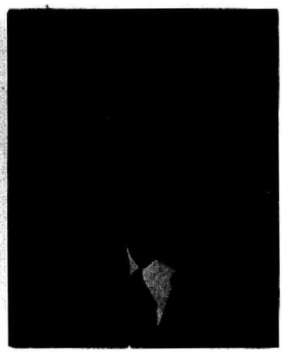
Ragsdale

MINNEAPOLIS IN MAY—American Baptists, meeting in Minneapolis in May in their 64th Annual Meeting named a woman president, Mrs. Marcus Rohlfs of Seattle, Washington and Woodrow Clark, pastor of the Fifth Avenue Baptist Church, Huntington, West Virginia as first vice-president and Warner Ragsdale, Jr., Washington, D.C. newspaperman as second vice-president.

Southern Baptist Convention Leaders

Bates

Landes



Hultgren

ST. LOUIS IN JUNE—Southern Baptists, assembled in St. Louis in June for their 114th Annual Meeting reelected Carl E. Bates, pastor of the First Baptist Church, Charlotte, N.C., president. They named two other pastors as vice-presidents: James H. Landes, pastor of First Baptist Church, Richardson, Texas, first vice-president and Warren Hultgren, pastor of First Baptist Church, Tulsa, Oklahoma, second, vice-president.

Compulsory Religion Argued Before U.S. Court of Appeals

In a case before the U. S. Court of Appeals here an Assistant U. S. Attorney argued that compulsory attendance at church or chapel services for men in the nation's military academies has "no entanglements whatsoever" with religion.

Continuing its defense in a higher court of requiring regular attendance at worship services as a part of the "officer's training package," the Government's legal spokesman said that the Department of Defense had found "no other way" to accomplish this particular part of an officer's training.

Robert J. Higgins, Assistant U. S. Attorney, presented the Pentagon's case in a one-hour hearing before a three-judge Court of Appeals.

The case, Anderson v. Laird, was brought before the U. S. Court of Appeals here by the American Civil Liberties Union (ACLU). In it six midshipmen at the U. S. Naval Academy and one West Point cadet maintained that the military regulation is in conflict with First Amendment guarantees of freedom of religion.

In a three-day hearing last spring top Pentagon officials testified before the U. S. District Court here that required attendance at worship services helped future officers to understand "the impact of religion on various individuals."

In August of last year U. S. District Court Judge Howard F. Corcoran upheld the Pentagon's practice and agreed that the purpose of compulsory chapel for future military officers "is purely secular" and that "its primary effects is purely secular."

Arguing against the Government's position, Warren K. Kaplan accused the Pentagon of developing a theory "riddled with logical flaws." Kaplan represented ACLU in its appeal to the higher court.

Kaplan described as a "contrivance" the Pentagon's testimony that the "sole purpose of compulsory attendance was to permit future officers to observe how other men worship . . . so that in future crises they would be able to understand religious needs."

Reading from catalogues and manuals governing the military schools, Kaplan cited a number of statements where, he said, the "real purpose . . . is to inculcate future officers with religious faith because of the Government's belief that (to do so) they will develop better officers."

Even if the Pentagon's practice is for secular purposes, Kaplan contended, "it would still be unconstitutional because it would inhibit religion in general or enable religion."

The ACLU lawyer maintained that the Pentagon's purpose could best be served by some nonreligious means, such as a course in comparative religion, ethics classes or occasional representaative visits to religious services.

When the Government's spokesman began his presentation to the court, he was asked if the Pentagon rested its case solely on that stated earlier as a secular purpose to train better officers by helping them to understand how other men worship.

"This is the most important one," replied Assistant U. S. Attorney Higgins, "but we regard the effect test as important also."

Judge Harold Leventhal, one of the three judges hearing the case, wondered why, if this was the Pentagon's "energizing purpose" in requiring compulsory attendance, it would not be better for the men to attend various churches each Sunday and to go to churches other than those of the men's particular religious commitment.

"This prohibition against switching churches is inconsistent," Judge Leventhal observed. Continuing his questioning, Leventhal asked how this regulation could be passed and maintained in view of the military's stated primary purpose.

Higgins responded that the military took this position because of "parents' concern . . . and so the academies would know where the men are on Sunday morning."

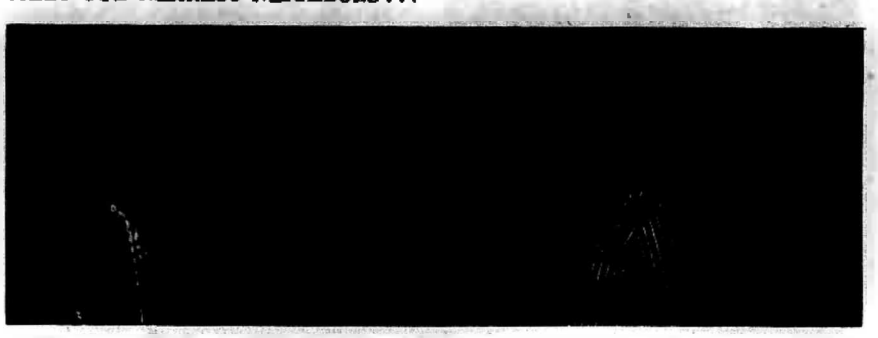
Higgins contended further that the military's requirement of compulsory religion at the academies rested on the "undisputed facts" that "this is a religious country . . . that the military acts reasonably when it says inductees can expect religious facilities . . . and that in times of crises military leaders must be capable of responding to the religious needs of military men under stress."

Leventhal pressed the question to Higgins whether "it is rational to expect regular attendance." He observed that occasional attendance would accomplish this facet of the officer's training.

The Assistant U. S. Attorney admitted to the court that to require attendance at worship services could be "counter productive" if the future officers, as some cadets testified last year, are turned against religion. Even in the case of the undergraduate being "neutral" toward religion, Higgins said, military leaders still say the effect of the required attendance regulation is "good."

In addition to Leventhal, the other two judges hearing the case were David Bazelon, Chief of the U. S. Court of Appeals here, and George E. MacKinnon.

MEET OUR NEAREST NEIGHBORS . . .



THE WASHINGTON OFFICE of the Representative of Guam, U.S. Territory, is located on the same floor of the office building in Washington which houses the Baptist Joint Committee on Public Affairs. Staff members who work with A. B. Won Pat, center, Guam's Washington Representative, are Mrs. Ann McNeill, Secretary, left; Roger Stillwell, legislative Assistant, Juanita Charfauros, Administrative Assistant and Mrs. James M. Sapp, Secretary-Receptionist.

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BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

Capital Punishment Process Upheld By Supreme Court

The Supreme Court upheld here in two combined cases the procedures used by juries to impose capital punishment in the 38 states which presently allow the death penalty.

In so doing, the Court said: "In light of history, experience, and the present limitations of human knowledge, we find it quite impossible to say that committing to the untrammelled discretion of the jury the power to pronounce life or death in capital cases is offensive to anything in the Constitution."

Justice John Marshall Harlan delivered the 42-page opinion, settled by a 6-to-3 vote of the Court. Justices William Joseph Brennan, Jr., William O. Douglas and Thurgood Marshall dissented.

Still not settled by the Court is the question whether the Eighth Amendment with its ban on "cruel and unusual punishment" forbids the death penalty under any circumstances. The Court has not indicated when, or if, it will rule on this question. Several cases asking for a ruling on this are now on appeal before the Supreme Court.

The main question before the Court in McGautha v. California and Crampton v. Ohio was to decide "whether the Federal Constitution proscribes the present procedures" for the sentencing done by juries in capital cases.

Both McGautha and Crampton, the two claimants, said that "absence of standards to guide the jury's discretion on the punishment issue is constitutionally intolerable." Both petitioners were sentenced to death for first-degree murders.

In upholding the right of juries to impose the death penalty the Court said that the states "are entitled to assume that jurors confronted with the truly awesome responsibility of decreeing death for a fellow human will act with due regard for the consequences of their decision and will consider a variety of factors. . . ."

For a court to attempt to catalog the appropriate factors in this elusive area, the opinion continued, "could inhibit rather than expand the scope of consideration, for no list of circumstances would ever be really complete. The infinite variety of cases and facets to each case would make general standards either meaningless 'boiler-plate' or a statement of the obvious that no jury would need."

Justice Brennan in a 64-page dissent said that the Court, in these two decisions, was faced with "nothing more than stark legislative abdication.

"Not once in the history of this Court, until today, have we sustained against a due process challenge such an unguided, unbridled, unreviewable exercise of naked power." Almost a century ago, he said, the Court found an almost identical California procedure constitutionally inadequate to license a laundry.

"Today we hold it adequate to license a life," Brennan said, declaring that he would reverse the death sentences for both claimants.

Brennan continued that the Court's opinion, at its core, "rests upon nothing more solid than its inability to imagine any regime of capital sentencing other than that which presently exists."

According to the Committee Against Legalized Murder, a New York based organization, there are 648 prisoners, including seven women, presently on death row. There are 99 in California, 78 in Florida, 43 in Texas and Louisiana and 42 in Ohio.

President Names Flemming

President Nixon has named Dr. Arthur S. Flemming to be the full-time Chairman of the White House Conference on Aging that meets in Washington the week of November 28.

Dr. Flemming, who served as Secretary of Health, Education and Welfare during the Eisenhower administration, concluded his presidency of Macalester College in St. Paul, Minnesota at the end of May. He will work closely with U.S. Commissioner on Aging John B. Martin who continues as director of all Conference activities preliminary to and following the November Conference.

Dr. Flemming has a rich background in government and private life. He is a former member of the Civil Service Commission, a past President of the Ohio Wesleyan University and the University of Oregon and, among other distinctions, has been President of the National Council of Churches and the American Council on Education.