



BAPTIST PRESS
 News Service of the Southern Baptist Convention

NATIONAL OFFICE
 460 James Robertson Parkway
 Nashville, Tennessee 37219
 Telephone (615) 244-2355
 W. C. Fields, Director
 Jim Newton, Assistant Director

BUREAUS

ATLANTA Walker L. Knight, Chief, 1350 Spring St., N.W., Atlanta, Ga. 30309, Telephone (404) 873-4041
DALLAS Orville Scott, Chief, 103 Baptist Building, Dallas, Texas 75201, Telephone (214) 741-1996
NASHVILLE (Baptist Sunday School Board) Lynn M. Davis, Jr., Chief, 127 Ninth Ave., N., Nashville, Tenn. 37203, Telephone (615) 254-5461
RICHMOND Jesse G. Fletcher, Chief, 3806 Monument Ave., Richmond, Va. 23230, Telephone (703) 353-0151
WASHINGTON W. Barry Garrett, Chief, 200 Maryland Ave., N.E., Washington, D.C. 20002, Telephone (202) 544-4226

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News Analysis

Supreme Court Split Votes
 May Show Trends of Rights

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HISTORICAL COMMISSION, SBC

By John W. Baker
 Associate Director, Baptist Joint Committee on Public Affairs

WASHINGTON (BP)-- When the U. S. Supreme Court ended its 1972 session here, it handed down a number of significant decisions, most of them on a split vote of five to four.

In terms of future decisions by the court, the way the justices were divided on their opinions may be as significant in some cases as the decisions themselves.

The inability of the justices to agree on many of the cases produced late decisions, numerous concurring and dissenting opinions, and a divisive decision to rehear next fall the arguments on the emotion-laden case which seeks to have state abortion laws declared unconstitutional.

To understand the decisions, Baptists must also understand the changes in the makeup of the court.

When he took office, President Nixon was critical of the judicial activism (so-called "loose construction" given to the Constitution) of the Warren Court. During his 1968 campaign, Nixon pledged that as vacancies occurred on the court, he would seek to appoint men who would exercise judicial restraint and who would be "strict constructionists" of the constitution.

Due to resignations and retirements from the court, President Nixon has been able to appoint four new members. With their appointment, the "Nixon Court" gained some of the "balance" he had sought, and moved sharply away from judicial activism.

Chief Justice Burger, and Justices Blackmun, Powell and Rehnquist, all Nixon appointees, are least likely to interpret the Constitution broadly and have become known as the "conservative bloc" in the court.

Justices Douglas, Brennan and Marshall, who are holdovers from the pre-Nixon Court, form a bloc which has tended to expand the coverage of the Bill of Rights. They generally are considered "liberal."

With a nine-member court, Justices Stewart and White, who are not clearly aligned with either of the other blocs, become the "swing" members. If one of them votes with the conservatives, he makes a simple majority. If both of them vote with the liberals, they have a bare majority.

The cohesiveness of these blocs is demonstrated by the fact that in 67 cases decided by the court, with all four Nixon appointees participating, the bloc voted together 54 times.

The liberal bloc was similarly cohesive. The three justices voted together on 111 out of 151 cases decided during the term.

Since January, Justice White, appointed by President John F. Kennedy, has tended to vote with the conservatives more often than not; and Justice Stewart, appointed by Dwight D. Eisenhower, has often voted with the liberals.

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In the final few weeks of the last court term, these "swing" justices helped to account for eighteen decisions on a five to four vote.

A number of these decisions and the pathway that they indicate the court may take in the future are important to Baptists regardless of an individual's position on the separate issues raised by the cases. Justice White voted with the conservative bloc to produce the following results:

--The powers of the police to stop and search people they consider suspects were broadened.

--Private social clubs were allowed to continue to refuse membership to blacks even though the clubs operated with state licenses.

--States were allowed constitutionally to convict an accused if the state constitution and laws allow conviction by less than a unanimous vote of a jury.

--The immunity of a Congressman and his aides in refusing to testify before a grand jury was declared to exist only in the narrow limits of actions in the process of legislation.

--The First Amendment, freedom of the press, permitting reporters to protect their news sources was limited.

--Civilians could get a court order to stop military surveillance on them only if they can show that the surveillance has actually harmed them in some way.

From these and other decisions, some conclusions may be drawn about the court and the direction it is taking.

The Warren Court was concerned about real or potential abuses of the rights of people by either the national government or the states. Thus they were active in expanding the meaning of the Bill of Rights to insure that rights of people, even the unpopular groups, would be protected from abuses of power.

The Burger Court has given indications that it generally trusts authorities to use their powers wisely and well. While the court has not specifically reversed any of the major decisions of the Warren years, it has altered some of them and expanded only one.

Though the present court has exhibited less judicial activism this year, the period since Justices Powell and Rehnquist joined the court has seen some signs of activism.

Justices White and Stewart joined the liberals in a five to four decision which declared that in most instances the death penalty is unconstitutional.

The court also limited wiretapping and expanded the right of a dependent to a lawyer in any case which could lead to a jail sentence. In addition, most vagrancy statutes were declared unconstitutionally vague, and parolees were guaranteed a fair hearing before they could be returned to jail for parole violations.

However, the general course of the Nixon appointees have set for the court seems to be one which looks at the letter of the Constitution and ignores the spirit of the law as it is applied to modern times.

A strict interpretation of the religion clauses of the First Amendment lead to the interpretation that Amish children need not go to school beyond the eighth grade because it interferes with their religious liberty. This may not be as great a victory as some claimed it to be. This decision and the reasoning involved could be used to justify aid to religious education.

We must wait until the newly-oriented court has ruled on several religion cases, but some constitutional scholars are beginning to wonder if the precedents relating to separation of church and state will escape unscathed.

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House Approves New Effort For Potential Delinquents

WASHINGTON (BP)--Church-related schools and religious groups may receive federal funds to provide a number of youth services aimed at preventing juvenile delinquency, if proposed legislation continues its journey through Congress.

Under terms of a bill passed by the House of Representatives by a 337 to 12 vote, and supported by the administration, national efforts in the realm of juvenile delinquency will be focused on community-based programs that reach "potential delinquents" before they get into trouble with the law.

The measure, now before the Senate, extends the Juvenile Delinquency Act of 1968 which majors on rehabilitating delinquent youth.

The new legislation asks that \$75 million be used to "redirect" juvenile delinquency programs to the task of prevention at the local level. Funds will be concentrated in areas which have the highest rates of youth crime, youth unemployment and school dropouts.

The main emphasis of the new legislation centers around the local schools, both public and private, through "coordinated youth services," according to the bill.

Any community-based organization wishing to be involved in the prevention program must clear its application with the local education agency, whether public or private, and must coordinate its efforts with those made by the schools.

The purpose of the legislation, according to Rep. Carl Perkins (D., Ky.), chairman of the House Education and Labor Committee, is to insure that programs will be centered in the schools or operated in close cooperation with them.

It is in the schools, Perkins explained, where "potentially delinquent" children can be identified and helped.

Among the youth services that local groups can provide with federal help are the following: individual, group and family counseling, diagnostic services, remedial education, tutoring, alternate schools (institutions which provide education to youths outside the regular or traditional school system), vocational testing and training for job development and placement.

Community agencies and institutions may get help also to provide emergency shelters, halfway houses, health services, drug abuse programs, social, cultural and recreational activities, foster care and other service-type ministries. Funds may also be obtained for programs training workers with potential juvenile delinquents.

In discussing the need for programs aimed at preventing delinquency the committee stressed the importance of trying to identify the potential delinquent before he or she is in contact with the police because then "the bonds are already starting to be severed between him and society."

Once a youngster has been arrested or detained by the police, the report continued, it is much easier to identify him and to try to help him. "But in a way it is much more difficult to help him then because he has already been labeled as a 'delinquent' or 'troublemaker.'"

The committee listed the following statistics to underscore what it called the "very serious proportions" of juvenile crime in this country in the last decade:

--Arrests of juveniles for violent crimes have increased by 167 percent.

--Arrests of juveniles for property crimes, such as burglary and auto theft, have jumped 89 percent.

--Almost two-thirds of all arrests for serious crimes are of young people under the age of 21.

SBC Brotherhood Commission
Proposed \$1.2 Million Budget

MEMPHIS (BP)-- The Executive Committee of the Southern Baptist Brotherhood Commission voted here to recommend a record 1972-73 operating budget of \$1,210,200, providing for development of a specialized program for Baptist young men and strong thrusts in the fields of lay ministries and lay witnessing.

The budget, up \$20,200 from this year, must be approved by the agency's full board of directors meeting here August 1. It would go into effect October 1.

In a unique arrangement, the Executive Committee approved appointment of Anthony Hough, a US-2 home missionary, as a consultant in the Baptist Young Men's department, a new staff position for the commission.

Hough is a Southern Baptist home missionary assigned to the commission for two years to research and develop the missions program for young men, ages 18 to 29.

Glendon McCullough, executive secretary of the Brotherhood Commission, said Hough's instructions are to come up with innovative ways which will motivate young men to become involved meaningfully in Southern Baptist missions. Hough, a native of Muncie, Ind., will begin the research project September 1.

Classifying lay witnessing as top priority, McCullough said his first goal is to train 5,000 laymen to lead lay evangelism schools throughout the United States.

In the field of lay ministries, the emphasis in Southern Baptist churches will be upon week end spiritual renewal experiences led by lay people, McCullough said.

"We also plan to use personnel in this department to serve as catalysts in bringing together hundreds of mission projects and Southern Baptist laymen with special skills to do them.

"One of our first efforts will be to develop a corps of laymen with specialized skills who will accept emergency assignments when disasters occur," he added.

McCullough said the emphasis on Baptist young men, lay ministry and lay witnessing was an effort to implement actions by the Southern Baptist Convention in Philadelphia asking the commission to involve laymen in witnessing and evangelism in meaningful ways. There are about 451 men and boys in Southern Baptist churches enrolled in Brotherhood units.

In other actions, the commission's Executive Committee re-elected Jerry Glisson, pastor of Leawood Baptist Church, Memphis, as chairman.

Also re-elected were William Foote, pastor of Beverly Hills Baptist Church, Memphis, as vice chairman; and Glenn Rainey, businessman from Jackson, Tennessee, as recording secretary.



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LYNN MAY
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NASHVILLE TN 37203