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The Burger Court

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THE BURGER COURT

The retirement of Chief Justice Burger has prompted the media and legal scholars to look back on the 17 years he served as Chief, and to make comparisons with the years of Earl Warren's tenure as Chief Justice. I have served for 14 1/2 of the Burger Court years. Perhaps my view of the two Courts may be of interest. In a luncheon talk, of course, I can do little more than generalize and cite to a few of the leading cases.

When describing judicial decisions, I do not like to use the political labels "liberal" and "conservative." Apart from the fact that a judge may take what is considered a liberal position on some areas of the law and a conservative one on others, I believe that most judges—Federal and State—try conscientiously to obey their oath of office, and to put behind them partisan and social predilections. But it is a common practice for Presidents to make their judicial appointments based on their perception of the appointees' political views. This practice was followed by the Presidents who appointed members of the Burger Court.

President Nixon, sensing substantial public displeasure with Warren Court decisions on criminal procedure, announced his intention to appoint conservatives. This also was a goal of Presidents Ford and Reagan. These three Republican Presidents appointed six members of the Court over which Warren Burger presided. But it is clear from the history of the Court, and certainly that of both the Warren and Burger Courts, that Presidents frequently are disappointed in the performance of their appointees. However one defines the term "conservative," there has been no conservative counterrevolution by the Burger Court.

Criminal Procedure

Perhaps the highest expectation of the Presidents who appointed the Burger Court majority was that their appointees would vote to overrule the

criminal procedure decisions of the Warren Court. The names of many of those decisions are well known, among them *Mapp v. Ohio,* 367 U.S. 643 (1961), *Massiah v. United States,* 377 U.S. 201 (1964), and, of course, *Miranda v. Arizona,* 384 U.S. 436 (1966).

These were the doctrinal pillars of the Warren Court's criminal procedure jurisprudence. The Burger Court overruled none of these decisions. Indeed, in recent years *Miranda* has become a household term, though members of the public probably use it with less than full understanding.

Perhaps you have heard the story of the woman whose son was a professor of law and who occasionally commented to him about the law. After Ernesto Miranda was killed in a barroom brawl over a card game, the mother sent her son a copy of the newspaper clipping concerning Miranda's death. On the bottom she wrote: "Charles, after all he did for us, isn't this a shame!" Whatever one's view of *Miranda,* the decision has a symbolic quality that extends far beyond its practical impact upon police interrogation methods.

It is fair to say that some decisions of the Burger Court have limited *Miranda.* In *Harris v. New York,* 401 U.S. 222 (1971), for example, in an opinion by Chief Justice Burger, the Court held that statements inadmissible in the prosecution's case-in-chief because of defective *Miranda* warnings nevertheless could be used to impeach the defendant's credibility if he chose to take the stand.

More recently, in *New York v. Quarles,* 467 U.S. 649 (1984), the Court recognized a narrow public safety exception to the *Miranda* rule. In that case, officers arrested a suspect in a crowded supermarket. When an officer noticed that the suspect wore an empty shoulder holster, he asked the suspect, without first giving *Miranda* warnings, where he had hidden the gun. We held that the suspect's response and the gun were admissible in evidence because the need to protect the public safety outweighed the need for *Miranda* warnings.

The Burger Court also was called upon to define the terms used in the *Miranda* standard and thus to clarify the extent of the protections the decision afforded. In *Rhode Island v. Innis,* 446 U.S. 291 (1980), for example, the Court defined the meaning of "interrogation" for purposes of *Miranda,* holding that warnings are required "whenever a person in custody is subjected to either express questioning or its functional equivalent." Id. at 300-01. While that legal definition appears fairly generous, the Court went on to apply it cautiously, concluding that the respondent in *Innis* had not been "interrogated." Similarly, the Burger Court provided a test for deciding when a suspect is "in custody" for *Miranda* purposes. *See, e.g., Oregon v. Mathiason,* 429 U.S. 492 (1977) (per *curiam).*

In *Edwards v. Arizona,* 451 U.S. 477 (1981), the Burger Court expanded the protections afforded by *Miranda.* Under the *Edwards* rule, whenever a suspect invokes his Fifth Amendment right to have counsel present during custodial interrogation, the police are not free to resume questioning until

counsel has been made available, unless the suspect himself initiates further conversations with the police.[1]

An important Sixth Amendment decision of the Warren Court was *Massiah v. United States,* 377 U.S. 201 (1964). *Massiah* held that, once a suspect's Sixth Amendment rights attach, police may not deliberately elicit incriminating statements from him in the absence of his lawyer. This decision had enormous practical implications for police investigation techniques. The Burger Court repeatedly has reaffirmed *Massiah,* making clear that the rule applies to surreptitious interrogation methods. *See Brewer v. Williams,* 430 U.S. 387 (1977); *United States v. Henry,* 447 U.S. 264 (1980); *Maine v. Moulton,* 474 U.S. ___ (1985). In *Kuhlmann v. Wilson,* ___ U.S. ___ (1986), however, the Court did place an outer limit on the *Massiah* rule, requiring a defendant to show that the police took some action, beyond merely listening, to elicit his incriminating remarks.

The Warren Court also is well known for its Fourth Amendment decisions. One of the most famous of these, *Mapp v. Ohio,* 367 U.S. 643 (1961), held that the exclusionary rule was applicable in state criminal trials. The Burger Court has continued stringently to enforce the rights of individuals to be free from unreasonable searches and seizures. But we have qualified some of the Warren Court's broad statements concerning the scope of the remedy for violation of Fourth Amendment rights.

Most importantly perhaps, the Burger Court rejected language in *Mapp* that suggested the use of illegally seized evidence was itself a Fourth Amendment violation. We explained that the exclusionary rule was a "judicially created means of effectuating" Fourth Amendment rights that rested "principally on the belief that exclusion would deter future unlawful police conduct." *Stone v. Powell,* 428 U.S. 465, 482, 484 (1976). Based on that view of the exclusionary rule, the Burger Court significantly modified the rule when, in *United States v. Leon,* 468 U.S. 897 (1984), we adopted the so-called "good faith" exception.

The Burger Court inherited criminal procedure decisions announcing broad principles protecting the rights of criminal defendants.[2] In reviewing

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1. Just this term, the Court extended the rule in *Edwards,* holding that its protection applies once a suspect invokes his Sixth Amendment right to counsel during his arraignment. Michigan v. Jackson, ___ U.S. ___ (1986).

2. Capital punishment jurisprudence was one area that was virtually undeveloped by the Warren Court, with that Court implicitly accepting the view that imposition of the death penalty was consistent with the Constitution. Indeed, in an opinion written for himself and three other Justices, Chief Justice Warren expressed the view that the death penalty could not "be said to violate the constitutional concept of cruelty" because the penalty had been employed throughout our Nation's history and was still accepted by our society. Trop v. Dulles, 356 U.S. 86, 99 (1958). In 1972, however, the Burger Court took the significant step of deciding that capital punishment, as then implemented by the States, offended the Eighth Amendment's prohibition on cruel and unusual punishments. Furman v. Georgia, 408 U.S. 238 (1972). When States responded to *Furman* by reenacting their death penalty statutes, the Court concluded that imposition of capital punishment for the crime of murder was not a *per*

lower court decisions applying those principles, the Court was repeatedly called upon to define their terms and to clarify their scope. I think it is fair to say that the record of the Burger Court in this area reflects a higher sensitivity to the public interest in law enforcement than that reflected in some of the decisions of the Warren Court. But in my view, we have not diminished the constitutional protections afforded to those suspected of committing crime.[3]

Racial Discrimination

I move now to racial discrimination decisions. The differences, if any, between the Warren and Burger Courts in this area resulted from the nature of the issues presented to the two Courts. The great legacy of Earl Warren's Court was *Brown v. Board of Education,* 347 U.S. 483 (1954). *Brown* was followed by *Green v. School Board of New Kent County,* 391 U.S. 430 (1968), which held that federal courts could, in appropriate cases, order affirmative action to achieve desegregated public schools.

The Burger Court has not retreated from these decisions. Indeed, in *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971), a unanimous Burger Court ruled that federal district courts had remedial authority to order busing of school children where desegregation otherwise could not be achieved. *Brown, Green,* and *Swann* involved *de jure* segregation. Two years after *Swann,* we extended the principles recognized in the *de jure* context to a case involving *de facto* segregation in the Denver,

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se violation of the Eighth Amendment and upheld those statutes that provided safeguards against arbitrary and capricious imposition of the penalty by guiding sentencing discretion. See Gregg v. Georgia, 428 U.S. 153 (1976); Proffit v. Florida, 428 U.S. 242 (1976); Jurek v. Texas, 428 U.S. 262 (1976); Woodson v. North Carolina, 428 U.S. 280 (1976); Roberts v. Louisiana, 428 U.S. 325 (1976). In recent years, we have considered many challenges to imposition of the death penalty, seeking to ensure that the penalty is administered both consistently and fairly. *E.g.,* Ake v. Oklahoma, 470 U.S. 68 (1985); Enmund v. Florida, 458 U.S. 782 (1982); Eddings v. Oklahoma, 455 U.S. 104 (1982); Bullington v. Missouri, 451 U.S. 430 (1980). The Court has repeatedly reaffirmed that imposition of the penalty is constitutional only if States scrupulously follow standards that protect against its arbitrary imposition. In two important capital punishment cases decided this term, we concluded that the Eighth Amendment bars execution of a prisoner who is insane, *Ford v. Wainwright,* ___ U.S. ___ (1986), but upheld the States' practice of excluding from the jury that will decide guilt persons with scruples against the death penalty, *Lockhart v. McCree,* ___ U.S. ___ (1986).

3. Habeas corpus jurisprudence is another area in which the Burger Court inherited a legacy of broad decisions favoring the rights of criminal defendants. The Burger Court clearly has narrowed some of those decisions. Fairly read, the Burger Court's decisions represent an effort to accommodate the States' interest in finality of criminal convictions, on which many important aspects of a rational criminal justice system are founded, with a prisoner's interest in relief from unjust incarceration. For example, in *Stone v. Powell,* 428 U.S. 465 (1976), we removed Fourth Amendment claims from the reach of the federal habeas statutes because of the costs imposed on the administration of criminal justice by application of the exclusionary rule on collateral review. We concluded that federal courts no longer should accept habeas jurisdiction over search and seizure claims unless the prisoner could show that the State had denied him a full and fair opportunity to litigate the claim. In *Wainwright v. Sykes,* 433 U.S. 72 (1977), the Burger Court disapproved the "sweeping language" used by the Warren Court in *Fay v. Noia,* 372 U.S. 391 (1963), concerning the availability of federal habeas corpus to

Colorado school system. *Keyes v. School District No. 1, Denver, Colorado,* 413 U.S. 189 (1973).

Perhaps the most difficult issues in this area arise in "affirmative action" or "reverse discrimination" cases. The Warren Court never confronted this issue. We squarely faced it for the first time in *Regents of University of California v. Bakke,* 438 U.S. 265 (1978). There, the University's system for admission to its Medical School used a quota, reserving 16 of 100 seats for minority students. The parties conceded that the respondent Bakke, whose application for admission was rejected, had better grades and test scores than most of the minority students admitted. Since diversity of experience and background, including race, was desirable in the educational setting, we concluded that a university lawfully could consider race as a factor in its admissions system. But we disapproved fixed quotas based on race alone such as that used by the University in *Bakke.*

Two years after *Bakke,* we considered an affirmative action program, expressly approved by Congress, for choosing contractors for Federal work projects. *Fullilove v. Klutznick,* 448 U.S. 448 (1980). We upheld the plan, although there was no Court for the appropriate standard to be used to assess the constitutionality of affirmative action.

This past term, we decided three difficult affirmative action cases. The first, *Wygant v. Jackson Board of Education,* ____ U.S. ____ (1986), was brought by nonminority teachers to challenge their school board's layoff system, under which nonminority teachers would be discharged while minority teachers with less seniority would be retained. The board sought to justify the system on the ground that it alleviated the effects of societal discrimination by providing role models for minority students. But there had been no finding of prior employment discrimination on the part of the school board. We therefore concluded that the racial classification embodied in the layoff provision violated equal protection.

In two cases involving discrimination by local unions, we considered whether Title VII empowers federal courts to order race-conscious relief that benefits persons who were not actual victims of discrimination. *Sheet Metal Workers v. EEOC,* ____ U.S. ____ (1986); *Firefighters v. Cleveland,* ____ U.S. ____ (1986). We concluded that such remedies, including hiring goals, may be appropriate where an employer or a labor union "has engaged in persistent or egregious discrimination," or where "necessary to dissipate the lingering effects of pervasive discrimination." *Sheet Metal Workers v. EEOC, supra* at ____.

Despite the careful consideration given these cases, we have not yet agreed on a standard generally applicable in affirmative action cases. It is

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review a state prisoner's constitutional claim that the state courts had refused to consider on the merits because of noncompliance with a contemporaneous objection rule. *Sykes* rejected the "deliberate bypass" standard of *Fay v. Noia* in favor of a test requiring the prisoner to demonstrate "cause and prejudice." This term, we were asked to reconsider *Sanders v. United States,* 373 U.S. 1 (1963), another broad Warren Court decision concerning habeas corpus. In *Kuhlmann v. Wilson,* ____ U.S. ____ (1986), a plurality of the Court agreed that a state prisoner is not entitled to successive federal habeas corpus review of his conviction unless he supplements his constitutional claim with a showing of factual innocence.

difficult to identify such a standard because these cases present a wide variety of circumstances, and raise issues under both the Equal Protection Clause and civil rights statutes. It is to be hoped that the day will soon come when race and ancestry are factors no longer taken into account in either private or governmental decision-making.

I mention one additional race discrimination case decided this term. In *Swain v. Alabama,* 380 U.S. 202 (1965), the Warren Court effectively permitted prosecutors to use peremptory challenges to strike prospective black jurors on account of their race. This term, in *Batson v. Kentucky,* ____ U.S. ____ (1986), we overruled *Swain* and held that such a use of peremptory challenges violates a black defendant's right to equal protection. Now, where the prosecutor's action in striking blacks gives rise to an inference of discrimination, he must articulate a valid, nondiscriminatory reason for his use of peremptory challenges. In this case, the Burger Court went well beyond the Warren Court in expanding protections afforded to minorities in a criminal trial.

Sex Discrimination

Although it had few opportunities to consider the issue, the Warren Court seemed almost uninterested in sex discrimination. For a century, the Supreme Court had refused to overturn the line that States traditionally drew between the sexes, upholding statutes barring women from jury service and from certain occupations. In *Hoyt v. Florida,* 368 U.S. 57 (1961), the Warren Court reaffirmed that States largely were free to exclude women from jury service.

By contrast, the Burger Court repeatedly has removed barriers to equality among the sexes. While there have been many important decisions in this area, I mention only a few.

The earliest was *Reed v. Reed,* 404 U.S. 71 (1971), that invalidated, under the Equal Protection Clause, an Idaho statute that gave a mandatory preference to male applicants for letters of administration of a decedent's estate. Although Chief Justice Burger's opinion for a unanimous Court was brief, it was recognized as a turning point in our equal protection jurisprudence.

Frontiero v. Richardson, 411 U.S. 677 (1973), marked the beginning of the Burger Court's efforts to decide what level of equal protection scrutiny should be applied to legislative classifications based on sex. A plurality argued that such classifications should be held inherently suspect and subject to strict judicial scrutiny. Four other Justices concurred in the judgment, declining to adopt that view of the applicable standard. But eight members of the Court agreed that the Equal Protection Clause required that married women in the armed services be provided fringe benefits identical to those given to married men.

The Burger Court also effectively overruled the Warren Court's holding that a state lawfully could exclude women from jury service. *Taylor v. Louisiana,* 419 U.S. 522 (1975), invalidated a Louisiana statute, similar to

that upheld by the Warren Court in *Hoyt v. Florida,* that excluded all women from jury service except those who volunteered. *Taylor* was premised on the Sixth Amendment's requirement that juries in criminal trials be drawn from a fair cross-section of the community, rather than on the Equal Protection Clause. But language in Justice White's opinion for the Court rejected the notion that "all women should be exempt from jury service based solely on their sex and [their] presumed role in the home." 419 U.S. at 535 n.17.

Mississippi University for Women v. Hogan, 458 U.S. 718 (1982), presented a reverse sex discrimination situation. In an opinion by Justice O'Connor, the Court held that a state-supported professional nursing school could not lawfully exclude men even though seven other state universities were coeducational, with two of those seven schools providing the very curriculum that the respondent sought to pursue. This decision took the important step of clearly articulating a standard applicable to gender-based classifications. The Court held that a government attempting to support such a classification has the heavy "burden of showing an 'exceedingly persuasive justification' for the classification," that is satisfied by showing that the "classification serves 'important governmental objectives and that the discriminatory means employed' are 'substantially related to the achievement of those objectives.' "458 U.S. at 724 (citations omitted).[4]

Finally, in a case decided this term, we held that allegations of "hostile environment" sexual harassment state an actionable sex discrimination claim under Title VII. *Meritor Savings Bank v. Vinson,* ____ U.S. ____ (1986). The Court unanimously agreed on the result in this case.

Substantive Due Process

The most controversial decision of the Burger Court is *Roe v. Wade,* 410 U.S. 113 (1973), that invalidated on substantive due process grounds state laws that criminalized most abortions. *Roe v. Wade* and its progeny recognize a right of privacy, "founded in the Fourteenth Amendment's concept of personal liberty," that encompasses a woman's interest in obtaining an abortion. *See, e.g., Akron v. Akron Center for Reproductive Health, Inc.,* 462 U.S. 416 (1983); *Planned Parenthood Ass'n of Kansas City, Mo., Inc. v. Ashcroft,* 462 U.S. 476 (1983). This right is not absolute, but is subject to the States' interests in preserving maternal health or the life of a viable fetus. Because of their emphasis on the liberty and privacy

4. Another line of equal protection cases decided by the Warren court involved challenges by individual voters to their States' reapportionment statutes. *E.g.,* Baker v. Carr, 369 U.S. 186 (1962); Reynolds v. Sims, 377 U.S. 533 (1964). The Burger Court repeatedly has reaffirmed the vitality of the principles announced there. *E.g.,* Gaffney v. Cummings, 412 U.S. 735 (1973). This term, the Court extended this line of decisions, squarely holding for the first time that a claim of partisan political gerrymandering is justiciable under the Equal Protection Clause. Davis v. Bandemer, ____ U.S. ____ (1986). But there was no Court for the standard that should be used to assess the constitutionality of reapportionment law alleged to be an unlawful partisan gerrymander.

interests of women, these decisions have been viewed as rejecting a type of sex discrimination. This term we reaffirmed *Roe v. Wade* in *Thornburgh v. American College of Obstetricians & Gynecologists*, ___ U.S. ___ (1986).

A recent case tested the limits of substantive due process. In *Bowers v. Hardwick*, ___ U.S. ___ (1986), the Court declined to hold that substantive due process encompasses a right to engage in homosexual sodomy. Statutes similar to the Georgia law challenged in this case have been on the books for hundreds of years. These laws, now moribund and rarely enforced, still exist in about half of the states. The case may not be as significant as press reports suggest. The respondent had not been tried or convicted, and we had no occasion to consider possible defenses, such as one based on the Eighth Amendment, to an actual prosecution.

First Amendment

Although First Amendment partisans rarely seem satisfied, both the Warren and Burger Courts have been sensitive to the First Amendment rights that are fundamental to our democracy. Certainly, there has been no retreat by the Burger Court from the stringent enforcement of these important rights.[5]

New York Times Co. v. Sullivan, 376 U.S. 254, decided by the Warren Court in 1964, conferred a broad cloak of immunity upon the press. The *Sullivan* rule requires a public official to prove that defamatory statements relating to his official conduct were made with "actual malice." The Warren Court extended this rule to public figures in *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967).

In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), a libel suit brought against a media defendant by a private individual, the Burger Court defined the limits of the *Sullivan* rule. *Gertz* held that *Sullivan* does not apply in

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5. Indeed, the Burger Court was the first to rule that the First Amendment affords some protection to speech concerning a commercial transaction. Prior to the 1970's, the Court declined to hold that the First Amendment placed any restraint on governmental regulation of commercial speech. *E.g.*, Valentine v. Chrestensen, 316 U.S. 52 (1942). In a series of decisions beginning with *Bigelow v. Virginia*, 421 U.S. 809 (1975), the Burger Court held that commercial speech is not wholly outside the protection of the First Amendment. *See* Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748 (1976); Bates v. State Bar of Arizona, 433 U.S. 350 (1977). This term, in a case involving casino advertising, the Court again reaffirmed that speech concerning commercial transactions is entitled to First Amendment protection. Posadas de Puerto Rico Assoc. v. Tourism Co., ___ U.S. ___ (1986). But we concluded that a State's interest in the health, safety, and welfare of its citizens could support a decision to regulate commercial speech, as long as the restrictions advanced that interest and were no more extensive than necessary to serve that interest.

The Burger Court also squarely rejected the view that the First Amendment protects only speech by individuals. Rather, we have repeatedly reaffirmed the principle that speech by corporations and other associations is entitled to First Amendment protection. *See* First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978); Consolidated Edison Co. v. Public Service Comm'n of N.Y., 447 U.S. 530 (1980); Pacific Gas & Electric Co. v. Public Utilities Comm'n, ___ U.S. ___ (1986).

suits brought by private citizens seeking to recover actual damages for defamatory falsehoods. While some critics regarded *Gertz* as a retreat from *Sullivan,* the decision reflects the Court's continuing effort to accommodate the States' interest in compensating for injury to reputation with First Amendment freedoms.

Just this term, however, in a case involving a private plaintiff, the Court struck the balance in favor of the press. In *Philadelphia Newspapers, Inc. v. Hepps,* ____ U.S. ____ (1986), we reversed the common law presumption that defamatory speech is false, and required a private plaintiff to prove falsity.[6]

The Burger Court also has decided a number of cases presenting issues under the "religion clauses" of the First Amendment. I believe it is fair to say that no prior court has been more zealous to assure separation of church and state, and at the same time to protect the rights guaranteed by the Free Exercise Clause.[7] Of course, our decisions in this area reflect the tensions inevitably created by the sometimes conflicting values embodied in the religion clauses.

Summary

The Burger Court decided well over 2,000 cases. The Warren Court, over 15 years, decided several hundred fewer cases. I cite these numbers to emphasize the high degree of selectivity in my discussion this afternoon. Depending upon the cases one chooses, and one's purpose or bias, either of these courts can be cast in liberal or conservative, favorable or unfavorable lights.

But some points seem indisputable. Perhaps to the disappointment of the Presidents who nominated members of the Burger Court, there has been no "counterrevolution" by that Court. None of the landmark decisions of the Warren Court was overruled, and some were extended.

It has been fashionable for critics to say that the Burger Court "lacked

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6. In another recent decision, we emphasized the important role of the federal courts in safeguarding the precious freedoms of speech and press guaranteed by the First Amendment. Under *Bose Corp. v. Consumers Union of United States, Inc.,* 466 U.S. 485 (1984), the Court held that appellate judges must independently decide whether the evidence in the record supports a trial court's finding of malice. We reaffirmed in *Bose* that "[t]he requirement of independent appellate review reiterated in *New York Times Co. v. Sullivan* is a rule of federal constitutional law." 466 U.S. at 510.

7. *Lemon v. Kurtzman,* 403 U.S. 602 (1971), a decision written by Chief Justice Burger during the early years of the Burger Court, established the "purpose, effect, and entanglement" test that remains the governing standard under the Establishment Clause. During the 1984 term, the Court applied that standard in three cases presenting challenges under the Establishment Clause. *See* Wallace v. Jaffree, 472 U.S. 38 (1985); Grand Rapids School District v. Ball, ____ U.S. ____ (1985); Aguilar v. Felton, ____ U.S. ____ (1985). Our decisions under the Free Exercise Clause have reaffirmed the principle that the Clause absolutely prohibits governmental regulation of religious beliefs and that it substantially protects lawful conduct founded on religious belief. Where the government limits religious liberty, it must demonstrate that the limitation " 'is essential to accomplish an overriding governmental interest.' " Bob Jones University v. United States, 461 U.S. 574, 603 (1983) (quoting United States v. Lee, 455 U.S. 252, 257-58 (1982)); *see* Wisconsin v. Yoder, 406 U.S. 205 (1972).

a sense of direction," appeared to "drift," or lacked a coherent "policy."[8] To lawyers, and certainly to Article III judges, these observations should make little sense. The great strength of the Supreme Court is that we have no "policy" or purpose other than "faithfully and impartially" to discharge our duties "agreeably to the Constitution and laws of the United States."[9] This is our sworn duty. As a New York Times editorial put it, "The ultimate glory of this unique institution is that each member [appointed for life] is master only of himself." New York Times, June 18, 1986.

It is well to remember that the provisions of the Bill of Rights are expressed in general terms: the First, Fourth, Fifth, Sixth, and Eighth Amendments all are open to, and indeed require, interpretation. Inevitably and properly, reasonable minds—trained in the same law schools—often differ in interpreting these important provisions. Yet, the long-term stability of our legal system is based on the doctrine of *stare decisis.* Commentators who expect radical changes because of personnel changes on the Court seem to overlook our fidelity to this doctrine.

If I may speak personally, I knew most of the Justices on the Warren Court, and of course I am close to those on the Burger Court with whom I serve. I have great respect and admiration for the legal ability, devotion to duty, and integrity of each of them.

Although at age 64 I went on the Court with some reluctance, I am honored to serve on it. Under our remarkable constitutional system, the Court has well discharged its responsibility to safeguard the liberties of our people.

LEWIS F. POWELL, JR.
August 12, 1986

8. This misconception of the role of the Supreme Court was strikingly illustrated by a widely circulated news story. The Court was criticized for giving "mixed signals" rather than providing "one guided ideology." Richmond Times-Dispatch, July 13, 1986.

9. 28 U.S.C. § 453 (oath taken by federal Justices and judges).