

High court splits on cross-burning law

Stephen Henderson

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WASHINGTON — The Supreme Court on Monday upheld a Virginia law that was used to jail two men who burned a cross in a family's front yard, but the justices struck down the state's use of the same law to prosecute a Ku Klux Klan leader who burned a cross at a rally on a willing owner's property.

The difference? The first case was an act of intimidation, according to the court, and was not protected by the First Amendment.

But in the other, a Virginia court told jurors that they could presume that any cross burning was meant to intimidate. The justices said that that crossed the line.

"It may be true that a cross burning, even at a political rally, arouses a sense of anger or hatred among the vast majority of citizens who see a burning cross," Justice Sandra Day O'Connor wrote. "But this sense of anger or hatred is not sufficient to ban all cross burnings."

The ruling struck a middle ground between two extremes on a hot-button issue. Some saw the case as an opportunity for the

court to inveigh against the evils of ethnic intimidation and its historical connection to racism; others thought the justices might seize on the opportunity to show unbridled support for free expression. The opinions produced a little of both, with a decision that does not destroy either side.

"I think this is a sound compromise that a substantial part of the country, and maybe a majority, can accept," said Rodney Smolla, a University of Richmond law professor who represented the defendants challenging the Virginia law in the Supreme Court.

"The court is demanding that society allow people to burn the cross when they're doing that to express a political message, but they're allowing society to ban cross burning when it's about intimidation," he said.

Virginia Attorney General Jerry Kilgore called the ruling a victory.

"This is a great day for Virginia," he said.

The court's complicated ruling produced five opinions and reflected significant division among the justices about how states can construct cross-burning bans without trampling free-speech rights.

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O'Connor's opinion upholding the law was joined by four other justices, but only three others agreed with the part that invalidates the provision of the law presuming that all cross burnings are designed to be intimidating. Justice John Paul Stevens wrote a one-paragraph concurrence.

Justice Antonin Scalia concurred with much of O'Connor's ruling but would not have invalidated any part of the law; he instead would have sent the

cases back to lower courts to sort out the problems with presumed intent.

Justice David Souter, joined by justices Anthony Kennedy and Ruth Bader Ginsburg, dissented from the part of O'Connor's opinion that said cross burning could be singled out for punishment. Souter would have overturned the Virginia law altogether because it violates free-speech protections and would prefer that laws deal with intimidation in general, rather than focusing on specific forms of it.

Finally, Justice Clarence Thomas, who spoke eloquently against any protection for cross burning when the cases were argued last year, wrote a dissent that mirrored what he said then.

Thomas said he would have upheld the Virginia law in its entirety and that he strained to see legitimate First Amendment issues in the case. They had been avoided, he said, by the fact that Virginia's law focused only on intimidation, which does not merit free-speech protection.

Thomas' feelings about cross burning garnered a lot of attention

last year because they seem inconsistent both with his conservative views on race and with his staunch support of First Amendment rights.

His dissent in the case has some court watchers wondering whether there are implications for his decision in another important case with racial overtones, the challenge to the University of Michigan's affirmative action policies. Thomas has traditionally opposed affirmative action, and most see him as an almost sure vote against the policies in the Michigan case.

"But I wouldn't necessarily count on that," said Sheldon Steinbach, general counsel for the American Council on Education. "If he can make an exception to First Amendment protections because of the history of cross burning and its ties to threats and violence, he may also be able to make an exception to equal-protection considerations for the limited use of race in college admissions."

A ruling on the affirmative-action case is expected by July.

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War

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Hussein's inner circle, al-Majid ordered a poison gas attack that killed thousands of Kurds in 1988.

"We believe that the reign of terror of Chemical Ali has come to an end," Rumsfeld said. "To Iraqis who have suffered at his hand ... he will never again terrorize you or your families."

Other officials said they would await further examination of the human remains found in a building in Basra where al-Majid and other Iraqi leaders were said to be meeting.

"Until they do the DNA I am not going to speculate," said Col. Larry Brown, operations chief for the 1st Marine Expeditionary Force. "This guy has been like Freddy Krueger. We've killed him four or five times."

In Basra, British troops consolidated their control of the southern city of 1.3 million people, but hundreds of residents indulged in widespread looting — breaking into the central bank and retail shops and setting fire to a hotel.

Further north, 10,000 U.S. Marines streamed across makeshift bridges and floated aboard amphibious vehicles, crossing a tributary of the Tigris River and rushing into the outskirts of Baghdad near the Rashid military airfield. Army forces already held important strategic and symbolic positions in the heart of the city.

And so, early Tuesday, fending off sporadic enemy fire, large numbers of allied forces occupied key precincts of both Baghdad and Basra, Iraq's two largest cities. Both cities were virtually encircled by U.S. and British troops.

"What we're trying to do is surround the city," Brown said of Baghdad. "Keep the rats in and the reinforcements out."

Asked if elements of the Army's 3rd Infantry Division would remain at the presidential palace and other locations in Baghdad or withdraw, Navy Capt. Frank Thorp said: "Obviously, they don't feel they're vulnerable, as they're still in there."

President Bush and British

Prime Minister Tony Blair, meeting Monday in Belfast, Northern Ireland, concentrated on forging a plan for post-war Iraq. As they consulted, U.S. officials in the southern Iraqi port of Umm Qasr prepared for the arrival of retired U.S. Lt. Gen. Buck Walters, assigned to plant the seeds of an interim government.

"It is time for all of us to think about the post-hostility stage, how we create a representative government consisting of all elements of Iraqi society," Powell said. The Bush-Blair summit will continue Tuesday.

U.S. Brig. Gen. Vincent Brooks warned, however, "there's still a great deal of hazard out there" on the battlefield, and more evidence of that flared Monday.

An Iraqi rocket slammed into an Army base on the southern outskirts of Baghdad, killing four people — two U.S. soldiers and journalists from Spain and Germany. On the eastern flank, two Marines were killed and three wounded when an artillery shell struck their armored amphibious vehicle as it approached Baghdad.

The official U.S. military death toll rose to 86, with more than 150 wounded.

In Baghdad, the day's action began around sunrise, when troops from the 3rd Infantry Division in more than 100 armored vehicles rolled into central Baghdad as warplanes provided cover against mostly disorganized resistance.

By the end of the day, at the domed New Presidential Palace, U.S. soldiers strolled under huge chandeliers, smoked cigarettes in a reception room, examined seized documents in a filing room and established a prisoner of war collection center in the courtyard.

In a central Baghdad square, U.S. Army tank crews used a 40-foot statue of Hussein for target practice, destroying it. They also occupied a parade ground where Hussein often reviewed his troops.

During their brazen thrust into Baghdad, U.S. tank columns approached the Al-Rashid Hotel, until recently home to many foreign journalists, and passed close to the Iraqi Ministry of Information, according to U.S. officials.

Nearby, Iraqi Information Minister Mohammed Saeed al-Sahhaf asserted that the American invasion had been repulsed and its soldiers slaughtered.

"Be assured Baghdad is safe, secure and great," he said. "There is no presence of the American columns in the city of Baghdad, none at all."

As he spoke, a U.S. shell landed nearby.

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Pauline Lubens San Jose Mercury News

Sgt. Jim Sheppard guards a compound in the center of Basra, Iraq, on Monday as city residents walk past. In other areas of the city, residents rioted and looted.

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