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People For The American Way

The non-partisan constitutional liberties organization.

January 16, 1987

Rabbi Marc Tanenbaum
45 E. 89th St.
Suite 18-F
New York, NY 10128

Dear Marc,

I am pleased to report to you that the meeting of January 13th, at which time the lawyers for PEOPLE FOR THE AMERICAN WAY briefed us on the progress and the implications of the recent Hawkins County, Tennessee lawsuit and the forthcoming decision in Mobile, Alabama was most valuable.

All who attended felt that they had become better informed about an issue which has serious and long range ramifications for the public school system in America, as well as the principle of Church-State separation.

The discussions were lively and thoughtful, and clearly indicated a desire for ongoing communication with PEOPLE FOR THE AMERICAN WAY. Attached, I am sending you the materials we distributed. Also, we asked those present to sign an amicus brief in the Hawkins County case. If you haven't been asked already, and wish to review the brief, please contact me before January 22nd. The filing date is January 26, so time is very short.

Of course, if there is any other material or information I can provide, I would welcome your call.

Very truly yours,

Doris

Doris Brickner
Special Projects Director

DB/sl
Enc.

111 West 40th Street, Suite 2410, New York, NY 10018 212-944-5820

People For The American Way

The non-partisan constitutional liberties organization.

BRIEFING MEETING, January 13, 1987

FOLLOW-UP QUESTIONNAIRE

1. Can PEOPLE FOR THE AMERICAN WAY use your name for general public purposes as supporting its legal defense positions in Church Hill, Tennessee, and Mobile, Alabama? (We will send you a copy of any document or statement for your approval prior to release).

_____YES _____NO

2. Can PEOPLE FOR THE AMERICAN WAY call on you to speak on this and other issues of mutual concern?

_____YES _____NO

3. Can PEOPLE FOR THE AMERICAN WAY ask you to make statements of support to the press?

_____YES _____NO

4. Can PFAW send you materials? Please check your preferences.

_____Press Clips
_____Op Ed and Issue Papers
_____Films (1/2 hour and 20 minutes)
_____Membership brochures

5. PEOPLE FOR THE AMERICAN WAY invites your suggestions as to ways of enlisting the interest of colleagues and other religious communities:

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ADDRESS_____

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TELEPHONE_____

AFFILIATION_____

ADDITIONAL COMMENTS ON HOW WE MIGHT ASSIST YOUR EFFORTS:
(please use the reverse side for your comments)

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People For The American Way

SECULAR HUMANISM FACT SHEET

The philosophy of humanism arose in the Renaissance, when the classic Greek and Roman texts were rediscovered, and the study of man and science flourished. St. Thomas Aquinas is credited with laying the foundations for modern Christian humanism, which incorporates human reason with divine revelation. By tacking on the word "secular", the Far Right has turned this philosophical tradition into a new demonology.

Today, "secular humanism" is the Far Right's catch-all label for most of the ills of our society. Textbook censors Mel and Norma Gabler describe it as "faith in man instead of faith in God ... that promotes situation ethics, evolution, sexual freedom, including sex education courses, and internationalism." Television evangelist James Kennedy calls it a "godless, atheistic, evolutionary, amoral, collectivist, socialistic, communistic religion." Jerry Falwell refers to its "satanic influence" and warns: "It advocates abortion-on-demand, recognition of homosexuals, free use of pornography, legalizing prostitution and gambling, and free use of drugs, among other things."

"Secular humanism" was mentioned in a footnote to the 1961 Supreme Court case, Torcaso v Watkins: "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others."

Beginning with this 25-year-old footnote, the Far Right argues that secular humanism is a sinister philosophy flourishing in our society which has taken over the public schools. Michael Farris, general counsel for Concerned Women for America, warns that "every school district in this country ... is involved with secular humanism."

THE HOAX OF SECULAR HUMANISM

Promotion of "secular humanism" has become the catch-all stamp of disapproval for any course, book or teaching method that doesn't advance the Far Right's sectarian beliefs. The Reverend James Kennedy states: "There is without question an absolutely new philosophy ... of humanism, or as it is called, secular humanism, which has taken over the educational elite of this country and, if they have their way, will be imposed upon every

teacher and every school and every textbook in America ... Secular humanism has been virtually established as the national religion in America."

Television evangelist Pat Robertson says: "Don't make any mistake. You're being hunted down by those who essentially are atheists, those who embrace so-called secular humanism. They hate religion, they hate Christianity, they hate the Bible because the Bible is truth and they don't like the truth."

Far Right groups have attacked books ranging from Shakespeare's Romeo and Juliet and The Diary of Anne Frank to courses on drug and alcohol-abuse prevention and to health and sex education, claiming they promote "secular humanism."

A widely distributed handout from the Texas-based Pro-Family Forum, entitled "Is Humanism Molesting Your Child?", lists examples of hundreds of topics that supposedly promote "secular humanism": ecology, racial equality, poverty, love, free enterprise, war, death, and many more. In a 1984-85 censorship study by PEOPLE FOR THE AMERICAN WAY, "secular humanism" was the most often cited objection to curriculum, textbooks and library books.

TRYING TO LEGISLATE CENSORSHIP

In the summer of 1984, Senator Orrin Hatch (R-Utah) introduced an amendment to the Education for Economic Security Act of 1984, which prohibited the use of federal magnet schools funds for "any course of instruction the substance of which is secular humanism." The bill passed Congress in July, 1984, and became law the following month.

This law remained on the books for over a year. However in November of 1985, when President Reagan reauthorized funds for magnet schools through fiscal year 1988, new language was included which deleted the "secular humanism" ban and instead stated the funds must be spent to "augment academic improvement."

EXAMPLES OF THE FAR RIGHT'S USE OF SECULAR HUMANISM TO CENSOR BOOKS AND CURRICULA

Although the Far Right was unable to retain the legislative ban on "secular humanism" in the schools, there has nevertheless been a dramatic rise in censorship efforts nationwide over the past few years.

* Mobile, Alabama. Fundamentalists backed by Pat Robertson's National Legal Foundation are charging in federal court that textbooks used in the public schools promote the religion of "secular humanism" and discriminate against Christianity.

* Bertram Elementary School, Texas. Two guidance and counseling programs -- "Toward Affective Development" and "Developing

Understanding of Self and Others" -- were opposed for allegedly teaching "secular humanism." The school trustees voted to discontinue use of the curriculum.

* Cobb County, Georgia. The school superintendent restricted nine topics for classroom discussion because of objections that they promote "secular humanism." The restricted topics include religion, evolution, homosexuality, values, and sex education.

* Orange County, California. Objections to a drug and alcohol prevention course, Project Self Esteem, in the Capistrano Unified School District, led to a lawsuit seeking an injunction against implementation of the course. "Secular humanism" charges were the basis of the objections.

* Hawkins County, Tennessee. Fundamentalists backed by Beverly LaHaye's Concerned Women For America are opposing a K-8th-grade Holt, Rinehart and Winston reading series, including stories on Leonardo Da Vince and the Renaissance, The Wizard of Oz, and The Diary of Anne Frank. Their lawsuit, now in federal court, is demanding the public school provide alternative reading and instruction for the plaintiffs' children. A decision is expected in October 1986.

* Washington state. The Moral Majority brought suit against Gordon Parks' award-winning novel, The Learning Tree, because it promoted "secular humanism." The suit, argued by Michael Farris, was dismissed by the U.S. Court of Appeals.

* Books objected to on grounds of "secular humanism" or because they undermine "traditional" values include: Hemingway's A Farewell to Arms, Orwell's 1984, Huxley's Brave New World, Steinbeck's The Grapes of Wrath, Shakespeare's Macbeth, Robert Cormier's I am the cheese, a health textbook Life and Health, Understanding Psychology, Adolescents Today, and Illustrated Encyclopedia of Family Health.

PEOPLE FOR THE AMERICAN WAY has materials discussing in more detail the issue of "secular humanism" and how it is being used to attack books and school curriculum. Publications include David Bollier's The Witch Hunt Against "Secular Humanism", Edward B. Jenkinson's Tale of Tell City: An Anti-Censorship Saga, and an Editorial Memorandum entitled "Secular Humanism, The Hatch Amendment, and Public Education." Also available is a nationwide survey of censorship incidents, "Attacks on the Freedom to Learn: A 1985-86 Report." For information on how to order these publications, please write to PEOPLE FOR THE AMERICAN WAY, 1424 16th St. NW, Washington, D.C. 20036.

COMMENTARY

Opting Out of Reading Class in Tennessee

The Only Possible Outcome

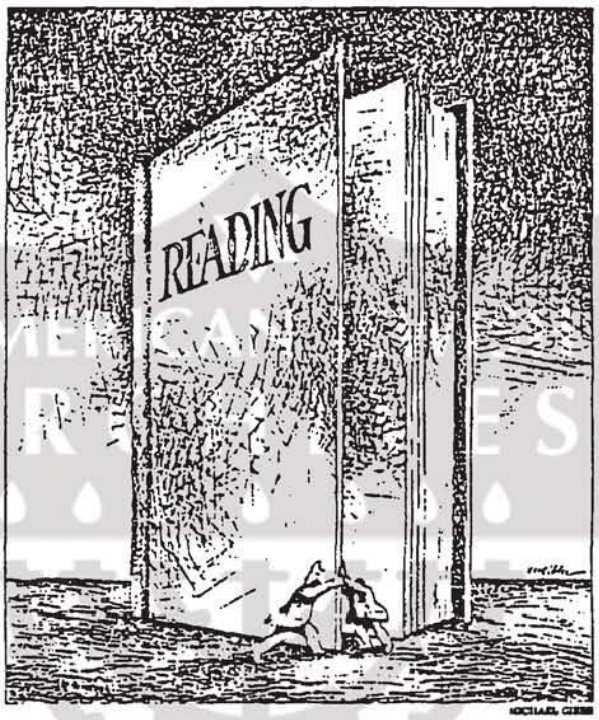
By William B. Ball

No recent court decision has been more widely publicized than that of U.S. District Judge Thomas G. Hull, on Oct. 24, holding that the Hawkins County (Tenn.) Public Schools must allow fundamentalist Christian parents to opt out of the school district's reading program because of their religious beliefs.

Acclaimed by some as a victory for parental rights and religious freedom, and denounced by others as threatening the disruption of public education, comment on the decision has moved out into seemingly ever-widening circles.

What function the judiciary should have in passing upon school-board matters, what function public schools should have in imparting philosophical values to children, and what implications the court's decision may have in terms of First Amendment principles generally are among the broader questions whose discussion the decision has quickened.

Judge Hull's decision is being appealed. The appellate courts may disagree with his view. My comments on the case, *Mozert* v. *Hawkins County Public Schools*, will nonetheless endeavor to examine the decision solely from the perspective of presenting existing constitutional law.



Tennessee statutes confer on public school boards the powers to prescribe the textbooks to be used in their schools. By and large, nationally these prescriptions have been accepted by parents and unchallenged by court action.

The textbook litigations that have ensued have chiefly consisted of efforts to have particular books barred from the school for classroom use by any student, or removed from the school library, or to have certain books added to the prescribed list. The *Mozert* case has none of these features. The facts of that case are as follows:

The selected books in question constituted the Holt, Rinehart & Winston 1983 basic reading series for grades K-8. The selection was not haphazard, but represented the judgment of the school district's book-selection committee, which had evaluated several series of textbooks. The school board had unanimously approved the committee's recommendation. The Holt series was received without objection by a large majority of parents in the Hawkins County public school system.

A minority of parents, of fundamentalist Christian faith, found the series religiously objectionable and asked that their children be provided alternative reading instruction. The school board responded by unanimously adopting a resolution requiring all teachers to use only textbooks that the board prescribed. The parents were refused alternative readers.

When children of objecting parents refused, on religious grounds, to read the Holt series or to attend classes in which the series was used, they were immediately punished by suspension. They then withdrew from the schools. Their parents (and they) then commenced court action in the U.S. District Court for the Eastern District of Tennessee against the school district and related officials under the First and 14th Amendments and several federal civil-rights laws on the ground that the school board's action violated the rights of both the parents and the children. The state commissioner of education, deeming the case to involve public educational interests statewide, intervened on the side of the school board.

The parents were promptly rebuffed by the district court, which, seeing no need for a trial, summarily rendered judgment against them. The U.S. Court of Appeals for the Sixth Circuit reversed, sent the case back to the district court for full trial, and read the district court a lesson on how, under the First Amendment, religious-liberty cases must be dealt with.

The court of appeals did not rule on the ultimate question of who was right in the case, but simply restated what the U.S. Supreme Court had long since laid down: that where people

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William Bentley Ball is a constitutional lawyer in private practice, and was lead counsel for the Amish families in the landmark 1972 compulsory-education case, Wisconsin *v.* Yoder.

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Education Week

'Wrong in Every Respect'

By David H. Remes

A wise friend and teacher has said that the free-speech guarantee of the First Amendment is "delusive" in the simplicity of its phrasing. Unfortunately, the same must be said of the amendment's religion clauses. In giving content to their grand words, the courts too often "add mud to already muddy waters," as Chief Justice William H. Rehnquist has put it. U.S. District Judge Thomas G. Hull's recent decision in *Mozert* v. *Hawkins County Public Schools* is a particularly regrettable example.

In *Mozert*, fundamentalist Christian schoolchildren and their parents in Tennessee claimed that the public-school authorities were violating their rights of religious freedom by insisting that the children learn to read from textbooks that offended their religious beliefs. They insisted that the free-exercise clause prohibits such an imposition and they sued to enjoin it.

Judge Hull agreed with the plaintiffs that forcing the children to learn reading from such textbooks, as the price of access to the public schools, violated their rights of religious freedom. Since the authorities were unwilling to allow the children to read from textbooks that did not offend them, the judge held, the children must be permitted to "withdraw to a study hall or to the library" during the reading period and to study with their parents later at home.

In Judge Hull's view, *Mozert* was a case in which the state had impermissibly compelled people to sacrifice adherence to their religious beliefs in order to obtain an important government benefit. The school board, he said, had effectively required the fundamentalist students to read texts that offended their religious beliefs "or give up their free public education." He acknowledged that the state has a compelling interest in educating the young, but concluded that "less restrictive means" were available to achieve this goal.

Judge Hull's decision was not mandated by the First Amendment or by the U.S. Supreme Court's decisions interpreting it. To the contrary, apart from his recognition that educating the young "ranks at the very apex" of a state's obligations, Judge Hull's analysis is wrong in every respect. He misperceived the nature of the public "benefit" involved, the nature of the "burden" imposed by the Tennessee authorities, the nature of the state interest involved, and the pitfalls in the opt-out alternative that he embraced.

What was the "benefit" at stake? Judge Hull treated the "benefit" at stake as instruction at the hands of state-paid teachers in state-operated facilities. In the judge's view, "education" is fungible, like health care or legal service. It may be dispensed interchangeably by the government or by private institutions. Access to it can no more be conditioned by government on a person's sacrifice of his religious beliefs than access to a community hospital or legal clinic.

This view is mistaken. Public education is not "public" just because it is free. It is "public" because it is a *kind* of education—an education that instructs children, as Justice William J. Brennan has put it, in "a heritage common to all American groups and religions." That heritage is one that includes *The Diary of Anne Frank* and *Huckleberry Finn*. It is a heritage of tolerance and diversity. Public education is not and cannot be an education that instructs children in the orthodoxies of their parents.

Thus, the real problem in *Mozert* was not that children were being required to sacrifice their religious beliefs in order to have access to some fungible public "benefit." The real problem was that the "benefit" at issue—public education—itself was offensive to the fundamentalist parents and their children, incompatible with their religious beliefs. They were complaining about public education, not the conditions of access to it.

What was the "burden"? In Judge Hull's view, the authorities had "burdened" the children's rights of religious freedom by forcing them to this choice: "Either read the offensive texts or give up [your] free public education." But putting citizens to this kind of a choice is not the kind of "burden" on religion that the Supreme Court has condemned in its free-exercise cases. Far from viewing it as a "burden," the Supreme Court has treated the choice of sending one's children to private schools as a fundamental right! Having chosen to send their children to public schools, parents cannot then complain that the curriculum offends their religious beliefs. If they are dissatisfied with the curriculum for other, legitimate reasons, their remedy lies in persuading the school board to make changes.

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David H. Remes is a lawyer with Covington & Burling in Washington, D.C., specializing in First Amendment matters.

Evidence Permitted Court 'No Other Conclusion'

Continued from Page 24

complain that governmental action offends their religious beliefs, (a) they must prove that they hold these beliefs sincerely and that the protested governmental action really injures the exercise of those beliefs, and (b) the government must prove that a truly compelling public necessity requires restricting that exercise and that no less restrictive means are available.

With that mandated script in hand, the district court took up the case anew, conducted an extensive trial, and ruled in the parents' favor. The court had no difficulty in finding that the parents had met their burden of proof under (a) above. The court refused to be drawn into the theological thicket of attempting to define whether the parents' beliefs concerning the textbooks were really "central" to their religion. Correctly, the court stated that, under previous Supreme Court decisions, the question is not whether a belief is "central," but whether it is religious.

The evidence permitted the court no other conclusion than that—whether sensibly or foolishly—the parents' religious claim was sincerely religious and that their beliefs were profoundly offended by the textbooks in question.

The court then approached what was the turning point of the case: whether a compelling societal interest dictated that the parents' children be forced to read the prescribed books, or otherwise forfeit a free public education. The court found no such compelling interest to exist; further, that a useful alternative existed in permitting the children to opt out of the reading program, to withdraw to a study hall or the library during the reading period, and to pursue a program of home reading, with a parent, under existing home-schooling provisions of Tennessee law.

Such are the facts and the judgment in the *Mozert* case.

My own appraisal of the decision is that, against the background of Supreme Court decisions, Judge Hull could not have ruled otherwise.

Critical questions are now being raised about the decision. I now pose these and give the answers as I see them in constitutional terms.

What business has a court pre-empting the role of a school board? None, of course. But suppose that the school board is charged with violation of constitutional rights: Are our courts barred from inquiring and acting?

We have not thought so in the desegregation cases or in the Bible-reading cases. And in *Tinker* v. *Des Moines School District*, the Supreme Court held unconstitutional the action of a school district barring students, under pain of dismissal, from wearing armbands symbolizing protest of the Vietnam War. In these and many other cases, our courts have indeed dealt with school-board issues, and vetoed school-board actions. I see no violation of the principle of separation of powers (or of state's rights, for that matter) in any of these cases—or in the Tennessee textbook case.

Does Judge Hull's decision give parents veto power over public-school programming? It is undeniably true that school boards must have liberty to carry out their legal responsibility to assist in the education of children. But two considerations must be borne in mind.

First, at least so the Supreme Court has repeatedly held, the parental right in education is primary. There are indeed bad parents, negligent parents, and ignorant parents. But the rights of all parents must not be placed at risk because of the failings of some. Our Constitution and laws have never recognized the state as the sole educator or the primary educator.

This comes into sharp focus when we come to a second consideration. That is, that local school boards are not immune to error. As Justice Robert H. Jackson stated in his superb opinion in the *Barnette* case (involving state imposition of the flag salute on children of Jehovah's Witnesses):

"Such [education] Boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity and be less vigilant in calling it to account. . . . There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond the reach of the Constitution."

The Tennessee case involves the protest of one set of parents against one kind of textbook. Suppose that, instead of fundamentalist Christians, these plaintiffs were Catholics protesting having their children forced to read the screeds of Tony and Susan Alamo, or Jews protesting a book calling the Holocaust a fraud, or black parents, a Schockleyite text?

We dare not trivialize such protests merely because it is a minority—even one deemed by some to be eccentric—that makes them. Book-forcing, in the face of sincere religious objections, is simply unthinkable where alternative means of learning reading are available.

Doesn't Judge Hull's decision call for administrative chaos? The decision—carefully, in my view—weighs its consequences. The court found no evidence whatever that school boards are now going to be flooded with demands for exemptions. Undoubtedly, that is the common sense of the matter. The court explicitly limited its decision to the narrow case before it—the particular objection of the particular plaintiffs to a particular book series.

But of greater importance is the fact that administrative inconvenience can rarely stand as a reason for overriding the exercise of First Amendment freedoms. Our school boards have traditionally found themselves able to adapt to situations of incontvenience. Busing for desegregation purposes has been the occasion of monumental inconvenience—and vast expense. Not a fact in the record of the *Mozert* case, nor even in the highly speculative commentary that has damned the *Mozert* decision, lends any ground whatever to the proposition that severe administrative difficulties are now in actual prospect, or, if so, that it is worth scrapping civil liberties in order to avoid them.

Judge's Analysis Was 'Wrong in Every Respect'

Continued from Page 24

Nor does the fact that the public-school curriculum may force some fundamentalist Christian parents to pay for a private-school education mean that their rights of religious freedom have been burdened. The Supreme Court has held repeatedly that the government does not burden the exercise of a protected right by refusing to subsidize it; and the fact that some parents might not be able to afford to send their children to private schools is immaterial. An individual's inability to pay for what he wants does not turn the government's refusal to make it available to him for nothing into a "burden" in the constitutional sense of the term.

What was the state's interest? No one disputed in *Mozert* that the state has a compelling interest in educating children. But the state has a more particularized interest than that, and it is just as compelling. Subject to the establishment clause and the First Amendment's anti-censorship constraints, the state has a compelling interest in being able to define the curriculum in its schools, free from judicial interference at the behest of irritated parents.

The state's interest here was not simply to teach children "how to read," but to define a curriculum in which reading instruction is an integral part of a broader program of development—one that involves exposure to a wide variety of materials that, as the state textbook commission said, will "realistically represent our pluralistic society." The reading series at issue in *Mozert* was part of this curriculum. That is why, as Judge Hull noted, "the reading texts teach more than just how to read."

Thus, the question is not, as the judge thought, "whether the state can achieve literacy and good citizenship for all students without forcing them to read [a particular textbook] series." The question was whether the courts have any business telling a state how to instruct its children in our "common heritage." The answer to that question is clearly "no."

Are the "less restrictive alternatives" acceptable? Having found that the school district had burdened the plaintiffs' rights of religious freedom by forcing them to choose between a "free public education" and being exposed to offensive reading texts, Judge Hull cast about to determine whether there were any "less restrictive" means by which the state could achieve what he perceived as its interest—teaching children how to read. Even if the state's interest were so narrow, the opt-out alternative approved by the judge is a prescription for disaster.

First, as school officials testified, it is unworkable. Judge Hull showed a lofty indifference to the fact that in grades 7 through 4 *there is no separate reading period.* Children in these grades simply cannot "withdraw to a study hall or the library" while reading is being taught, because in those grades *reading is taught throughout the day.* Children in these grades would have to be permitted to excuse themselves whenever instruction in any subject is offered using books that offend their parents' religious beliefs.

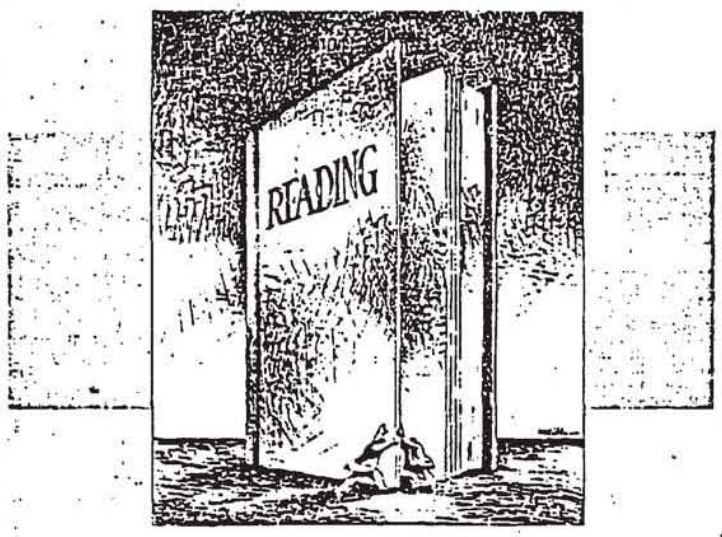
In grades 5 through 8, the result is likely to be, at least in some school districts, to eliminate reading as a separate course, and to create the same problems of unworkability that will beset instruction in grades 1 through 4. For if any significant number of children boycott a reading class on religious grounds, school authorities will eliminate that class. It is economically unjustifiable to dedicate teacher time to under-enrolled courses and, according to the school board's testimony, educationally unsound.

The only way for a school to avoid such boycotts—in any grade—would be to remodel its entire curriculum to include books that are objectionable to no one on religious grounds. It is doubtful that this is possible. Everything is bound to be religiously objectionable to someone. The result will be that the largest religious constituencies in the public schools will end up dictating the curriculum—a flat violation of the establishment clause.

Meanwhile, children of minority religious faiths could still boycott class, although there would be tremendous pressure on them to attend class in order to keep the class economically and educationally viable. They certainly will not wield the censorial power of the more popular sects. The burden of the majority religions' curriculum choices would fall squarely on them.

Both of these results—educational fragmentation and religious censorship—are devastating from a First Amendment standpoint. In the end, as Justice Robert H. Jackson warned nearly 40 years ago, undertaking to eliminate from the public-school curriculum all that is religiously objectionable to some religious sect will "leave public education in shreds"—or make it hostage to the demands of the dominant religions.

These are the consequences threatened by Judge Hull's decision. But the problems that led to the lawsuit in *Mozert* will remain even if his decision is overturned. The existing climate must change. Fundamentalist Christian parents must realize the disservice that they are doing to their own children—and the harm they are doing to public education generally—in demanding a public-school curriculum that gives them no offense. They must come to understand that the public schools cannot teach their religious beliefs. The courts will do their part, but they cannot teach these lessons.



For Full Discussion of Religion in the Schools

By Anthony T. Podesta

How should religion be treated in the public schools? From federal courtroom to political podiums, voices have been raised contending school curricula ignore religion—or are actually hostile to it. The question is the subject of a raging public debate—and maybe, just maybe, an emerging national consensus.

However, controversy continues over both the explanation and the solution for this problem: whether it results from a deliberate effort to erase religion from our history and ultimately from our society; and whether the answer is simply to improve the coverage of religion—or to go one step further and have the public schools actively promote religion.

During the past two years, three studies of public-school textbooks have agreed the books minimize the importance of religion in American life. Similar findings were reported by Paul Vitz, professor of psychology at New York University, in a study funded by the Department of Education, and by two organizations often at odds with Secretary William Bennett's department, Americans United for the Separation of Church and State, and People For the American Way.

In our review of 31 junior- and senior-high-school American history textbooks, which was first presented to the Texas State Board of Education last year, People For the American Way found that, while Americans are, by most measures, the most religious people in any industrialized nation—more than 90% believe in God and 60% attend a house of worship at least once a month—history texts do not reflect the importance of religion in our society.

When religion is mentioned, it is usually only in passing. Textbooks refer to religious diversity, but do not provide in-depth coverage of the many religious traditions that have enriched our national life. There are also significant omissions in coverage of the role of religion in inspiring various social movements, including abolition, prohibition, the labor movement, civil rights, the anti-Vietnam War movement, and both pro- and anti-abortion movements. In fact, as Secretary Bennett has noted, some textbooks go to absurd lengths to avoid mentioning religion, with one text defining pilgrims as "people who make long trips" and another defining fundamentalists as rural people "who follow the values or traditions of an earlier period."

The consensus ends with the recognition that there is a problem with the treatment of religion in the schools. Mr. Bennett blames "extreme secularists" for using the First Amendment, with its strictures against official establishment of religion, to banish God and morality from textbooks and curricula. Prof. Vitz declares, "The secular humanists have been able to dominate and control education." Reading such statements by respected neoconservatives, one can hear leaders of the Religious Right such as Pat Robertson or Jerry Falwell offering a hearty "amen."

Thus defining the problem, Messrs. Bennett and Vitz argue that the solution is for the educational system not merely to provide better coverage of religion but to promote it. While rejecting the Religious Right's view that the U.S. must be a "Christian nation," Secretary Bennett declares that the public schools should encourage religious belief and "strengthen" "the Judeo-Christian tradition." Prof. Vitz criticizes the very concept of nonsectarian public education, denouncing "the monopoly school system," calling for "lawsuits against school boards" such as the cases now under way in Alabama and Tennessee, and supporting vouchers and tax credits for private religious schools.

However, some of us offer a different explanation—and a different solution—for the poor coverage of religion. We believe the overall problem with textbooks and curricula was summed up by Secretary Bennett's predecessor, Terrel Bell, when he used the phrase "dumbing down." Yes, textbooks and curricula fail to provide adequate treatment of religion, but they also fail to offer first-rate coverage of dozens of other potentially controversial subjects, from the theory of evolution, to tragic chapters of history such as slavery and the Holocaust, and even literary classics, such as the works of Shakespeare, whose Romeo and Juliet is bowdlerized in every high-school anthology.

It makes no more sense to blame a secularist conspiracy for watering down the coverage of religion than to blame a fundamentalist conspiracy for deleting references to evolution. The common preoccupation among all too many publishing-company executives and state education officials is fear—not of religion or science but of controversy. It is the same search for the lowest common denominator that renders all too many science, literature and history textbooks into pedagogical pablum, with easy words, simple concepts, glitzy graphics, and as little content as possible so that no one will be offended, whatever his heritage or viewpoint.

If the problem is not bias but "dumbing down," then the solution isn't evangelism but smartening up. Let the textbooks describe the marvelous diversity of religious beliefs that Americans brought to these shores, the even greater diversity of faiths that we have created here, and the extraordinary contributions that religious leaders, religious institutions and religious people have made—and are making today. But there is no need for the public schools to promote any one religion, nor to promote some entity called "Judeo-Christianity," nor even to promote religious belief in all its forms.

The public schools should do a better job of teaching about religion, but it isn't their role to teach religion. It's time for our nation's education, religious and political communities to reach another new consensus: that our young people need better education, not better indoctrination.

An attorney and former college instructor, Mr. Podesta is president of People For the American Way.

The Wall Street Journal
Nov. 12, 1986

DALLAS MORNING NEWS
NOVEMBER 23, 1986

Evangelical suits may reshape education

By William J. Choyke
Washington Bureau of The News

MOBILE, Ala. — David Webster was in the second grade when his parents first noticed signs of conflict between their Christian teachings at home and public school lessons designed to provoke critical thinking.

In a program for bright and gifted students, David was presented with a dilemma: Six people of diverse socioeconomic and racial backgrounds were caught in a nuclear disaster and had rushed to a fallout shelter where there was only enough space for three. Which three would he admit?

Bob and Sue Webster, concerned that the lesson was incompatible with their Christian view that God is the ultimate arbiter of life, successfully worked with David's teachers to get him excused from such exercises. But by the time he reached sixth grade and faced a different teacher in every class, the Websters almost gave up in frustration.

"My husband and I felt absolutely powerless," recalled Mrs. Webster. "We would give our two children instruction at home and then send them into this environment. It was never our aim to take

Please see EVANGELICAL on Page 8A.

Evangelical challenges could reshape education

Continued from Page 1A.

of the system. Our aim was to equip the children to be productive members of society."

But the Websters did take on the system. Like scores of predominantly evangelical Christian parents across the country, they believe that today's public school system has evolved away from traditional Judeo-Christian values to a philosophy that says man alone determines his destiny. And this change, they say, is undermining attempts to rear their children according to their religious beliefs.

Their frustration is manifested across the country, from rural hamlets to large cities, in dozens of challenges to textbooks and school practices. For instance, two parents in Bristol, Va., have asked school officials to drop celebrations involving Santa Claus and the Easter Bunny because they say those activities detract from the religious aspects of holidays. Parents in Portland, Ore., have objected to student seminars that emphasize differences in generational values because, the critics claim, the exercises encourage conflicts with parents.

This anxiety also has spawned three landmark lawsuits — which coincidentally are nearing key stages — that could change the face of public education in America.

If the traditionalists prevail, federal judges, rather than local and state school boards, would have the ultimate authority in deciding the content of school curriculums, similar to judges' roles in desegregation cases, according to lawyers involved in the cases. And those curriculums could have to be significantly revised.

The lawsuits, filed in Tennessee, Alabama and Louisiana, focus on these issues:

■ Whether parents have the constitutional right, based on the First Amendment's guarantee of "free exercise" of religion, to take their children out of public school classes in which the curriculum offends their religious beliefs.

Four weeks ago in Greeneville, Tenn., U.S. District Judge Thomas Hull ruled that children of seven fundamentalist parents could opt out of reading stories like *Cinderella* and *Macbeth* because they mentioned magic or witchcraft and depicted traits such as courage and intelligence as personally developed rather than God-given. Hull has set a trial on damages for the parents for Dec. 15; meanwhile, the school district is appealing his ruling.

■ Whether a school's curriculum, particularly in the area of home economics, advances a religious theory of humanism in violation of the First Amendment's prohibition on establishment of a governmental religion. In this Mobile, Ala., case, the Websters and 622 other evangelical Christian parents also contend that the omission of religious references in social studies and history textbooks inhibits their families' constitutional right to exercise a religion of their choice.

A three-week trial ended last month, and a decision by U.S. District Judge W. Brevard Hand is expected in a few months.

■ Whether a state can direct its schools to teach "creation science" — which reflects what the parents see as the biblical view of creation — if those schools offer courses dealing with evolution. The U.S. Supreme Court will hear oral arguments Dec. 10 on Louisiana's Balanced Treatment Act, which has been struck down by lower courts. A decision is likely this spring.

The battles reflect a clash of cultures and lifestyles as much as a fight over legal principles.

"I think democracy is at stake," warned Dorothy Williams, chairwoman of the Alabama Civil Liberties Union Committee Against Censorship. "If somebody gets the entire control of what gets in the textbooks, it will have a hell of an impact. What is at stake is the future of public education and the future of democracy."

Said Thomas F. Parker IV, one of three attorneys for the Websters and other plaintiff-parents in Mobile: "It is the role of the school to pass on societal values to the next generation. Education is what we are finding makes the values of a society. It is the values of a small group that are being passed on, and they are so fundamentally opposed to the values that hold us together as a nation that they pose a national security interest."

■

Textbooks have long been the primary targets of conservative and Christian critics because they are viewed as the most visible and influential tool in the classroom.

By 1984, the types of concerns that the Websters first expressed quietly six years earlier had grown into sporadic public disputes, spurred in part by conservative Phyllis Schlafly and local chapters of her Eagle Forum.

During Education Department hearings on students' rights in early 1984, numerous parents complained that public school textbooks and role-playing programs such as that presented in David Webster's class were encouraging students to stray from traditional Christian morality. Shortly afterward, Mrs. Schlafly compiled some of the testimony in a book, *Child Abuse in the Classroom*.

It sold more than 150,000 copies at $4.95 apiece. In a telephone interview from her home in Alton, Ill., Mrs. Schlafly credited *Child Abuse in the Classroom* with serving as the catalyst for grass-roots action by convincing parents that they were not alone in their concerns.

"Public schools are trying to impose on children ideas and behavior which are, I believe, offensive to their First Amendment rights in a large percentage of classrooms," Mrs. Schlafly said. "People who have very firm religious beliefs are the ones that find out how their beliefs are being offended in the schools. But you don't have to be a fundamentalist Christian to think it is wrong to teach children in schools about premarital sex, open marriage and prostitution.

"The psychological garbage is in every school district and the issue

PAGE 2

is coming on like a charging steam engine," she said.

Local chapters of the Eagle Forum in Alabama and elsewhere have pressured education officials to choose textbooks compatible with Christian ideals.

"Selection is not censorship," argued Joan Kendall, Alabama chairwoman of the Eagle Forum's education committee, who served on the state's 23-member textbook advisory committee in 1984. "It is common sense.

"The liberals have had the corner on the textbook market for years and that is why they are resisting," she said. "We are not against teaching human reproduction, for instance, but want in the books a portion on abstinence. A textbook can change the code of values and code of beliefs of an individual. It is different than a book in the library."

Eagle Forum's Alabama chapter has been instrumental in persuading the State Board of Education, which acts on recommendations from its State Textbook Committee, to drop more than 50 books from its approved lists in the past two years.

"On one hand, I see this debate as being very healthy to have public interest in textbooks," said Dr. Carlton Smith, chairman of Alabama's State Textbook Committee and a superintendent of schools in Vestavia Hills, a suburb of Birmingham.

"On the other hand, I see we can have a blandness developing in the textbooks that are written not to offend anyone," he added. "The textbooks remain the basic tool for education and should provide youngsters better skills to become independent thinkers."

Ms. Williams of the Alabama

Please see MOBILE on Page 9A.

Mobile suit poses biggest challenge, attorneys agree

Continued from Page 8A.

ACLU and Anthony Podesta, president of the Washington-based People for the American Way, say that the fundamental purposes of the education system — developing freedom of mind and freedom of expression — are threatened by efforts to exorcise from textbooks straightforward references to homosexuality, cohabitation and other ideas that critics view as anti-Christian.

"I think the common thread through these cases and efforts is that these people feel unrepresented," said Podesta, whose civil liberties organization is paying the costs in the Tennessee case and splitting expenses with the ACLU in the Alabama case. "They feel their traditional lives and values are not represented in the textbooks. Yet, they want to put single-mindedness in place of freedom of worship and freedom of thought."

■

Of the three major lawsuits involving religion and education, the complex Mobile dispute promises to have the greatest impact because it deals with the broadest range of issues, the lawyers agree.

It dates to 1982, when Ishmael Jaffree, a Mobile resident, challenged an Alabama statute that provided a minute of silence for "meditation or voluntary prayer" in public schools. Judge Hand upheld the law, but the U.S. Supreme Court struck it down as unconstitutional by a vote of 6-3 in 1985.

Jaffree also sought to have all activities furthering a belief in God expunged from the public schools, but never appealed that part of Hand's ruling. The judge foretold the current case when he wrote in a footnote to his 1983 decision:

"If this court is compelled (by higher courts) to purge 'God is great, God is good, we thank Him for our daily food,' from the classroom, then this Court must also purge from the classroom those things that serve to teach that salvation is through one's self rather than through a deity."

After the high court ruling, Hand contacted the lawyers for the 624 evangelical parents who opposed Jaffree in the original lawsuit and asked them if they wanted to pursue the religious-reference portion of the case. Subsequently, the parents, once defendant-intervenors, became the new plaintiffs.

Their claim was twofold. First, they said that five textbooks approved for use in home economics advanced the tenets of humanism, which the parents said was a religion. They defined humanism as a "preoccupation with man as the supreme value in the universe and as the sole solver of the problems of the universe." References to single-parent families, homosexuality and sex-role reversals are not only anti-Christian but are humanistic, they contended.

Secondly, they said their children had a constitutional right to receive accurate information about the role that religion played in American history and society. The omission of religion in textbooks, the parents contended, distorted history and social studies books in a violation of their right to practice their religion without governmental interference.

Numerous examples of omissions are cited, ranging from the failure of textbooks to accurately portray the role of religion in the Pilgrims' first Thanksgiving to its importance to Martin Luther King Jr. and the civil rights movement.

Podesta and others acknowledge that textbooks have neglected the importance of religion, primarily because publishers have shied away from controversy. "(But) there is no constitutional right to good textbooks," he added. "The place to battle this out is not under the rules of evidence, but before the state (education) boards across the country."

If Judge Hand determines humanism is a religion, the next issue he must address is whether the schools, through the home economics books, impermissibly advance it.

A victory for the evangelical Christians would be a defeat for pluralistic schools, civil libertarians say. Textbooks and curriculums would have to be revised, and educators as well as textbook publishers would become even more wary of dealing with controversial subjects that could offend someone's religious beliefs, they say.

Moreover, they fear that fundamentalists and other conservative groups, encouraged by a favorable Alabama ruling, would seek to go a step further: to pressure legislatures to approve a tuition tax credit, or voucher system, that parents could use to finance their children's education at the school of their choice.

This system, the civil libertarians argue, would lead to the unraveling of American public education.

Judy Whorton, a registered nurse and one of the 624 plaintiffs, said the evangelicals' agenda is much more limited.

"The concern we have is that we do not want any tenets of religion taught, but that the law be equally applied," she said. "We want facts about all religion taught; but tenets of no religion taught."

William A. Bradford Jr., a Washington attorney representing 12 parents who oppose the evangelicals' lawsuit, denies that secular humanism is a religion. And even if it is, he added, the home economics textbooks' themes have only a coincidental similarity to the tenets of humanism, which he says encompasses many different forms and beliefs.

"Humanism," Bradford declared, "is a convenient label that these plaintiffs have attached to ideas they don't like."

George F. Will

Tailored Textbooks

A '60s sensibility is slinking back into public life, this time in conservative judicial activism that is as pernicious as liberal activism. In the Tennessee textbook case, conservatives have invoked, as '60s radicals did, "sincerity" as a legitimizing license for turning schools into arenas of conflict.

The decision is that parents' and pupils' First Amendment right to "free exercise" of religion is unconstitutionally "burdened" if pupils are exposed to instructional material distressingly at odds with their religious beliefs. The judge said a controlling fact must be the uncontested sincerity of the plaintiffs' beliefs, however peculiar, about Holt, Rinehart & Winston readers—readers used in 15,000 school districts.

The judge said: "The plaintiffs have sincerely held religious beliefs which are entitled to protection under the . . ."

Conservative judicial activism could produce a supervision far more intrusive than anything liberal activism has achieved.

Hold it. Constitutional protection of belief? Protection from what? Literature? Science? The 20th century? The free-exercise clause protects a broad sphere of conduct. However, it is not a guarantee of intellectual spiritual serenity or a commitment to protect parents and children from influences that might complicate the transmission of sectarian beliefs.

The Tennessee plaintiffs objected to "The Diary of a Young Girl" by Anne Frank (Anne said having some religion was more important than having a particular religion), "The Wizard of Oz" (it contains a good witch and implies that virtues can be acquired without God's help), "Cinderella" (magic), "Macbeth" (witchcraft), Hans Christian Andersen (fortune telling), Greek and Roman mythology (idol worship), concepts of death contrary to Biblical teaching, and all stimulation of children's imaginations "beyond the limitations of scriptural authority." The Tennessee judge's understanding of the "free-exercise" right would empower elementary-school pupils to leave the room when the class comes to readings that threaten to cause distress.

The Supreme Court has held that the free-exercise guarantee was violated when a Jehovah's Witness was denied unemployment compensation after resigning from a firm rather than accept transfer to armaments work; or when a similar denial of a state benefit resulted because a Seventh Day Adventist quit a job rather than work on Saturday; or when a diploma was denied to a student who, on religious grounds, refused to attend state-required ROTC training.

In these cases, state benefits were made contingent on conduct violative of a central religious tenet. The Tennessee case was quite different. The plaintiffs were not seeking exemption from forbidden conduct but exemption from exposure to disturbing thoughts. In the cases the Supreme Court has decided, the religious persons only sought access to a state benefit. In Tennessee, the plaintiffs insisted that the benefit (education) be tailored to their tastes.

Imagine the claims and counterclaims that will be litigated in every school district when word gets around that the "free-exercise" clause is a guarantee against state action discomfiting to sincerely held theistic notions. But surely elective participation in public education cannot be tailored to sectarian sensibilities without violating another clause of the First Amendment—the ban on any "establishment" of religion. "Establishment" would be the clear consequence of state action to satisfy the plaintiff's insistence that their children not be exposed to ideas they consider contrary to scripture or "that might cause confusion" about religious beliefs.

Parents have a constitutional right to send children to private schools, even inferior ones, where they will be protected from serious literature and other disturbing influences. But chaos must result when parents are invested with a right to fine-tune their children's cooperation with a public-school curriculum. That is bound to be disruptive and is bound to exert pressure toward blandness, dumbness and falsehood in instruction. (Imagine teaching evolution to little creationists.)

Pluralism depends on tolerance of diversity, a value subverted by assertion of a constitutional right to retreat from all but comforting instruction. Furthermore, there is a social interest not only in pluralism but in commonality, in a shared grammar of the intellect. That must involve acquaintance with facets of history, science and literature that are problematic for certain religious mentalities.

In his new novel, "Peckham's Marbles," Peter De Vries' protagonist confronts a religious obstacle to romance: "She was an Episcopalian, Peckham a Dadaist. But who could say that in this era of ecumenism the two denominations might not soon one day merge."

Not soon. Religious irritability is rising, and in America irritability begets litigation, and the Tennessee case shows how litigation can cause an exponential increase in irritability.

Worse may be on the way. In an Alabama textbook case, parents charge that texts do not do justice to the contributions of religion to American history. This charge probably is well-founded. But imagine a ruling that the use of such texts abridges parents' "free-exercise" right or "establishes" the "religion" of "secular humanism."

If a court holds that bad teaching is unconstitutional, conservative judicial activism will have produced a judicial supervision of American life far more intrusive than anything liberal activism has achieved.

Wash. Post
11/9/86

ABOUT EDUCATION

New Fervor in School Battle

By FRED M. HECHINGER

FUNDAMENTALISTS fighting for control of what public schools teach are turning both to the ballot box and the courts. By their own leaders' estimate, twice as many "Christian candidates" are running for local, state and national offices in today's elections than ran in 1984.

Garry Jarmin, political consultant to Christian Voice, a conservative Christian lobbying group, told Education Week, a journal for educators, "It is arrogant and naïve for us to assume that we can have control of the national Government if we don't have control of school boards."

A fund-raising letter over the signature of Forrest Turpin, executive director of Christian Education Association International, says that when supporters of fundamentalist Christian views control all school boards, "this would allow us to determine all local policy," including selection of textbooks, teaching programs, superintendents and principals.

In the courts, the battle is also being waged with new fervor. The issues of the 1925 Scopes trial in Dayton, Tenn., seem inconsequential compared with the current proliferа-

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NYT

Fervor in School Battle

Continued From Page 1

tion of trials in which fundamentalists challenge the public schools.

In the original Scopes trial, the issue was rather limited: John Scopes, a biology teacher, was convicted of violating a Tennessee statute that declared it unlawful "to teach any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man descended from a lower order of animals."

The trial, which pitted the fundamentalist William Jennings Bryan against Clarence Darrow, ended in an anticlimax: Scopes was fined $50, and the law was nominally upheld. It was not until 1968, when a high school biology teacher in Arkansas challenged a similar law, the Supreme Court ruled the statute null and void.

The ruling, however, did not put an end to the creationists' war against evolution. It merely changed their strategy. In the latest case which will be argued in the Supreme Court's current term, Louisiana's education authorities, joined by representatives of the scientific, religious and educational community, will be pitted against the state's Attorney General, supported by fundamentalist, orthodox and ultraconservative groups. The latter will try to get the Court to uphold the constitutionality of Louisiana's Creationist Act of 1981.

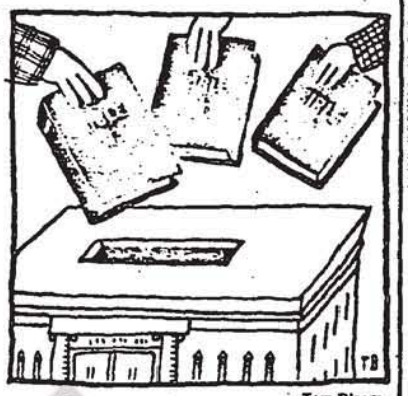
The most recent ruling, by Judge Thomas Gray Hull of Federal District Court in Greeneville, Tenn., makes the Scopes trial appear like a minor skirmish in a fundamentalist battle against a broad range of public school instruction. At issue was the charge by a group of fundamentalist parents that their children's rights had been violated when they were suspended from school for refusing to read assigned textbooks which, the parents held, subjected them to godless influences.

Judge Hull, who in 1983 had dismissed a similar suit, this time upheld the parents' right to let the children leave their classes when offending books are used.

Beverly LaHaye, president of Concerned Women for America, who supported the fundamentalist parents, called the Tennessee ruling "a tremendous step forward to religious freedom in America." This raises questions about the definition of religious freedom in the context of public education.

The question is not new. In the last century, many parents — primarily Roman Catholics but also members of other religions — objected to the prevailing Protestant domination of the schools. Many Catholics withdrew their children and sent them to parochial schools. The right to maintain nonpublic schools, though under state regulatory power, was upheld in 1925 by the Supreme Court.

The issue came up again in 1972, when Jonas Yoder, an Amish parent



Tom Bloom

in Wisconsin, charged that compulsory high school attendance was in conflict with Amish religious views. The Court upheld the parents' right not to send their children to high school, but carefully restricted the option to long-established religious life styles.

While all these cases reduced the public schools' monopolistic powers, none tried to dictate their curriculum or censor textbooks. In fact, the public schools' nonsectarian nature was repeatedly upheld by the courts.

Perhaps encouraged by the Reagan Administration's call for officially sanctioned school prayer and by a general conservative mood, fundamentalist Christians have reopened old issues and gone one step further: to try to have anything that conflicts with their views expunged from textbooks and the classroom. The Tennessee parents' demands on the public schools are hard to define narrowly; they sound like an attempt to impose fundamentalist religious and ultraconservative political dogma, or to let children opt out of whatever lessons fail to meet such demands, while still remaining enrolled in the public schools.

Objections to what is taught range widely. Among the selections the Tennessee plaintiffs considered unacceptable was a story about Anne Frank's "Diary of a Young Girl," "The Wizard of Oz," a chapter about the origin of tidal waves, and stories suggesting that courage and other fine traits are developed by the individual rather than being God-given.

This suggests that the goal of these challenges is not to protect the children's religious faith but to impose fundamentalist religious controls on the public schools. This is why Christian fundamentalists see today's elections as an opportunity to make gains in their efforts to control what is taught in public schools.

"Whoever controls public education and the mindset of the learning atmosphere will control public opinion and this nation," Robert L. Simonds, president of the National Association of Christian Educators told Education Weekly. The Scopes trial was small potatoes compared with such goals.

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James J. Kilpatrick

Puree Of Textbook

As observers have remarked for the past 2,000 years, no influence in society can be more upsetting than the influence of organized religion. It not only unites; it also divides. Last week a federal judge demonstrated the truth of that ancient proposition. Judge Thomas Gray Hull ruled in favor of a group of Christian fundamentalists who challenged the textbooks used in the public schools of Hawkins County, Tennessee.

If Hull's decision survives appeal to the 6th U.S. Circuit and ultimately to the U.S. Supreme Court, we can look for something approaching chaos in both elementary and secondary education. School boards would find it just about impossible to accommodate the complaints and demands of different religious and antireligious groups.

The same issues submitted to Judge Hull in Tennessee are before Judge William Brevard Hand in Alabama. In each case parents contend that to compel their children to study from certain readers and textbooks is to violate their First Amendment rights. The amendment forbids governments to foster any "establishment of religion," and it guarantees to individuals the free exercise of their religion.

The fundamentalists' argument, as I understand it, goes this way: if it violates the establishment clause for a teacher to teach that "God exists," it is equally a violation for the teacher to teach that "God does not exist." Public school attendance is compulsory. The child of a Christian fundamentalist family loses his right to the free exercise of his religion if the child is made to read matter destructive of the child's religious faith. The nonexistence of a supreme being is a tenet of secular humanism. Many of the readers and textbooks widely used throughout the United States are the work of humanist writers.

"Evangelicals are gaining the kind of equality for which other minorities have been successfully contending."

Judge Hull examined a series of readers published by Holt, Rinehart & Winston for use in grades one through eight. He concluded that the books did indeed "burden" the children's free exercise rights. "The state," he said, "can achieve literacy and good citizenship for all students without forcing them to read the Holt series." Such books are "by no means essential." Children whose families are offended must be allowed to "opt out" of the reading courses. Parents would then be lawfully obligated to teach them reading at home or by some other means.

This won't do. It won't work. Federal judges were not meant to be school superintendents or textbook censors. Hull's ruling opens a bleak vista of litigation stretching into infinity, as believers in "creationism" contend against the apostles of "evolution." A given classroom of 30 pupils could well include Catholics, Jews, Moslems, Quakers, Dunkards, Christian Scientists and Predestinarian Baptists. Statistically speaking, about half of the children would come from atheistic or agnostic families. How are these conflicting doctrines to be reasonably accommodated?

One of the problems, documented in both Tennessee and Alabama, lies in the vapid character of so many textbooks. Paul E. Vitz, a professor at New York University, last year made an exhaustive analysis of 10 sets of textbooks in social studies. He concluded that religion had been washed out of all of them. The child who learns from these texts will learn nothing of the role of the church in American history.

The reason for this lies in the eagerness of textbook publishers to satisfy everyone and to offend no one. This has led to the Mixmaster text, in which all the vegetables are pulped. By catering to blacks, Hispanics, militant feminists and homosexuals—and to any other vociferous minority—the writers have created an intellectual puree. The one minority that has been consistently put down is the minority of white Protestant fundamentalists. There is a certain sweet irony in noting that in Tennessee and Alabama, the sawdust evangelicals are gaining the kind of equality for which other minorities have been successfully contending.

But no one really gains in this situation. It is patently absurd to expel "The Wizard of Oz" from a child's reading list because the Oz books deal with a witch. Farewell, Cinderella! Goodbye to the "Diary of Anne Frank." Let us close the windows lest a fresh idea blow in. A greater disservice to children scarcely could be imagined.

Milton had the right idea: Let the winds of doctrine blow! Unfortunately, the people who write and publish textbooks, and the school boards that adopt textbooks, are caught in a bind. The courts, grappling with the First Amendment, are doing nothing to ease their difficult task.

Washington Post
October 30, 1986

FUNDAMENTALISTS WIN A FEDERAL SUIT OVER SCHOOLBOOKS

'Sincere' Religious Objections Lead a Judge in Tennessee to Order an Alternative

By DUDLEY CLENDINEN
Special to The New York Times

ATLANTA, Oct. 24 — In the first Federal court decision on a subject of growing concern, a small group of fundamentalist Christian parents today won a ruling that shelters their children from the godless influences they detect in certain public school textbooks.

The books at issue in the case in Hawkins County in East Tennessee are part of a basic reading series published by Holt, Rinehart & Winston and approved by the State of Tennessee. But

Excerpts from books at issue, page 8.

since they offend the plaintiffs' religious beliefs, and since the evidence of the recent trial showed that any other books on the state list would probably offend them, too, Federal District Judge Thomas Hull ruled in Greeneville, Tenn., that a reasonable solution would be to let the children sit out the class and learn to read at home.

Other Means of Teaching

Grounding his decision in the First Amendment's guarantee of the free exercise of religion, Judge Hull said the students could not be forcibly exposed to material violating their religious beliefs when the Tennessee schools could fulfill their objectives without forcing students to read a particular set of books. He found nothing wrong with the books themselves, which the publisher says are used in 15,000 school districts around the country, and he did not order their removal from the curriculum.

"Despite the fact that many people holding more orthodox religious beliefs might find the plaintiffs' beliefs inconsistent, illogical, incomprehensible, and unacceptable," the judge said, the real question was whether the plaintiffs' objections were sincerely held religious convictions. He found that they were, as the defendant school district had already acknowledged.

Opponents of the suit said they would appeal, warning that the ruling could turn schools into a cafeteria line from which parents of different persuasions could choose and reject courses that

Continued on Page 8, Column 1

New York Times
October 25, 1986

Fundamentalist Parents Win U.S. Suit Over Tennessee Schoolbooks

Continued From Page 1

pleased or offended their beliefs.

The victory in this case comes as part of a swelling public assault by evangelical Christians on what they call "secular humanism," which they see as an anti-Christian view of life centered on man's capabilities. The Tennessee suit, Mozert v. Hawkins County Public Schools, asked that Christian children be protected from schoolbooks infected with such a philosophy. Another suit in Federal District Court in Mobile, Ala., in which testimony ended just two days ago, asks that such books be removed from the curriculum, and that the role of traditional religion in American culture be returned.

The seven Tennessee families and their lawyers were ecstatic today. "I'm floating around ceiling level right now," said Michael Farris, the plaintiffs' chief attorney, who teaches his own children at home rather than expose them to the secular influence of the Virginia public schools.

But those who had defended the textbooks said they would immediately seek to overturn the verdict.

"This decision is a recipe for disaster for public education," said Anthony T. Podesta, president of People for the American Way, which paid expenses for the school board's defense. "It invites every sect in the country to pick and choose which books it will accept."

John Workman, a spokesman for CBS Inc., which owns Holt, said the company would defend its books further. "As publisher of the Holt basic reading series, we firmly disagree with the allegataions made by this group of parents and we will support the School Board's position on appeal," he said from his New York office. Holt, Rinehart & Winston was not a party to the lawsuit. In an unrelated move, CBS announced today that it would sell its educational and professional publishing division to Harcourt Brace Jovanovich. [Page 33.]

Judge Hull's opinion attempted to limit the effect of his ruling, saying, "This opinion shall not be interpreted to require the school system to make this option available to any other person or to these plaintiffs for any other subject." The plaintiff children, ranging through the eighth grade, are now in private Christian schools, and if they choose to return to public schools, the judge outlined a relatively straightforward approach.

"As the Court envisions the opt-out program, each of the student-plaintiffs would withdraw to a study hall or to the library during his or her regular reading period at school and would study reading with a parent later at home," the judge wrote. "The child's reading proficiency would be rated by the standardized achievement tests used by the state."

But Mr. Farris, the general counsel for Concerned Women of America, a conservative lobby of Christian women, said he agreed with Mr. Podesta that widespread extension of the decision could work a broad policy change in public schools, allowing parents to shop the curriculum to protect their children.

"I think that's right," he said. "If there's a serious offense to their religious beliefs, if there's a sex education course that teaches that homosexuality is a wonderful alternative lifestyle, I think they can opt out and teach their children sex education at home. And if schools don't allow Christmas carols, then we can opt out of that.

"For those school districts that have shown religious tolerance and cooperation, there's no change," Mr. Farris said. "For those districts that have had the position that there is only one way to teach, it's going to be a rude awakening."

The Hawkins County School Board, in a county where a majority of the population is Southern Baptist or Methodist, rejected the parents' demands in September 1983 that the reading series be removed. Represented by Vicki Frost, the mother of four children, the parents charged that the books taught witchcraft, black magic and sorcery as well as the practice of the occult, Hinduism and astrology.

When Mrs. Frost tried to remove her daughter from a reading class, she was arrested. She later won a false arrest judgment of $70,000 against county school officials and the Church Hill Police Department in Judge Hull's court.

When the parents, with the help of Concerned Women of America, sued in December 1983 to win the right of alternative instruction for their children, Judge Hull first threw out the case, saying their rights had not been violated because the books were neutral on the subject of religion. But the United States Court of Appeals for the Sixth Circuit, in Cincinnati, held that the parents' complaints deserved the hearing of a trial.

At the nonjury trial this summer, with 23 colorful children's books piled in stacks of evidence in the drab brown courtroom, Mrs. Frost was the star witness for the plaintiffs, and she spent long methodical hours on the stand detailing examples of such philosophies as supernaturalism, male-female role reversal, pacifism and situational ethics.

"I'm a born-again Christian," she said. "The word of God is the totality of my beliefs." As such, she was offended by such stories as "A Visit to Mars," which seemed to her to embody thought transfer or telepathy, supernatural powers which she believes are properly God's alone.

'I'm Very Grateful'

"Our children's imaginations have to be bounded," Mrs. Frost said firmly, after describing a reading exercise in which seventh grasders were asked to imagine themselves a part of nature.

In this and other examples, she saw the insidious influence of secular humanism. "Humanism in its essence denies God as the Creator," Mrs. Frost said. The core of its faith, she said, holds that "in man is the meaning of all things."

Today, when informed of the court's decision, Mrs. Frost said: "I can say I'm very grateful and very thankful."

But Timothy Dyk, a Washington attorney who represented the School Board, said he would push the appeal as far as necessary. If ultimately affirmed by the Supreme Court, he said, the decision could lead to "a fundamental reshaping of the public schools."

"The schools don't want to have children coming in and out of school for parts of the day," he said, "so what you'll have is the formation of lowest common denominator education, that which is not objectionable to anyone."

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2 Examples of Textbook Material Called Objectionable in Suit

Following are segments from stories and articles in two textbooks published by Holt, Rinehart & Winston that were cited by plaintiffs in a lawsuit on which a Federal judge ruled yesterday in Greeneville, Tenn. The plaintiffs said the material was objectionable in some cases as "supernatural," and in others as putting man in the place of God or of advocating Roman Catholicism.

The segments are from "Tidal Waves," an article by Herbert S. Zim, in "Riders on the Earth," Copyright 1983, and "The Hunchback Madonna," a story by Fray Angélico Chávez, in "Great Waves Breaking," Copyright 1983.

'Tidal Waves'

You know from your own experience that pushing water in a bathtub makes waves. The great pusher on the ocean is the force of the wind. When it blows, waves begin to form and move across mile after mile of the ocean's surface.

A tidal wave or tsunami (tsoo-NAH-me), however, is not caused by the force of the wind. A tidal wave may start in any one of three ways. A large landslide in the soft deposits of mud and sand along a steep continental shelf may occur. If millions of tons of these deposits slip down, the nearby water may be given a tremendous push. The explosion of a volcano may also send tidal waves moving across the ocean. Earthquakes underneath the sea do the same thing; if an area of the ocean floor moves up or drops down rapidly, the water above the area is moved, too.

Most tidal waves are caused by earthquakes, also known as seismic disturbances. The push given to the water by an earthquake is not great when you think of the ocean as a whole. But the surface in one area only has to move up and down a few meters to start a tidal wave. From a ship in deep water, this wave may not be noticed at all.

Tidal waves are very different from wind waves. They are quite low and perhaps as much as 240 kilometers (150 miles long). But as tsunamis come close to shore, their speed slows down and their height builds up. They may rise to over 30 meters (100 feet) high.

Only a few tidal waves may reach the shore, or there may be as many as two dozen.

If tidal waves approach during the day, the first small waves may not be noticed by people at the beach. What does attract attention, more often, is the way the sea withdraws. It may roll back like a very low tide and expose more of the bottom than people have ever seen before, grounding small boats and leaving fish flapping on the sand.

'Hunchback Madonna'

Old and crumbling, the squat-built abode mission of El Tordo sits in a hollow high up near the snow-capped Truchas. A few clay houses huddle close to it like tawny chicks about a ruffled old hen. On one of the steep slopes, which has the peaks for a background, sleeps the ancient graveyard with all its inhabitants, or what little is left of them. The town itself is quite as lifeless during the winter months, when the few folks that live there move down to warmer levels by the Rio Grande; but when the snows have gone, except for the white crusts on the peaks, they return to herd their sheep and goats, and with them comes a stream of pious pilgrims and curious sightseers that lasts throughout the spring and summer weather.

They come to see and pray before the stoop-shouldered Virgin, people from as far south as Belén who from some accident or some spinal or heart affliction are shoulder-bent and want to walk straight again. Others, whose faith is not so simple or who have no faith at all, have come from many parts of the country and asked the way to El Tordo, not only to see the curiously painted Madonna in which the natives put so much faith, but to visit a single grave in a corner of the *campo santo* that, they have heard, is covered in spring with a profusion of wild flowers, whereas the other sunken ones are bare altogether, or at the most sprinkled only with sagebrush and tumbleweed. And of course, they want to hear from the lips of some old inhabitant the history of the town and the church, the painting and the grace, and particularly of Mana Seda.

No one knows, or cares to know, when the village was born. It is more thrilling to say with the natives that the first settlers came up from the Santa Clara valley long before the railroad came to New Mexico, when the Indians of Nambe and Taos still used bows and arrows and obsidian clubs; when it took a week to go to Santa Fe, which looked no different from the other northern towns at the time, only somewhat bigger. After the men had allotted the scant farming land among themselves, and each family raised its adobe hut of one or two rooms to begin with, they set to making adobes for a church that would shoulder above their homes as a guardian parent. On a high, untillable slope they marked out as their God's acre a plot that was to be surrounded by an adobe wall. It was not long before large pines from the forest nearby had been carved into beams and corbels and hoisted into their places on the thick walls. The women themselves mud-plastered the tall walls outside with their bare hands; within they made them a soft white with a lime mixture applied with the woolly side of sheepskins.

The padre, whose name the people do not remember, was so pleased with the building, and with the crudely wrought *reredos* behind the altar, that he promised to get at his own expense a large hand-painted *Nuestra Senora de Guadalupe* to hang in the middle of the *retablo*.

Richard Cohen

Propagating Ignorance

There is a joke in which a psychiatrist draws pictures for a boy and asks him what he sees. The first picture is nothing but dots, and the boy says it's ants having sex. The second is of two crossed lines and the boy says he sees worms having sex.

"You know, you have sex on the mind," the psychiatrist says.

"What do you expect, when you show me these dirty pictures?" asks the boy.

Something similar to this has happened in Tennessee—only it is no joke. There, a group of fundamentalist parents sued the state, saying that certain school texts were "anti-Christian" or promoted secular humanism. Like the boy, they saw what they wanted to see everywhere: in a passage from the stage adaptation of Anne Frank's diary; in an explanation of the formation of tidal waves; and even in a description of the genius of Leonardo da Vinci. His sort of creativity, they said, was limited to God alone.

When it came to "The Diary of a Young Girl," the plaintiffs showed that they fully understood the importance of the book. It is frequently described as a plea for religious tolerance, and it was precisely on that basis that the fundamentalist parents rejected it. "We cannot be tolerant in that we accept other religious views on an equal basis of ours," said one of the plaintiffs, Vicki Frost.

Frost's argument, if it can be called that, carried the day. A federal judge ruled that children whose parents objected to this and similar readings could be excused to read on their own. What applies to Anne Frank applies also to readings having to do with evolution, pacifism, feminism, sex education and, it seems, just about anything that fails to mention God—and then only in an approved way.

The judge was faced with an age-old American dilemma: how to reconcile the needs of the secular state with the religious convictions of its citizens. The beliefs of the Tennessee parents may be bizarre, but to them they are no more bizarre than others'. In fact, they consider their beliefs correct, not to mention superior. Their obligation is to raise their kids accordingly.

But whatever the obligation of the parents, the government has one too. It is to provide an education—everything from the three Rs to the teaching of certain values. Maybe foremost among those values is tolerance. In a polyglot society such as ours, tolerance is not a dreamy aspiration but a real necessity. Without religious toleration—the gift of the Enlightment to our Constitution—we would all be at each other's throats.

The parents have certain options. One of them is to take their children out of the public schools and have them educated according to their own beliefs. Another is to use the church and the home to inculcate religious values and to leave the schools free to do their own thing. This is done all the time and explains why, even though the public schools are secular and neutral when it comes to religion, the public itself is not.

The Tennessee judge, rather than finding the obligations of the schools and of the parents to be irreconcilable, caved in to the parents. In permitting kids to be excused from certain readings, he rendered the government neutral in the contest between knowledge and ignorance. Evolution is a scientific theory with several hundred million years of evidence to back it up; Leonardo da Vinci was a creative genius; Anne Frank's diary is a moving plea for tolerance, and tolerance itself is a foremost civic obligation.

Public schools have no business participating in a process that would lead kids to believe otherwise. Their duty is to educate, to offer a palette of knowledge from which students can choose. Let the parents impart their own views, but let schools do what schools should do—educate.

Now, in a decision that both the plaintiffs and their opponents say might have a wide impact, the schools have been ordered to lend their authority to the propagation of ignorance: you can learn evolution or not; you can learn religious tolerance or not; you can learn about the cause of tidal waves or not.

You can, in short, become educated or not—pending the usual appeal, of course—and go off into the world unsuited either to live in it or to contribute to it. The issue, we are told, is religious rights. Yes, but it has been settled in a way that changes it: now it's child abuse.

Washington Post
October 31, 1986

'Secular Humanism' and Schools

THE BATTLE over religion in the public schools is shifting from school prayer to school textbooks. Last week a Tennessee judge ruled in favor of a group of parents who had complained that their children's right to exercise their religion was being violated by the textbooks they were required to read—textbooks which, they said, promoted "anti-Christian" and "secular humanist" beliefs. U.S. District Judge Thomas Hull ruled that the schools must pay damages to parents whose rights had been thus violated, and though he denied the parents' demand that the schools provide alternative curriculums along lines acceptable to their religion—that is, curriculums that explicitly affirm Christianity and Christian principles—he said the children might be excused from lessons with the objectionable textbooks and be taught reading at home. Meanwhile, in Alabama, another group of parents is pressing a similar textbook suit that is more sweeping in its claims and in its possible effects. The plaintiffs there say that the textbooks violate their children's religious rights, not merely by exposing them to objectionable material but by actually seeking to impose an organized, state-sponsored religion of their own. Again, the religion is this thing known as secular humanism.

What is new in both these cases is the attempt to turn around the usual debate by characterizing anything ***but*** the expression of a particular religion—the plaintiffs' own—as an antithetical creed. Courts have held in recent years that the public schools should give no particular standing to any religion, leaving to the home and the place of worship the duty of teaching children that a certain set of moral and religious beliefs is the only right one. Some parts of the parents' complaints—for instance, that the textbooks omit information on a particular religion, which is part of the Alabama complaint—could be remedied without disturbing this principle. But most of the specifics tell a different story. In Tennessee, one objectionable reading was a part of Anne Frank's "The Diary of a Young Girl" in which Anne urges a friend to have some religious convictions: "Not necessarily Orthodox . . . as long as you believe in something." In the Alabama case, a witness objected to the statement in a home economics teacher's guide that "people of all races and cultural backgrounds should be shown as having high ideals and goals." Concerning a statement that "You will be able to understand and get along with other people better if you keep an open mind about the value judgments they make," another witness commented that "the Christian is called upon to *close* her mind regarding value judgments that are fundamentally wrong." Other objections are to simple statements that people of different backgrounds hold different views.

The implication of all this is very destructive. If anything short of affirmation of a particular religion constitutes secular humanism, how can common ground possibly be found? Public schools are charged not only with teaching students the three R's but with instilling respect for diversity. That is not a religion but a principle on which Americans must agree in order to live peacefully in a pluralistic society. And the public schools have not only the right but the obligation to teach it. The plaintiffs' logic in these cases, if followed, would end the teaching of tolerance and destroy the common ground on which this country is based and which has been its greatest strength.

Washington Post
October 30, 1986

Ellen Goodman

Denying Diversity

BOSTON—There was a time when people who wanted to keep the peace and keep the crockery intact held to a strict dinner-table rule: never argue about politics or religion. I don't know how well it worked in American dining rooms, but it worked pretty well in our schools. We dealt with religion by not arguing about it.

Children who came out of diverse homes might carve up the turf of their neighborhood and turn the playgrounds into a religious battlefield, but the public classroom was common ground. Intolerance wasn't tolerated.

In place of teaching one religion or another, the schools held to a common denominator of values. It was, in part, the notion of Horace Mann, the 19th-century father of the public-school system: the way to avoid religious conflicts was to extract what all religions agreed upon and allow this "nonreligious" belief system into schools.

I wonder what Mann would think of that experiment now. Was it naive or sophisticated? Was it a successful or a failed attempt to avoid conflict in a pluralistic society?

Today, textbook publishers are, if anything, controversy-phobic. Textbooks are written and edited by publishing committees that follow elaborate guidelines to appease state and local education committees. They must avoid alienating either atheist or fundamentalist. And still these books have become centerpieces, controversial sources of evidence in courtrooms.

A judge in Tennessee recently allowed a group of students to "opt out" of reading class because the textbooks violated their religious beliefs. Their parents had managed to read religious subtexts, even witchcraft, into such tales as "Goldilocks," "Cinderella" and "The Three Little Pigs."

At the same time, a group of parents in Alabama went to court protesting that textbooks are teaching a state religion masquerading as "secular humanism." Not to teach about God is to teach about no God. The attempt to keep religion out of the textbooks was no guarantee against controversy either.

There is still a third argument about religion in the public schools that doesn't come from fanatics but from educators. They maintain that the attempt to avoid conflict has pushed textbook publishers to excise religion altogether, even from history class. It is not just the teaching *of* religion that has become taboo, they claim. It is teaching *about* religion.

Sources as diverse as William Bennett's Department of Education and Norman Lear's People for the American Way have reported in the past year on the distortions that result. There is a history book that tells about Joan of Arc without mentioning her religious motives. Others explain Thanksgiving without discussing the religious beliefs of the Puritans.

"The result of wanting to avoid controversy is a kind of censorship," maintains Diane Ravitch of Columbia University. "It becomes too controversial to write about Christianity and Judaism." Ravitch is involved in creating a new history curriculum for California that would incorporate teaching about people's belief systems and their impact on society. It may be tricky, she admits, to teach about religion without teaching religion, but then all good teaching is risky. So is learning. And that's what is at stake.

The common ground of values—neutral turf in the religious strife—threatens to shrink to the size of a postage stamp. In Tennessee, the court agreed to protect the religious beliefs of a set of parents whose own beliefs included intolerance of other religions and the importance of binding a child's imagination. These are ideas that are profoundly hostile to the American concept of education.

If textbook publishers keep retreating to a shrinking patch of safe ground, they will end up editing chunks out of "The Three Little Pigs." The strength of our system, what's worth telling the young, is not that Americans deny their differences or always resolve them, but that we have managed, until now, to live with them.

The Washington Post
Nov. 11, 1986

A Courtroom Clash over Textbooks

Evangelicals attack secular humanism in Alabama schools

"It's one of the most important trials of the last several decades." So maintains Robert Skolrood, executive director of Televangelist Pat Robertson's conservative National Legal Foundation and chief counsel for the 624 plaintiffs, all Christian Evangelicals. Anthony Podesta, president of the liberal lobby People for the American Way (P.A.W.), which is providing the legal team for the defense, counters that the case is a "hoax perpetrated by people who don't want the 42 million schoolchildren in this country to learn about ideas these people disagree with—everything from divorce to evolution." The two sides are clashing in a federal courtroom in Mobile, where the plaintiffs have brought a suit against the Alabama state board of education. At issue: whether some 45 texts used in Alabama schoolrooms illegally espouse a religion, called secular humanism by the Evangelicals, which they argue elevates man at the expense of God.

Judge W. Brevard Hand

One of the most extraordinary features of the trial is that the presiding judge, W. Brevard Hand, has previously made his sympathies clear. Nearly four years ago, in a case that gave birth to this one, Hand challenged several landmark Supreme Court decisions with a ruling that not only authorized school prayer in Alabama schools but also stated that the First Amendment did not apply to the states in such cases. Although an appeals court reversed Hand's decision, he provided grounds for restructuring the issue so that the original plaintiff, Lawyer Ishmael Jaffree, was replaced by the 624 Evangelicals and the central argument became not prayer but secular humanism.

"Our claim," says Attorney William Bradford, who is defending the school board, "is that secular humanism is not a religion, and even if it were a religion, there is no evidence it is being espoused in these texts." The common legal definition of a religion specifies belief in a superior being, which would seem to be the very antithesis of secular humanism. Before the plaintiffs' attorneys rested their case last week, they called expert witnesses in an attempt to resolve this apparent contradiction. University of Virginia Sociologist James D. Hunter characterized secular humanism as the functional equivalent of a religion, and, by implication, subject to the law. Hunter, however, subsequently acknowledged that the phrase functional equivalent is absent from the Constitution's First Amendment, which forbids the establishment of any religion by the Government. He also conceded that "vegetarianism, socialism, environmentalism and bureaucracy" might be construed as functionally equivalent religions.

If, as seems likely, Judge Hand rules for the plaintiffs, the defense says it will count on the prospect that his ruling may again be overturned. Yet during the 18 or more months that an appeal might take, school officials fear Evangelicals could get offending texts removed from classrooms or impose their own choices of teaching materials, thus breaking down the public school curriculum. A case similar to the one at Mobile is in progress in Tennessee, where Evangelicals object to classroom teachings that they claim do not give creationism its due and to texts that support objectionable doctrines like feminism and a child's right to defy his parents. Last year P.A.W. counted 130 incidents of analogous if less serious challenges to curriculum content in 44 states. Thus the defense sees classroom chaos spreading far beyond Alabama.

Several Mobile plaintiffs, however, argue that they seek only to restore balance to classrooms where texts and teachings have drifted so far toward secularism that history, among other key subjects, is being badly taught. Last year Nurse Judy Whorton and her husband Robert withdrew their two sons, Ben and Andy, from public school in Mobile to underline their convictions. Whorton cites a social studies text that failed to identify the Rev. Martin Luther King Jr. "as a pastor of a church and never mentioned the role that religion played in the civil rights movement." Such objections are seconded by Marcia Greger of Biloxi, Miss., who sat in on the trial. Greger protests of her teenage daughter's texts. "They never say what the Pilgrims came for." Some books depict the settlers' harvest celebration at Plymouth Colony as merely a congenial festivity with the Indians, making no mention of God and Thanksgiving. "Everything is from a humanistic point of view," says Greger. New York University Psychologist Paul Vitz, who testified for the plaintiffs last week, suggests that their suit is the right tactic for offsetting the bias they perceive. Says he: "They're going on the 'squeaking-wheel theory' to get into textbooks the same way that women, blacks and minorities have done it."

In mounting their legal defense, P.A.W. and the school board are aware of seeming to defend inferior texts. Says Podesta: "We agree that religion has been given short shrift in history books, but lousy books don't violate the Constitution." However, the single point on which plaintiffs, judge and defense appear to agree is that many pupils are being shortchanged by texts that lean beyond the point of neglect in avoiding religion and other potentially controversial issues. Publishers protest that their products should not be judged too harshly and that, in any case, they are untainted by secular humanism. "I don't know what secular humanism is," says Donald Ecklund, vice president of the school division of the Association of American Publishers. Perhaps not. But the Mobile case makes clear that lawyerly issues aside, schoolchildren in Alabama, Tennessee and elsewhere deserve less curricular confusion in the classroom and a more profound image of, say, Thanksgiving than as a pumpkin-pie party with the Indians. —*By Ezra Bowen. Reported by Joseph J. Kane/Mobile*

Robert and Judy Whorton with Son Ben: a principled withdrawal

Thanksgiving as a congenial festivity, with no mention of God.

A Reprise of Scopes

Once again, fundamentalists and educators battle in a Tennessee court

WILLIAM JENNINGS BRYAN: These gentlemen have no other purpose than ridiculing every person who believes in the Bible.

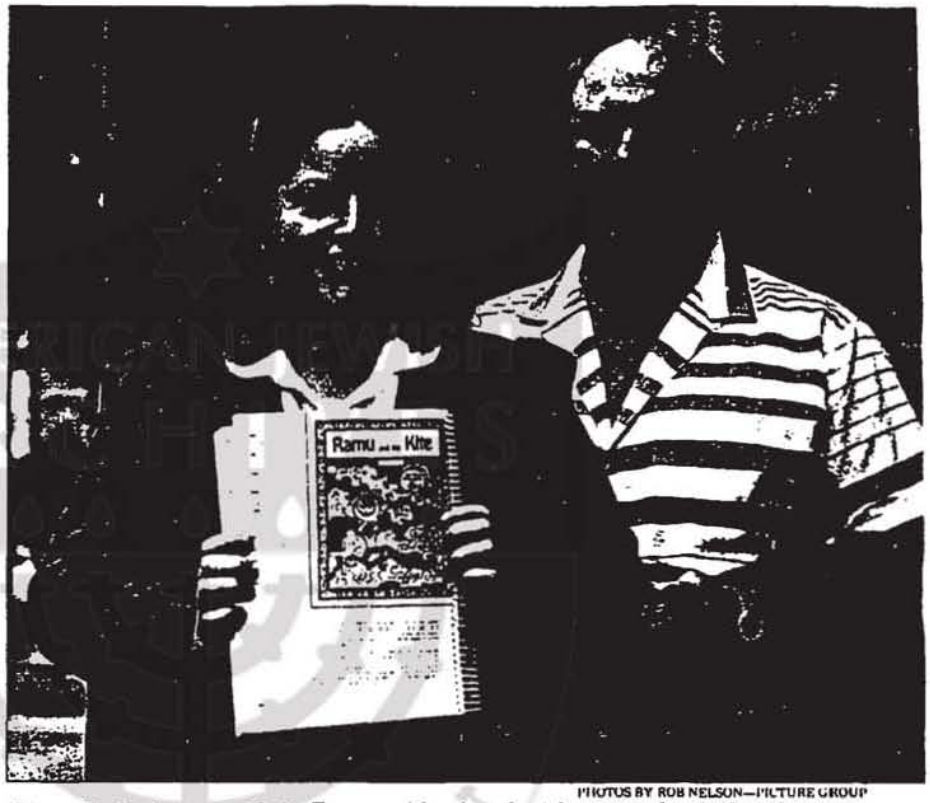
CLARENCE DARROW: We have the purpose of preventing bigots and ignoramuses from controlling the education of the United States, and you know it.

—An exchange from the Scopes trial, July 1925

Exactly 61 years after Darrow and Bryan knocked heads over the teaching of evolution in the famed "monkey trial," the battle of religious fundamentalism and public education is once again raging in a Tennessee court. This time it is a civil case: seven fundamentalist families are suing the local school board over textbooks they deemed offensive to their religious beliefs. But just as in the Scopes trial, the case is being orchestrated by powerful national lobby groups, and it has attracted a circus of reporters and "expert" witnesses. And, as in 1925, it is likely to have political and legal ramifications well beyond the Bible belt.

John Scopes's conviction for violating Tennessee's ban on teaching evolution solved nothing, of course; the issue has continued to bedevil school districts, libraries, legislatures and courts, and it has grown beyond Darwinian doctrine to the broad notion of "secular humanism." A fundamentalist construct as elusive as quicksilver, it is shorthand for a range of viewpoints and teachings some consider "anti-Christian," "anti-American" or contrary to their reading of the Bible. It can apply to phenomena as abstract as the Renaissance (said to have glorified humankind above God) and something as immediate and practical as the metric system (held to promote "one-world government"). But however the interpretations vary, the basic question fundamentalists pose is clear: do parents have the right to shield their children from public-school teachings that violate their religious beliefs? And, if so, can schools possibly accommodate them, and everybody else, without creating classroom chaos or ignoring vast areas of science and human history?

The Tennessee case began three years ago, when Vicki Frost, helping her second-grade daughter with homework, read a story called "A Visit to Mars." Frost says the story deals with mental telepathy, which she considers a sacrilegious attempt by humans to "be like God himself." She and other parents scrutinized books in the first-through-eighth-grade Holt, Rinehart and Winston reading series and found a host of stories they say promote such things as situation ethics, gun control and blurring of traditional sex roles—all artifacts of secular humanism. At first school officials allowed parents to choose substitute texts, then went back to requiring the Holt series, which has been used by nearly 10 million students in all 50 states since 1973. The parents told their children not to enter classrooms where the books were being used, and in November 1983 Frost removed her daughter from class and be-



PHOTOS BY ROB NELSON—PICTURE GROUP

'I try to live by the word of God': *Frost and husband with an armload of evidence*

Clash of rights: *Coplaintiff Rachel Baker*

Promoting 'secular humanism'? *Books in the disputed Holt, Rinehart and Winston series*

gan teaching her herself in the school library. Arrested for trespassing, she won a $70,000 judgment for false arrest, a judgment now on appeal.

Meanwhile, parents also filed a suit against the county, asserting that the Holt series violates their First Amendment right to free exercise of religion and demanding the right to alternative textbooks. Concerned Women for America, a 540,000-member Washington-based conservative group, joined their cause and dispatched attorney Michael Farris to plead the case. People for the American Way, a civil-liberties group founded by TV producer Norman Lear to counter fundamentalist activism, lined up behind the school board and the state, and sent lawyer Timothy Dyk to serve as lead defense attorney. "A far-right victory would be a crushing blow for education, forcing publishers and schools to censor everything controversial," says People for the American Way president Anthony Podesta. "How can people call this a censorship case?" counters CWA's Farris. "If we win, there will be more books, not fewer. It's Scopes in reverse."

Magic acts: As the trial opened in federal court in Greeneville last week, attorneys led Frost, Rachel Baker and other plaintiffs through explanations of their beliefs. Frost said she objects to "The Wizard of Oz" because "it portrays witches as good" and to King Arthur and Cinderella because they contain magic and supernatural acts. Stories critical of the free-enterprise system offend her, she said, because "capitalism is ordained by God." Her eyes brimming with tears, Frost also told the courtroom her daughter would never be a feminist, because God meant for women to be subservient to men. "I try to live by the word of God, and that governs everything I believe." She also objected to teachings about other religions. Even reading about Catholicism, she said, "could produce changes in my child's way of thinking—they could become confused." At one point, Dyk spread his hands in exasperation, saying, "There is no way this woman could attend public school and not be offended."

Just as in the Scopes case, the trial has attracted high-powered sympathizers. Texas fundmentalist textbook crusader Mel Gabler held forth for reporters on the courthouse steps, delivering a long attack on carbon dating and asserting that the earth and the moon are just as young as Genesis implies. Gabler and the plaintiffs have found little support among the residents of the predominantly Baptist local community, however. Customers at The Ivory Thimble needlework shop in nearby Church Hill, Frost's hometown, thought the parents were "making mountains out of molehills." Many said that if they didn't like the public-school curriculum, they should send their children to private schools.

In fact, Frost's children now attend a Christian school in Hawkins County. But she and other plaintiffs are fighting on principle. "We believe we have a constitutional right to have our religious beliefs protected," she said. "We pay taxes to the state of Tennessee. We should be able to send our children to the public schools." This week Dyk will present the state's contention that accommodating the parents could seriously disrupt classes and, as state Advocate General William Farmer testified, potentially "destroy the public-school system as we know it." It will be up to U.S. District Judge Thomas Hull to draw the line between the parents' right to exercise religion without interference and the state's right to operate orderly schools.

An upcoming case in an Alabama federal court could have even broader implications. There, more than 600 fundamentalist parents, students and teachers are seeking to remove all traces of "secular humanism" from the state curriculum. They contend that secular humanism itself is a religion, and if Christianity cannot be taught, then neither can humanism. Retiring Gov. George Wallace has sided with the fundamentalists, but state education officials argue that a successful lawsuit would in effect give a federal judge the right to proscribe what can be taught in the schools. That case, too, has pitted People for the American Way against Concerned Women for America and Gabler's organization, along with the National Legal Foundation, founded by TV evangelist and presidential hopeful Pat Robertson. Robertson has also featured the fundamentalist partisans on his syndicated show, "The 700 Club."

Powerful national lobby groups: *Evangelist Robertson*
WALLY McNAMEE—NEWSWEEK

'The E-word': Meanwhile, both sides have continued to fight the textbook battle on other fronts, and recently liberals have gained some ground. As late as 1974, Gabler's organization persuaded the Texas textbook-review committee to consider only books that identified evolution as *just one theory* of man's origin; that policy, in turn, had a major influence on textbooks nationwide, since Texas is the country's largest central textbook purchaser. In 1984, however, at the urging of the Texas chapter of People for the American Way, the state repealed the rule. Last week, at the state's hearing on government and science texts in Austin, Texas Council for Science Education president Steven P. Schafersman attacked five textbooks for never mentioning "the E-word" and thundered: "We can no

longer hold Texas science education hostage to know-nothings and zealots." Similarly, the California Board of Education last year rejected all elementary and junior-high-school science texts submitted for approval because they contained little or no evolution.

Nevertheless, liberal watchdogs say fundamentalists are escalating their efforts to censor textbooks, library books and school curricula around the country. Increasingly, the targets are classroom discussions of such things as career options, value systems, suicide—even home economics. At hearings in Colorado this year, one housewife complained she felt "edited out of existence" by the school's choice of books. Elsewhere, parents have complained about texts describing the lifestyles of rock musicians, designed to interest unmotivated youngsters, and to programs discouraging drug abuse, because they didn't want drugs mentioned in any context.

Many such censorship efforts never get past local school officials, much less to the courts, which is why both sides are watching the Tennessee and Alabama cases closely. "If a precedent is set down allowing people to go to the court to conform the public-school curriculum to their religious beliefs, then nothing is safe," says Michael Hudson, Texas director of PFAW. "Fundamentalists, then, will attack curricula in every state because it conflicts with their narrow views." Clarence Darrow never did get to bring the Scopes matter to the U.S. Supreme Court, but one or both of the current cases may land there. Still, no high-court ruling will end this debate. As H. L. Mencken wrote at the end of the Scopes trial: "The fire is still burning on a far-flung hill, and it may begin to roar again at any moment."

MELINDA BECK *with* GINNY CARROLL *in Greeneville*, LYNDA WRIGHT *in Washington*, BARBARA BURGOWER *in Houston and bureau reports*

Timid Texts: Short Shrift for Religion

Errors of omission: "Pilgrims are people who make long trips." Fundamentalists are rural folk who "follow the values or traditions of an earlier period." Christmas is "a warm time for special foods." These are among the more flagrant examples of textbook timidity cited by New York University psychology Prof. Paul C. Vitz in his recent study, "Religion and Traditional Values in Public School Textbooks." A key witness for the plaintiffs in the "Scopes II" trial, Vitz accuses the publishing industry of systematically deleting religious references from elementary and high-school textbooks. Coming from a political conservative and self-styled Roman Catholic convert from "secular humanism," such conclusions are hardly astonishing. But the liberals agree. In two separate textbook surveys, People for the American Way (PAW) and the research arm of Americans United for Separation of Church and State reach remarkably similar conclusions. "While history textbooks talk about the existence of religious diversity in America, they do not show it," writes PAW president Anthony T. Podesta. "Religion is simply not treated as a significant element in American life."

For his federally funded study, Vitz combed through scores of books, from primary readers to high-school history texts. His finding: it may be easier for a camel to go through the eye of a needle than for a religious figure to get into the pages of a history book. One world-culture text for sixth graders manages to discuss Joan of Arc without mentioning God, religion or her canonization, leading Vitz to conclude that her inclusion was a sop to feminists. Another has 20 pages on Tanzania but none on the Protestant Reformation. An Isaac Bashevis Singer story appears in a sixth-grade reader with "Thank God" changed to "Thank goodness."

BETTMANN ARCHIVE

'People who make long trips': *The Massachusetts Pilgrims*

Deep fear: While Jews and Catholics receive inadequate treatment in most texts, says Vitz, they fare better than Protestants because at least they are perceived as minority groups. Fundamentalists "get total short shrift." Writes Vitz: "Those responsible for these books appear to have a deep-seated fear of any form of active contemporary Christianity, especially serious, committed Protestantism." The PAW study, examining religion as only one aspect of the overall quality of history textbooks, departs from Vitz on the point of ideological bias: "Left and right in the world of religion are ignored equally. When there is no Billy Graham, there is no Reinhold Niebuhr."

What concerns textbook publishers is not religion as such, but controversy. "Publishers don't act in bad faith," says Frances Fitzgerald, author of "America Revised," a well-received analysis of history texts. "They're trying to produce something that will be bought and be acceptable" to a wide range of consumers. School boards worry equally about believers and nonbelievers; publishers, in turn, pressure textbook writers to avoid antagonizing either group. Moreover, the spate of legal cases involving church-and-state issues seems to have put the fear of God into educators and editors. "The Supreme Court clearly said we should encourage teaching about religion in the schools," says Charles C. Haynes, author of the Americans United report and a former religion professor. "But the distinction between teaching religion and teaching *about* religion got lost in all the controversy."

No taboo: Until recently, says O. L. Davis Jr., chairman of the PAW report, "there has been no serious climate of opinion to support texts that present a balanced and sensitive treatment of religion in American life." But the simultaneous emergence of critical studies from both left and right suggests that there is now broad interest in breaking the taboo on the subject. California, the nation's largest textbook purchaser, plans to advise publishers to improve their treatment of the role of religion in America in time for the state's next adoption of history books. For a market-driven industry like publishing, such demands may be all it takes to get discussion of the Good Book back into textbooks.

ELOISE SALHOLZ

Textbooks on trial in Tennessee

EDWIN M. YODER on religious liberty vs. educational anarchy

One of these days, Judge Thomas Hull of the U.S. district court in Greeneville, Tenn., must try to distinguish for Vicki Frost and her born-again Christian friends between religious liberty and educational anarchy. It may not be easy, but it is essential. Frost is the woman who has been contending in Judge Hull's court that her children's beliefs may be undermined by certain versions of traditional folk tales, Greek myths and much else. She claims that her children's religious freedom under the First Amendment entitles them to be spared such stories.

It began three years ago when she found a story called "A Visit to Mars" in her daughter's Grade 6 reading primer. The story struck her as un-Christian and contrary to Biblical teaching. Frost asked school officials of her county to spare her children exposure to these pagan stories by providing them "alternate" textbooks. The county refused; she and several other parents have sued.

Vicki Frost and husband Roger show a textbook to which they object

Although the case has been nicknamed "Scopes II," the comparison is misleading. The 1925 "monkey trial" in Dayton, Tenn., over the teaching of evolution found the state successfully battling a modern biological idea. Today the practicalities of curricular planning force Tennessee to stand up and be counted for its adopted textbooks.

There is no practical alternative: Even in a democracy supersensitive to the crankiest ideas of liberty, education demands a bit of professional judgment and a bare minimum of uniformity.

It isn't unusual to find educational authority under attack, but the passions of our populist age have exacerbated the problem. Frost and her fellow plaintiffs are troubled by the moral relativism of the times, by the collapse of traditional patterns of family unity and authority—often ascribed by religious fundamentalists to "secular humanism" (which, by the way, is why Frost and her friends also object to some mentions of Leonardo and the Italian Renaissance in sixth-grade classrooms).

There is a daunting clash of cultures here, as if between whole eras, that makes the exercise of informed educational judgment more, not less, essential. A judgment for the plaintiffs would loose curricular anarchy upon the public schools and upon textbook suppliers as well. Textbook publishers are easily intimidated—often sacrificing academic integrity to popular clamor. People for the American Way, who have taken the state's side in the Tennessee case, claim that nearly half the published high-school biology texts avoid the word *evolution* and presumably the idea as well. If Greek myths or old folk tales are also too pagan for sixth graders, what will be left for sixth-grade study but pious pabulum? That is a question that, with some luck, may be held for another day.

Meanwhile, however Judge Hull rules, the Greeneville case contributes another chapter to the saga of America as a "by golly, I'll sue" society. If you wonder how we took the road to rule by judges, Scopes II is enlightening.

I try to imagine how my father, who directed a small-town public-school system for some four decades, would have handled Scopes II. He would certainly have been partial to the use of traditional stories. But earnest people could differ about the likely effect of tall tales on 12-year-olds. It's a judgment call. The question is: Who makes the call—literate professionals able to distinguish between teaching and indoctrination or (let's be charitable) uninstructed people who totally confuse the two and also confuse professional authority with religious oppression?

Twenty or 30 years ago my father would confidently have dismissed Frost's complaints. In that blessedly prelitigious and more deferential age, authority was easier to exercise. Today its exercise is likely to be challenged in court while national pressure groups rally to back their pet causes—however cranky or misguided—with money, expert witnesses and clever lawyers.

There are, to be sure, limits—and legitimate ones—on the authority of schools and school boards. Some of them have a lot to do with ideas of religious liberty. Tennessee school authorities can't make Frost's children chant Hindu mantras or indeed any prayer, nor require them to salute the flag. Nor could some other school board demand that Amish children or those of other traditional religious communities go to public school beyond a certain age if doing so seemed to threaten community coherence.

But Frost's challenge is not to religious tyranny; it is to academic authority. And if schools and school boards are stripped of authority to make academic judgments, educational chaos waits just around the corner from the little red schoolhouse. We begin, like Frost and her friends, with heartfelt but insular notions of personal freedom, and the impulse, given its head, runs wild.

American higher education has been laboring these past 20 years to repair the self-inflicted wounds of the 1960s, when a similar rage of academic relativism swept over the campuses. Distinguished college faculties lost nerve and yielded to the callow clamor for "relevance," proclaiming all studies—from Latin to basket weaving—equal and optional. It would be bizarre if the courts, in the name of religious liberty, now forced public schools into a similar surrender of authority.

The Tennessee case is a well-disguised encounter—although a very real one—between learning and ignorance. Such terms may make you a bit uneasy. But if Judge Hull rules wrong, the schools will lose more than the right to teach sixth graders about old folk tales, mythology or imaginary visits to Mars.

Edwin M. Yoder is a Washington-based syndicated columnist

People For The American Way
The non-partisan constitutional liberties organization.

January 13, 1987

MEMORANDUM

Re: Developing a People For The American Way Statement on Teaching About Religion in the Public Schools

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The PFAW History textbook study, released last May, concluded that the texts fail to teach about the contributions of religion and religious life in American history. Publishers, we argued, avoid controversial subjects at the expense of textbook excellence.

We have stated publicly that the omission of religion is an educational deficiency. Public schools can and should teach about the rich contribution of religion and religious ideas to our history, literature, art and institutions. To address this need, we have developed the following statement of guidelines for teaching about religion in the public schools.

We are circulating this draft statement to religious leaders to gain their signatures. We invite you to join in this effort.

111 West 40th Street, Suite 2410, New York, NY 10018 212-944-5820

People For The American Way

The non-partisan constitutional liberties organization.

RELIGION IN THE PUBLIC SCHOOLS

In Abington v. Schempp, the 1963 decision striking down the reading of Bible verses in public schools, the U.S. Supreme Court said:

> It might well be said that one's education is not complete without a study of comparative religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historical qualities. Nothing that we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment.

American religious leaders, educators and public officials have a responsibility to complete students' education by providing such a "secular program of education" about the role of religion and religious institutions in human history. Too often, we have failed to meet this responsibility, creating confusion and divisiveness about the treatment of religion in the public schools.

Some have responded by trying to turn the public schools into sectarian institutions; others, by resisting any mention of God or religion. What has been neglected is the constitutionally and educationally sound alternative recommended by the Court.

We do not ask preferential treatment for religion; we ask only that the academic study of religion be given the place it deserves in public education. It is a disservice to our students and our society to neglect so important an influence, for good and for ill, on human history.

As religious leaders from a variety of denominational and theological backgrounds, we urge other religious leaders, public officials, educators, textbook publishers and those who train our nation's teachers to end the neglect and fear of the academic study of religion.

We urge others to join the consensus we have reached about the treatment of religion in the public schools:

1) PUBLIC SCHOOLS SHOULD TEACH ABOUT RELIGION.

It is impossible to fully understand history, politics, literature, art, music, and culture without knowing the influence of religious beliefs and institutions. Failing to adequately cover religion implies that it has not been and is not now an

(over please)

111 West 40th Street, Suite 2410, New York, NY 10018 212-944-5820

important element of human life; it gives the incorrect impression that religion does not matter or is taboo.

2. PUBLIC SCHOOLS MUST RESPECT AND TRANSMIT THE AMERICAN TRADITION OF RELIGIOUS PLURALISM AND TOLERANCE.

The Constitutional promise of religious liberty is nurtured by a corresponding tradition of religious tolerance. Educating students about the diversity of religious expression in America can help promote understanding, alleviate prejudice, and prepare students to participate in a pluralistic society. Making students aware of the consequences of religious intolerance should be a vital aspect of instruction.

3. TEACHING ABOUT RELIGION SHOULD BE OBJECTIVE AND ACADEMIC, NOT DEVOTIONAL.

Whether the study of religions is incorporated into the study of history, literature or social studies, or offered as a course in comparative religion, the subject matter should be presented objectively as part of the secular program of instruction. Critical reading and thinking skills should be developed and employed in the study of religion, as in other academic subjects. Religious books and materials such as the Bible or the Koran may be used in the curriculum for such educational purposes.

4. RELIGIOUS INSTRUCTION IS THE RESPONSIBILITY OF FAMILIES AND RELIGIOUS INSTITUTIONS, NOT THE PUBLIC SCHOOLS.

The American public schools must be a place for students of all traditions and faiths. Sectarian practices such as organized prayer, religious worship, and proselytizing have no place in the public school curriculum. Families and religious institutions are the proper agents for religious education, and we remain confident in their ability to transmit the religious values and faith of their traditions.

Norman Lear

June 2, 1986

Drs. Bennett and Tanenbaum
45 E. 89th Street, #18F
New York, New York 10128

Dear Marc and Georgette:

I know that you've recently heard from PEOPLE FOR's president, Tony Podesta, about the proposed appointment of two unqualified extremists to the federal bench — Daniel Manion and Jefferson Sessions. PEOPLE FOR has taken the lead in protecting excellence on our courts (see National Law Journal article). Just three weeks ago, we convinced the Senate Judiciary Committee that Mr. Manion's nomination should be rejected. This unprecedented victory is the first time in six years that the Committee has refused to recommend an Administration nominee.

But despite the fact that the Judiciary Committee does not think Mr. Manion is fit to serve as a federal judge, the full Senate still must vote on his appointment. Your past support made the Committee victory possible. With your help, we can win on the Senate floor, as well. I am endorsing the ambitious campaign Tony outlined in his recent letter, and urge you to make a very generous contribution to this effort.

Among other things, your support will help us place the enclosed advertisement in newspapers all over the country. It alerts the public to the dangers of a federal bench pre-packaged with unqualified zealots.

Although it is critical to our success, I'm afraid money alone won't make the difference in this battle. Please exercise one of your most precious freedoms. We know from experience that your voice will be heard. Write or call your U.S. senators, and any other senators you know, asking them to vote "NO" on the Manion nomination when it comes up on the Senate floor sometime in mid-June, and to reject candidates like Sessions who put ideology above the Constitution. A very brief questionnaire is enclosed. We have noted the names of those senators whose votes we expect to be crucial. Please help us coordinate our efforts by filling out the questionnaire and returning it to PEOPLE FOR.

Please contribute, make calls and write as many letters as you can. There is so much at stake. With your help, I know victory is in the offing.

Sincerely,

Norman

NL/pcb/eb
Enclosures

QUESTIONNAIRE

We are witnessing an intense lobbying effort from the right wing in support of Daniel Manion. This battle has been referred to in far right journals as "historic" in proportion. Your efforts mean everything to our victory.

NAME _____

ADDRESS _____

PHONE _____

_____ I will contact (Senators) _____ from my home state in opposition to the Manion appointment.

_____ I will contact the following other senators (a targeted list of senators critical to the defeat of Manion's appointment and their key aides is attached):

_____ _____

_____ _____

_____ _____

_____ _____

COMMENTS

If you would like additional information before making contact with the Senate, please call Melanne Verveer, Director of Public Policy or Judiciary Project Director, Ricki Seidman, at PEOPLE FOR. The number is (202) 462-4777.

We would also appreciate hearing from you about any response you receive as the result of your contacts. This information is crucial to our lobbying strategy. If you have already contacted members of the Senate, please indicate their response above.

TARGET LIST OF KEY REPUBLICAN SENATORS

SENATOR	STATE	STAFF CONTACT	PHONE
Rudy Boschwitz	Minn.	Barbie Thompson	(202) 224- 5641
John Chafee	R.I.	Sandra Taylor	2921
Thad Cochran	Miss.	Linda Slade	5054
William Cohen	Maine	Kim Corsell	2523
Alfonse D'Amato	N.Y.	Michael Kinsella	6542
John Danforth	Mo.	Maurice Watson	6154
Robert Dole	Kans.	Sheila Bair	6521
Peter Domenici	N. Mex.	Sean Bersell	6621
David Durenberger	Minn.	Steve Moore	3244
Daniel Evans	Wash.	Bill Jacobs	3441
Barry Goldwater	Ariz.	Terry Emerson	2235
Slade Gorton	Wash.	Marianne McGettigan	2621
Mark Hatfield	Oreg.	Jim Hemphill	3753
John Heinz	Pa.	Dwight Howes	6324
Nancy Kassebaum	Kans.	Dan Bolen	4774
Bob Kasten	Wisc.	Jerry Whitburn	5323
*Chas. McC.Mathias	Md.	Matt Gerson	9496
Mack Mattingly	Ga.	Scott Dix	3643
Frank Murkowski	Alaska	John Moseman	6665
Bob Packwood	Oreg.	Cathy Shine	5244
Larry Pressler	N. D.	Diane Swenson	5842
Warren Rudman	N. H.	Paul Barbadoro	3324
*Arlen Specter	Pa.	Neil Manne	8178
Robert Stafford	Vt.	Victor Maerki	5141
Ted Stevens	Alaska	Svend Brandt-Erichsen	3004
Lowell Weicker	Conn.	Margie Sudderth	4041

* Thank him for opposition to Manion in Judiciary Committee. Ask him to be a leader against the nomination on the Senate floor.

TARGET LIST OF KEY DEMOCRATS

SENATOR	STATE	STAFF CONTACT	PHONE
Max Baucus	Mont.	Heidi Werling	(202) 224-2651
Lloyd Bentsen	Tex.	Felix Sanchez	5922
Dan Boren	Okla.	Greg Kubiak	4721
Dale Bumpers	Ark.	Patti Barker	4843
Lawton Chiles	Fla.	Scott Benbow	5274
*Dennis DeConcini	Ariz.	Ed Baxter	4521
Thomas Eagleton	Mo.	Kathy Tuttle	5721
J. James Exon	Nebr.	Chris McLean	4224
Wendell Ford	Kentucky	Elizabeth Wilson	1148
Albert Gore	Tenn.	Goody Marshall	4551
**Howell Heflin	Ala.	Karen Kremer	4022
Ernest Hollings	S. Car.	Dave Rudd	6121
J. Bennett Johnston	La.	Mark Dunham	5824
Russell Long	La.	Kevin Richardson	1083
John Melcher	Mont.	Jenny Bolling	2644
George Mitchell	Maine	Anita Jensen	5344
Daniel Patrick Moynihan	N. Y.	Jamie Baker	4451
Sam Nunn	Ga.	Randy Nuckolls	3521
William Proxmire	Wisc.	Ken Dameron	5653
David Pryor	Ark.	David Smith	2353
Paul Sarbanes	Md.	Jeanie Lazerov	4524
Jim Sasser	Tenn.	Rosemary Warren	3344
John Stennis	Miss.	Guy Land	6253
Edward Zorinsky	Nebr.	Dave Brown	6551

* Thank him for opposition to Manion in Judiciary Committee. Ask him to be a leader against the nomination on the Senate floor.

** Supported Manion in Judiciary Committee, urge to reconsider vote.

People For The American Way

QUARTERLY REPORT FALL 1983

PEOPLE FOR PUBLISHES CITIZEN'S GUIDE

We proudly announce the publication of *Protecting the Freedom to Learn: A Citizen's Guide*, written by Freedom to Learn Project director Barbara Parker and project coordinator Stefanie Weiss. Our new 125-page book is the first handbook published specifically to help concerned citizens prevent school and library censorship in their communities.

The book's foreword is written by Steven Pico, whose 1976 protest against censorship by school officials while he was a high-school student in Island Trees, New York went all the way to the Supreme Court. The Citizen's Guide is divided into three sections: an overview of America's growing censorship movement; detailed suggestions on organizing to prevent censorship; and a comprehensive appendix containing a review of the censors' tactics and tools (including copies of materials produced by national censorship organizations for use by local censors), model book selection and reconsideration procedures and library record confidentiality policies, sample letters to officials and the media, and other materials to help citizens protect academic freedom and literary integrity in their communities.

Former Common Cause president David Cohen praises our new book as "an excellent piece of work that will be tremendously helpful to people who are trying to stop Far Right extremists from censoring books and ideas."

To order your copy of *Protecting the Freedom to Learn: A Citizen's Guide*, please see the coupon on page 8. ★

From our new TV spot

NEW MEDIA CAMPAIGN LAUNCHED

"Rev. Falwell's campaign to intimidate and discredit anyone who disagrees with his political views on nuclear arms and Central America must not go unchallenged," said **PEOPLE FOR** executive director Tony Podesta as he launched our new "Don't Freeze the Debate" media campaign earlier this fall. "We have sent our new 60-second spot to all television stations that air Rev. Falwell's 'religious' programs to help balance their programming on defense and foreign policy issues," Podesta continued. "We're also helping stations put responsible local speakers on the air to present contrasting views."

Rev. Falwell regularly broadcasts attacks on Americans who disagree with the Administration's nuclear arms buildup program as "freez-niks" and "robots" and those who oppose the President's Central American policies as "dupes," while praising people who share his views as "patriotic, God-fearing Americans."

Our new television spot, produced by founding chair Norman Lear, is part of our ongoing program to protect citizens' freedom of expression and to encourage open debate on important public issues. In our message, a construction worker

(continued on page 2)

PEOPLE FOR's new national study, "Attacks on the Freedom to Learn: Lessons of Fear (1982-1983)," documents censorship in 48 states during the last school year. *See page 3 for details.*

EXECUTIVE DIRECTOR'S REPORT

PEOPLE FOR is producing a major new half-hour documentary film and launching a Family Rights Project to counter actions by "pro-family" leaders in and out of government which threaten the rights and freedoms enjoyed by millions of America's family members.

Although most people believe that our government has both a right and a responsibility to help families who are unable to meet basic needs, most citizens object when government support becomes interference through official attempts to limit individual rights and family opportunities. But the organizations that comprise the so-called "pro-family movement" are determined to erode this public consensus and to obliterate the rights and liberties hard won for women, children, families, minorities and the poor in the courts and in Congress.

"Pro-family" leaders in government agencies and in Congress are working to transform programs that support families into programs that withhold vital services from families and narrow family members' opportunities and rights. "Pro-family" policymakers are working, for example, to weaken child-labor laws, to slash funding for child-nutrition programs and day-care centers and to eliminate educational programs that help disadvantaged children, minorities and women.

"Pro-family" leaders Rev. Jerry Falwell, Phyllis Schlafly and others exhort their millions of local supporters to work to ban sex education from local public schools, censor textbooks and literature that portray women, men and minorities in "non-traditional" roles, mandate religion in public schools, ban family-planning services and roll back child-abuse laws.

With our media expertise and other key resources, **PEOPLE FOR** can play an important role in alerting the American people to the dangerous "pro-family" agenda and in activating citizens to press for public policies that can help meet the challenges facing America's families in the 1980s.

We have already begun production on a new half-hour documentary film exposing the "pro-family" agenda. We will broadcast the film on TV stations around the country in the spring of 1984, encouraging citizens to actively protect their rights from "pro-family" attacks.

In addition, our new Family Rights Project will:

- establish a National Information Clearinghouse on Family Rights, analyze the "pro-family" movement's impact on public policy and publish timely reports on emerging family rights issues;
- publish and distribute a *Citizen's Guide to Family Rights;*
- work with the media to educate millions of citizens about family rights issues through special issue papers, media alerts and editorials;
- forge concerned activists and organizations into an effective network to promote family rights public policies that reflect our nation's commitment to equal rights and opportunites for all citizens.

Your generous membership support for our important new film and Family Rights Project will help ensure that we can make as much headway against the "pro-family" movement during the coming year as we have against censorship, government prayer and biblical creationism in public schools, attacks on church-state separation and attempts to strip the federal courts of their power to protect citizens' constitutional rights. ★

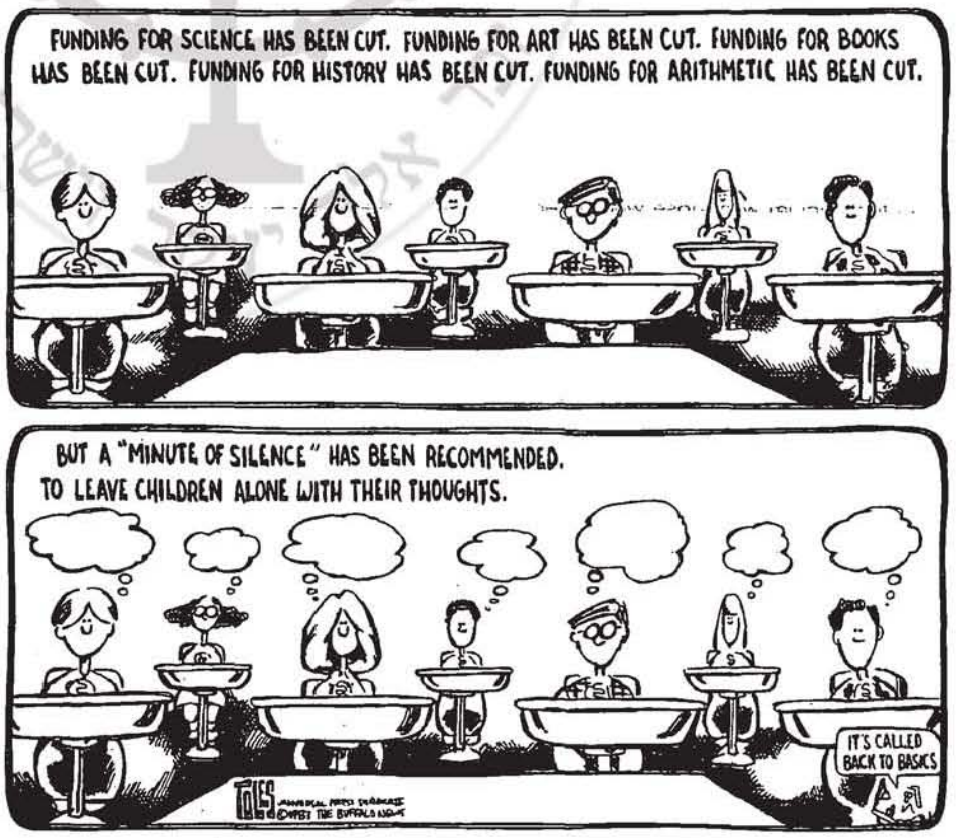
Anthony T. Podesta

(continued from page 1)

speaks to the camera: "I'm religious and I come from a religious family. But that doesn't mean we see eye to eye on political matters like the nuclear freeze. Now, the other day I saw a minister on TV suggesting that if we don't agree with his views, we're anti-Christian or we're disloyal Americans or we're dupes of the Russians. . . That's not the American Way."

To date, 66% of the stations which have responded to our request for air time have agreed to air our spot as a free public service, and other stations have agreed to air opposing views by local speakers. The Council on Peacemaking and Religion wrote us: "Thank you for your help in obtaining equal time on defense and nuclear arms programming here in Louisville. . . We are grateful for the work you are doing to ensure that distorted information presented on the air has a chance to be corrected." An Ohio viewer thanked Columbus station WTVN-TV for broadcasting our message, praising our "emphasis on acceptance of diversity as opposed to name-calling those who may disagree."

You can help us get our message on the air. If you'd like to approach the television station in your community which airs Rev. Falwell's programs with a request that the station broadcast our spot, please write to our Washington, DC headquarters. We'll send you a media kit containing everything you and your local station need to participate in our new TV project. ★



Toles, © 1983, Buffalo News. Reprinted with permission of Universal Press Syndicate

CENSORSHIP BULLETIN

TEXTBOOK PROJECT VICTORY: "A WELCOME CHANGE"

For 21 years, Texas censors Mel and Norma Gabler's attacks on textbooks went unchallenged. Many of the Gablers' narrow religious and political beliefs were translated into official standards by which science books, dictionaries and other texts were selected by Texas education authorities for use by the state's schoolchildren. Publishers, eager to sell their texts in the lucrative Texas market, routinely altered the content of books sold all over the country to reflect the Gablers' ultra-fundamentalist views.

Last year, the Gablers were given a full day of the Texas Textbook Selection Committee's three-day hearings to attack proposed textbooks. Those who wished to defend texts from such assaults were not permitted to testify.

This year, thanks to a new law generated by **PEOPLE FOR**'s efforts, textbook supporters were permitted to participate in the textbook hearings for the first time. "It is crucial that supporters and constructive critics of our public schools speak out, particularly in light of the current national debate on public education," said **PEOPLE FOR** Texas coordinator Mike Hudson in testimony before the Committee. "We must not abdicate the responsibility for textbook selection to opponents of public education who harass our schools and work to indoctrinate students."

At this year's hearings, the Gablers were allotted six minutes, a time rule applied to critics and supporters alike, sharing the podium with those who urged textbook committee members to select texts that expose schoolchildren to the widest possible range of information and ideas. Norma Gabler complained, "Why in that time, you can barely say the name of the publisher and the name of the book," but publishers clearly supported the change. "We've only heard one side of the story for years and years," said one.

Newspaper editorials across the country praised **PEOPLE FOR**'s efforts. *USA Today* said, "The news from Texas that representatives of . . . **PEOPLE FOR THE AMERICAN WAY** have been able to battle the gabbling Gablers to a standstill is encouraging." The Norwich, Connecticut *Bulletin* noted, "A refreshing change this week in the politics of schoolbook publishing may make censorship more difficult in the future . . . The publishers welcomed the change. So should we all." ★

Garrison, © 1983, the San Antonio News. Reprinted with permission

PEOPLE FOR RELEASES NATIONAL CENSORSHIP STUDY

PEOPLE FOR has published a new study, "Attacks on the Freedom to Learn: Lessons of Fear (1982-1983)," which documents a record number of censorship attempts and other attacks on the freedom to learn during the past school year in 48 states.

Freedom to Learn Project director Barbara Parker said in releasing the report, "Our study shows that censorship attempts occur as often in metropolitan areas and populous states such as California and New York as they do in rural areas of Mississippi or small towns in Iowa." Teaching materials under attack ranged from classics such as *The Diary of Anne Frank* and *Of Mice and Men* to award-winning films, world geography texts that state that the earth is millions of years old, *The American Heritage Dictionary* and *Newsweek*.

The reason most often cited for censorship attempts in our study was "secular humanism," and the impetus for most local censorship campaigns came from national Far Right groups like the Moral Majority, Phyllis Schlafly's Eagle Forum, the Pro-Family Forum and Mel and Norma Gabler's Educational Research Analysts.

In a number of states, our study reports, the Far Right attempted to force their agenda into the public schools not through book-banning campaigns but through state legislation requiring the teaching of biblical creationism in science classes and permitting government-mandated school prayer.

To order a copy of the 20-page summary of "Attacks on the Freedom to Learn: Lessons of Fear (1982-1983)," please see the coupon on page 8. ★

ACTION ALERT

The next major hurdle facing our Texas Textbook Project is attempting to change an official textbook guideline which mandates that science texts identify evolution as only one of several explanations for human origins. As PEOPLE FOR chairman John Buchanan noted in recent testimony before the Texas State Board of Education, "This guideline wrongfully places religion in science classes, inhibits the teaching of evolution, damages the quality of our children's science education and violates our great democratic principle of church-state separation and our Constitution's First Amendment guarantee of religious freedom." We encourage all PEOPLE FOR members to write to Joe Kelly Butler, Chairman, Texas State Board of Education, 201 East 11th Street, Austin TX 78701, urging him to revise textbook content guidelines which now limit scientific integrity and encourage the teaching of biblical creationism in science classes. Please send us a copy of your letter.

QUARTERLY REPORT
VOLUME 3, NUMBER 2, FALL 1983

Nancy Debevoise . . . . . Editor
Anthony T. Podesta . . . Executive Director

PEOPLE FOR THE AMERICAN WAY is a project of Citizens for Constitutional Concerns, Inc., a nonprofit, tax-exempt organization. Contributions to PEOPLE FOR are tax deductible.

National headquarters: 1424 16th Street, NW, Suite 601, Washington, DC 20036
Austin: 1206 San Antonio, Austin, TX 78701
Columbus: 447 East Broad Street, Suite 113, Columbus, OH 43215
Los Angeles: 1901 Avenue of the Stars, Suite 680, Los Angeles, CA 90067
New York: 225 West 57th Street, Suite 801, New York, NY 10019
Winston-Salem: 310 East Third Street, Winston-Salem, NC 27101

MEMBERS' FORUM

Defending Principles

One of [**PEOPLE FOR**'s] strengths is its own avoidance of personal attacks and name-calling, and its preference to plead the case of reason and principle while turning the spotlight on . . . those who seem to to violate those principles. In your commentary [on the President's replacement of U.S. Civil Rights Commission members] however, the primary "principle" I see being defended is that elected officials should always follow "precedent" . . . this single article lies in sharp contrast to the bulk of the articles in your several Reports . . .

Douglas L. Schrag
Loring Air Force Base, ME

Shocking News

The summer *Quarterly Report* . . . made my blood run cold . . . As a resident of Massachusetts, I was shocked to hear of the book burning on Martha's Vineyard . . . Sometimes I think that the current rise of ignorance and intolerance is just too stupid and foolish to be true. Thank you for reminding me that . . . we are not immune to those who would legislate morality.

Marc R. Wilson
Reading, MA

Outstanding Leadership

The action alert in your summer 1983 issue stimulated my thinking on the [Constitutional Convention] issue . . . I am introducing a law that would have all of Pennsylvania's calls for a Constitutional Convention expire after seven years [to] give General Assembly members a chance to review long-standing calls and make certain that the current will of Pennsylvania was accurately expressed . . . Thank you for both your help in this matter and your outstanding leadership on behalf of fundamental American values.

Rep. Mark B. Cohen, Chairman
House Labor Relations Committee
Pennsylvania House of Representatives

Renewed Support

Due to a tighter budget I didn't feel my husband and I could renew our membership. After reading your recent *Quarterly Report*, I realize we can't afford not to. Thank you for doing the job for all of us.

Lynn Rognstad
Boulder, CO

PEOPLE FOR *founding chair Norman Lear and novelist Kurt Vonnegut, Jr. at a reception in East Hampton, NY, honoring authors, journalists and publishers for their commitment to freedom of expression. Dick Cavett and Broadway producer Norman Kean auctioned off Lear's director's chair, a "M*A*S*H" script autographed by Alan Alda, a student apprenticeship at NBC's Los Angeles studios and other treasures, raising funds to support* ***PEOPLE FOR****'s public education and citizen action programs. Among those honored at the reception: novelists E. L. Doctorow and Judith Rossner; authors Nora Ephron, Shana Alexander, Betty Friedan, Wilfred Sheed and Gail Sheehy; screenplay writer Bud Schulberg and reporter Pete Hamill.*

photo by Cal Norris

HERE'S WHAT THE PRESS IS SAYING ABOUT US

"Through media campaigns and public hearings, ***PEOPLE FOR THE AMERICAN WAY*** *has begun to marshal opposition to the . . . Know-Nothingist pressures in American culture today . . . Textbooks that promote a bland, unquestioning attitude ultimately turn off the book buyers of tomorrow. Many publishers know this, of course, and undoubtedly many of them support PAW's activities. They need to carry these views into their everyday activities, however, if books and ideas are to remain a viable part of American life."*

Working Papers, May-June 1983

"[The censors] are suddenly . . . on the defensive against a well-organized counterattack . . . ***PEOPLE FOR THE AMERICAN WAY.***"

The Washington Post, 8/16/82

*"****PEOPLE FOR THE AMERICAN WAY*** *announced . . . that prayer is conducted periodically in almost one of every three public schools in North Carolina . . . [P]ublic school officials across the state, in light of the* ***PEOPLE FOR THE AMERICAN WAY*** *study, should reevaluate what's going on in their schools and make sure any unconstitutional practices are stopped."*

The Charlotte Observer, 9/12/83

*"****PEOPLE FOR THE AMERICAN WAY*** *. . . forced the Texas Education Agency for the first time to hear citizens wishing to respond to critics of textbooks being considered for adoption for use in public schools."*

Houston Chronicle, 10/28/82

"One of the more ironic developments of recent months has been Moral Majority's launching of a national 'anti-censorship' campaign . . . Falwell claimed that ***PEOPLE FOR THE AMERICAN WAY*** *and other national anti-censorship organizations are 'the real book banners.' . . . It is clear that the free exchange of ideas implied in anti-censorship efforts is an alien concept to the extremists of Moral Majority."*

Zanesville, OH ***Times Recorder,*** 6/27/83

COMMENTARY: EXCELLENCE OR EQUITY IN EDUCATION—MUST WE CHOOSE?

A national commitment to educating all our children is the backbone of American democracy. Since 1787, when Congress passed its first ordinance establishing a system of public education, we have devoted immense energy and vast resources to educating our young people. We are the only nation in the world which provides a free, universal public high-school education to all who want it, and our public schools do more than those in any other country to provide educational opportunities to students with special needs. But our schools are far from perfect; they have promises of excellence and equity to keep to millions of young people.

Following a period of flagging interest in and funding for our public schools—and in response to urgent new demands for excellence in education—Americans have once again decided that good public schools are in the nation's best public interest. Proposed reforms range from higher teachers' pay to a longer school day and a back-to-basics curriculum.

In the midst of this healthy national debate, powerful Far Right opponents of public education, both in and outside of government, are working to reverse America's historic commitment to equal educational opportunity for *all* schoolchildren. While Administration officials publicly proclaim their commitment to educational excellence, they are quietly dismantling federal programs that work to ensure educational equity for all schoolchildren and proposing budget cuts that will make the schools' job even more difficult.

As the National Commission on Excellence in Education was releasing *A Nation at Risk*, the President was blaming the decline in educational quality on court decisions that obligate schools to work to correct "longstanding injustices in our society: racial segregation, sex discrimination, lack of opportunity for the handicapped." The Commission's report, in contrast, underlined the crucial importance of government involvement in nurturing "the gifted and talented, the socioeconomically disadvantaged, minority and language minority students and the handicapped." These students, the Commission stressed, are America's children "most at risk."

Yet the Administration is working to eliminate programs specifically designed to help those students. It has proposed a $2.2 billion cut in the Department of Education's budget that would eliminate Indian education programs, civil rights training and assistance centers and the women's educational equity program. A U.S. Civil Rights Commission report notes, "Many of the educational programs slated for cuts are those that have met with success in improving the quality of education for the neglected and the disadvantaged."

For example, the Administration has dropped 750,000 children from Chapter One programs, which provide remedial reading and math instruction to disadvantaged children, nearly half of them minorities. The Heritage Foundation, whose views are highly valued by the Administration, complains that the program "favors 'disadvantaged' pupils at the expense of those who have the highest potential to contribute positively to society."

After failing in its attempt to repeal the Education for All Handicapped Children Act, the Administration proposed a 30% budget cut in the programs authorized under the Act. The Far Right objects to the "special treatment" these programs provide. The Administration has also slashed funds for bilingual education by a third and has proposed an additional 32% cut in the program, which assists non-English speaking children until they are proficient in English.

Even those programs designed to benefit gifted and talented students are under attack. The Administration is pushing for a 13% cut in the budget for the National Institute of Education (NIE), which funds research on ways to challenge gifted students and encourage all students to stretch their minds. Asked why federal officials are slashing education research funds at a time when many are calling for educational reforms, the Education Department's budget director said the cuts were consistent with the Administration's commitment to "increasing restraint in federal education programs." Former NIE head Robert Sweet, who used to direct Moral Majority's New Hampshire chapter, now works at the White House, where he oversees the development of the President's education policies.

The Administration has cut back dramatically on enforcing civil rights laws and regulations which require that schools receiving federal funds obey anti-discrimination laws. The Department of Education's civil rights division has drastically limited its investigation of complaints about schools that discriminate against minorities, women and handicapped students. The Justice Department, turning back more than a decade of progress toward educational sex equity, is arguing in the Supreme Court's Grove City College case that the federal commitment to equal rights enforcement should be greatly reduced. Justice also argued before the Supreme Court in the Bob Jones University case that racially discriminatory religious schools cannot be denied tax-exempt status, a proposition rejected by eight Supreme Court Justices. Robert Billings, the Moral Majority's first executive director, who led the Religious Right's fight against IRS regulation of Christian schools, now directs the Department of Education's 10 regional offices and is acknowledged by Far Right leaders as "the voice for Christian schools" in the Administration.

After a public outcry and congressional resistance halted the Administration's campaign to eliminate the Women's Educational Equity Act Program, government officials cut the program's staff in half and purged its longtime director, career civil servant Leslie Wolfe. Education Department undersecretary for management Charles Heatherly, who edited a 1980 Heritage Foundation attack on the Department, calls the program "a feminist program feeding at the public trough."

In an unprecedented action, the Administration replaced 17 of 20 members of the National Advisory Council on Women's Educational Programs who had served under the Ford and Carter administrations. The director, who had headed the council for almost eight years, was fired and replaced with the former Illinois chapter director of Phyllis Schlafly's anti-women's rights group Eagle Forum.

In a wholesale purge, the Administration replaced all 14 members of the Advisory Panel on Financing Elementary and Secondary Education who had been appointed by President Carter at Congress' direction. Connaught Marshner, one of the Far Right's most influential anti-public education activists, was installed as the panel's new head. Marshner admitted that she deliberately excluded "pressure groups"—which she defined as teachers' organizations—from the panel's meetings, saying, "I would go out of my way to avoid hearing what the pressure groups have to say." Marshner's panel has recommended drastic cuts in funding for public education, including abolishing the Department of Education and scrapping Chapter One programs that work to meet the special needs of disadvantaged students.

Although the Administration's anti-public education campaign is masked by public pronouncements of support for our nation's schools, other Far Right leaders are more outspoken. Rev. Jerry Falwell writes: "I hope to see the day when, as in the early days of our country, we won't have any public schools. The churches will have taken them over again and Christians will be running them." The Heritage Foundation's *Agenda for Change*, one of several reports used by the Reagan administration as its blueprint, also calls for a retreat from government commitment to education. The report's chapter on public education concludes, "...the eventual goal should be the complete elimination of federal funding."

(continued on page 6)

Ohio Governor Honors PEOPLE FOR in "Freedom to Learn Week" Proclamation

Excerpts from Ohio's "Freedom to Learn Week" proclamation:

"WHEREAS, the banning of books from our public schools and libraries by a minority of citizens denies the majority the freedom to choose reading materials, the opportunity to expand their knowledge and censors the freedom of expression and individuality we have enjoyed for more than 200 years;

and . . . WHEREAS, the Association of American Publishers, the American Library Association, the American Society of Journalists and Authors, and **PEOPLE FOR THE AMERICAN WAY** have joined together to call attention to this elite censorship . . . NOW THEREFORE, I, RICHARD F. CELESTE, Governor of the State of Ohio, do hereby proclaim the week of September 10-17, 1983 as 'Freedom to Learn Week' in the State of Ohio."

People For Foils Moral Majority Campaign to Deceive Government

The Moral Majority Foundation recently presented false testimony to the federal Office of Personnel Management (OPM), claiming that it engages in "no litigation or lobbying efforts whatsoever." On the basis of the Foundation's testimony, OPM approved its inclusion as a "health and welfare" organization in the Combined Federal Campaign, the government's version of the United Way, to which civilian and military employees donate $100 million each year.

PEOPLE FOR immediately alerted OPM that the Moral Majority Foundation is involved in litigation and in lobbying campaigns to outlaw abortion, permit government prayer in public schools, restrict gays' constitutional rights and defeat nuclear freeze initiatives, and thus should be categorized as an "advocacy" organization. The next day, OPM reversed itself, reclassifying the Moral Majority Foundation as an "advocacy" group.

"I don't see how helping young people overcome their problems makes us an advocacy group," protested Ronald Godwin, who heads the Foundation and also serves as Moral Majority, Inc.'s executive vice president. Godwin claims that the Foundation's activities are restricted to "counseling unwed mothers . . . drug education, campaigns to clean up television and conferences and workshops."

The Administration is attempting to prevent all advocacy organizations from competing for federal employees' voluntary contributions, despite a federal court order, which the government has appealed. Targets range from Planned Parenthood and the NAACP Legal Defense and Education Fund to the Right-to-Work Legal Defense and Education Foundation.

PEOPLE FOR believes that government in a democracy committed to diversity must not be in the business of dictating which political, religious or philosophical activities have the official seal of approval and which are denied access to potential supporters. Government should preserve the right to differ, not mandate conformity. Tax-exempt groups representing all viewpoints should have equal opportunity to compete for charitable contributions by federal employees. ★

Action Alert

Despite alarming evidence of continuing violations of church-state separation in our nation's public schools, proponents of government-mandated school prayer continue to introduce constitutional amendments in Congress that would overturn 1962 and 1963 Supreme Court decisions which forbid official prayer in the public schools. We urge all PEOPLE FOR members to write your U.S. Senators, reminding them that you oppose any attempt to amend the First Amendment.

Survey Documents Religion in N.C. Public Schools

"All Americans who support our nation's founding principles of church-state separation and religious freedom will be disturbed by our survey findings," said **PEOPLE FOR**'s North Carolina Project director Barry Hager in releasing a 23-page report, "Religion in North Carolina's Schools: the Hidden Reality."

Our report, based on a survey of more than 2,500 North Carolina educators, found that:

- organized prayer is conducted in nearly a third of the public schools;
- *daily* classroom prayer occurs in more than 18% of the state's public schools; and
- in one of every 17 schools in the state, students receive academic credit for Bible study as part of the regular curriculum.

PEOPLE FOR distributed the report to top education officials in North Carolina, asking them to adopt policies to protect public school students' religious freedom. We will continue to monitor the state's response to our efforts and will keep you informed of our progress over the coming months.

Our report generated front-page coverage and editorial support from newspapers across the state. The Raleigh *News & Observer* wrote in an editorial: "**PEOPLE FOR THE AMERICAN WAY** has presented strong evidence that many schools are evading and even defying U.S. Supreme Court rulings against organized religious practices in public education." The editorial called on state education authorities to "issue guidelines that will bring all schools into conformity with Supreme Court decisions." ★

(continued from page 5)

If the Far Right continues its anti-public education crusade, millions of children, particularly those identified as "most at risk," will suffer the consequences. It is not surprising, says University of Wisconsin Education Professor Charles Park, that "public education, with its commitment to pluralism and religious neutrality, is cast in the role of the arch-enemy" of the Right.

In the coming years, **PEOPLE FOR THE AMERICAN WAY**'s Freedom to Learn Project will actively defend the rights of all children to equal educational opportunity and will work to promote educational equity through a variety of media outreach campaigns, community action projects and other advocacy efforts. In *High School,* the Carnegie Foundation for the Advancement of Teaching's new report, foundation president Ernest L. Boyer writes: "To push for excellence in ways that ignore the needs of less privileged students is to undermine the future of the nation. Clearly, equity and excellence cannot be divided." We share Dr. Boyer's conviction that "It is in the public school that this nation has chosen to pursue enlightened ends for all its people. And this is where the battle for the future of America will be won or lost." ★

INTERVIEW: BARBARA PARKER, FREEDOM TO LEARN PROJECT DIRECTOR

Barbara Parker, a nationally recognized expert on censorship, directs ***PEOPLE FOR****'s Freedom to Learn Project. She wrote the first major magazine article on textbook censors Mel and Norma Gabler in 1979; the piece won two national journalism awards. Parker translated her growing concern about the Far Right's attacks on public schools and libraries into action when she joined* ***PEOPLE FOR*** *in early 1982.*

Barbara Parker *photo by Joan Marcus*

What convinced you to make a move from reporter to full-time activist?

Frustration. For several years I had tracked the Gablers and had found their footprints all over local censorship skirmishes and Far Right strategy conferences around the country. But few people seemed to be paying any attention to what obviously was becoming a major political battle for the public schools. When my story on the Gablers attracted some attention I thought, "Wonderful. Now maybe people will take this seriously." But as I began to speak to groups around the country about this scary new movement, I had a tough time telling the story as an "unbiased reporter." When **PEOPLE FOR** came along, I decided to take the leap from one who wrote about what was happening to one who did something about it.

The censors' battle against textbooks and literature seems to have escalated into a full-fledged war on students' access to ideas and on religious freedom in the public schools. What's going on?

Using the nation's public schools to advance their narrow political and religious agenda is the ultimate goal of such Far Right organizations as the Moral Majority, Phyllis Schlafly's Eagle Forum, the Pro-Family Forum, the Heritage Foundation and Mel and Norma Gabler's Educational Research Analysts. All demand that schools stick to the "basics," which means phonetic reading, writing, arithmetic, rote and religion, to the exclusion of books, ideas and teaching methods that encourage children to flex their minds and think for themselves.

The Far Right works *against* our public schools rather than *with* them to make them better. A good example is their creation of a bogeyman—"secular humanism"—which they claim has infected the nation's public schools and poisoned children's minds. For a teacher or administrator or board member to have to spend valuable education time defending *Of Mice and Men* or *The Diary of Anne Frank* or a text that presents men and women in "non-traditional roles" is horrifying, particularly at a time when the schools are working overtime to prepare children for the challenges of the 21st century.

How effective has the Freedom to Learn Project been in countering the Far Right's war on our schools?

I am amazed at the tremendous progress we've been able to make in such a short period of time. We've alerted literally millions of people about the enormous amount of censorship activity occurring throughout the country and what can be done to counter it. We've had a phenomenal response from parents, educators, librarians, religious and civil rights groups who have seen our documentary, heard our speakers on television and radio and at community meetings, seen our anti-censorship magazine ad and read about our work in news stories and editorials published around the country. Thousands of people have donated funds to help launch our mass media public education campaigns and citizen action programs.

We've broken the 21-year hold that the Gablers have maintained over Texas education officials, winning textbook selection reforms that will benefit students in all 50 states. We've focused national attention on publishers who pre-censor textbooks to mollify the censors and increase sales. We've documented censorship campaigns in 48 states during the last school year.

Most important, we've helped people in small towns and large cities from New York to Arizona defend their schools and libraries from censorship assaults. We get calls every day from local activists, librarians, teachers and school board members who need immediate, specific answers, materials and advice. In Elkader, Iowa, for example, we helped rally community support behind a librarian struggling to defend a novel in her high school library from a book-banning campaign. In Xenia and Columbus, Ohio, we responded to citizens and school board members who asked us to help them defend textbooks from local censors' attacks. We're providing materials and technical assistance to community groups and educators in a number of school systems in Oregon, Florida, Maryland and other states embroiled in censorship controversies. Our new *Citizen's Guide*, the first handbook designed specifically to help concerned parents, community groups and others protect students' freedom to learn, will be tremendously helpful to citizens across the nation.*

But we've got a huge job ahead of us. There is more at stake than the freedom to teach and the freedom to learn: if local citizens allow censorship to continue unreported, unchallenged and unchecked, its effects will reach far beyond the classroom. Our tradition as a democracy where church-state separation is the rule rather than the exception is kept alive in our local communities—in the public schools.

How can the Freedom to Learn Project help protect the future of public education?

In our quest for educational excellence, we must be careful not to throw out the gains we've made in providing equal educational opportunities for all children. The concept of a free public education for every child is the cornerstone of our pluralistic democracy. That opportunity is the only chance that some kids have. We need to remind Americans about what public education in this country has accomplished and what it is trying to accomplish.

But Far Right leaders in and out of government have dedicated themselves to turning the public schools into religious indoctrination centers for healthy, bright, white, male children, to the exclusion of minorities, females, poor and handicapped children and non-English speaking students. In response, we will be working very hard over the next several years to aggressively protect equal educational opportunity for all children through mass media campaigns, citizen action projects and cooperative efforts with leading education, civil rights and child-advocacy organizations. It's going to be a very tough job, but it's hard to think of a more important one. ★

*To order a copy, please see the coupon on page 8.

PEOPLE FOR CHALLENGES FALWELL'S "CHRISTIAN POSITION" ON EL SALVADOR

Almost as soon as Rev. Jerry Falwell returned from a trip to Central America announcing "the Christian position on El Salvador," **PEOPLE FOR** publicly challenged Rev. Falwell to honor our democratic tradition of open debate and demanded that he halt his campaign to intimidate and discredit millions of Americans who disagree with his political views.

Rev. Falwell made a 7½-hour "fact-finding mission" to El Salvador to gather material for several prime-time television specials that will "spread his message that the Christian position on El Salvador should be one of peace through strength," according to an ABC-TV news interview. Falwell told ABC that he intends to rally "church-attending Americans all over the country to get them to put pressure on their Congressmen."

Shortly after Rev. Falwell's return from El Salvador, **PEOPLE FOR** executive director Tony Podesta confronted Falwell on Metromedia TV's "Panorama" program, reminding him that all Americans have a right as citizens to debate controversial issues on their merits without being labeled anti-Christian. Public debate on foreign policy issues critical to our nation's future must not be suppressed by those who claim that the policies of any Administration are God's will, Podesta told Rev. Falwell and TV viewers.

Moral Majority spokesmen say Administration officials jumped at the chance to get the President's policies promoted to a television audience Rev. Falwell estimates at 10 million. Moral Majority communications director Cal Thomas said that Falwell had been "in consultation with some of the Administration and received support for the trip," although Moral Majority vice president Ronald Godwin insisted the trip was not political.

A letter from the White House preceded Rev. Falwell to El Salvador, granting him privileges usually reserved for visiting dignitaries. After being met at the airport by the U.S. Ambassador, Rev. Falwell was briefed by Salvadoran military officials, who then escorted him on a helicopter tour of the countryside.

In a fundraising letter mailed after his trip, Rev. Falwell urges millions of Moral Majority members to "support President Reagan's stand in Central America" and "give him encouragement not to yield to the pressure of the liberals and to stand strong against the Communists in El Salvador." He asked readers to fund his efforts to combat the "half-truths of the liberal press and the peace-niks and the freez-niks and everyone else who has fallen prey to the Communist propaganda."

Rev. Falwell told his audience in a recent nationally broadcast TV special: "The fact is, we either stop them in El Salvador or stop them in El Paso," and exhorted viewers to "Stand with the Lord, stand with liberty, stand with our children, stand with the President." ★

PEOPLE FOR PUBLICATIONS

Our new 125-page book, *Protecting the Freedom to Learn: A Citizen's Guide*, is the first comprehensive handbook published specifically to help citizens prevent and combat censorship in local communities. Individual copies are $9.50 each. Bulk rates are available.

We'd be glad to send you our books and issue papers. Please send your check or money order, along with this coupon, to our Washington, DC headquarters.

_____ copies of *Protecting the Freedom to Learn: A Citizen's Guide* at $9.50 per copy ..... $_____

_____ copies of "Attacks on the Freedom to Learn: Lessons of Fear (1982-1983)," (20-page summary) at $2.00 per copy ..... $_____

_____ copies of *Liberty & Justice for Some: Defending A Free Society From the Radical Right's Holy War on Democracy* at $7.00 per copy ..... $_____

_____ copies of "Scopes Revisited: Evolution vs. Biblical Creationism," at $2.00 per copy ..... $_____

_____ copies of "The Tale of Tell City: An Anti-Censorship Saga," at $2.00 per copy ..... $_____

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NEWS FROM

People For The American Way

EMBARGOED MATERIAL
FOR RELEASE: Wednesday, June 4, a.m.
CONTACT: Nancy Stella, David Kusnet, Jackie Blumenthal
(202) 462-4777

CONGRESSIONAL PROBE OF JUSTICE DEPARTMENT GRANT URGED
Citizens Group Charges "Scandalous Abuse of Public Funds"

WASHINGTON, DC —

People For the American Way, a 250,000-member citizens' organization, has urged Congress to investigate a $622,905 grant awarded on May 8, 1986, by the Justice Department to a group called the Task Force on Families in Crisis. The grant is to cover a two-year program, the Family Violence Prevention Project.

According to evidence obtained by People For under the Freedom of Information Act and released today, the task force appears to be merely a front for Phyllis Schlafly's Eagle Forum, a highly controversial national organization which pursues a narrow ideological agenda.

In a letter to Senators Rudman and Thurmond and Reps. Conyers and Neal Smith, People For's president Anthony Podesta charged that the task force lacks both the experience and the objectivity to deal with the problem of family violence.

"It's virtually impossible to see where Eagle Forum ends and the Task Force on Families in Crisis begins," said People For's public policy director Melanne Verveer. The documents obtained by People For indicate that the project was clearly understood to be an Eagle Forum project from the beginning, and Schlafly met with department officials to advocate on behalf of the grant. The projects cited in the proposal to demonstrate previous experience at administering programs are all Eagle Forum programs, and virtually all of the officers of the task force are Eagle Forum officers and activists.

-over-

1424 16th St., N.W. • Suite 601 • Washington, D.C. 20036 • Telephone 202-462-4777

People For cited the "unprecedented cynical statement of purpose" made by Tottie Ellis, the president of the task force, in a letter of April 18, 1986. The grant, covering a two-year program, was awarded to the task force even after Ellis's letter. She asked that the proposal be withdrawn, and admitted her group's only purpose in applying for the grant was "to balance the tremendous amounts of government money already given to feminist groups who pursue their own agenda at taxpayers' expense."

The People For letter quotes numerous public statements by Eagle Forum head Phyllis Schlafly on issues related to domestic violence which demonstrate the group's bias and the impropriety of the grant. Schlafly has said, for example, "virtuous women are seldom accosted by unwelcome sexual propositions or familiarities, obscene talk or profane language..." She claims that the primary victimizers of children are the public schools, and accuses schools of encouraging schoolchildren to "reject their parents' values, to engage in premarital sex, to have abortions, to reveal private family information ... and even to commit suicide."

The letter also cited Schlafly's strong opposition to women seeking their rightful place in the job market. She has said: "It is absolutely intolerable the way that the military, the courts and the federal bureaucracy have capitulated to feminist demands and ordered the hiring of women in work situations where putting men and women together is likely to result in fornication, adultery, divorce or illegitimate births."

"The idea that a group so committed to such views and so inexperienced in this sensitive area could deal effectively or objectively with victims of family violence is ludicrous and cynical in the extreme," said Podesta. "Congress must move to stop the Justice Department from becoming a pork barrel for the far right."

PEOPLE FOR THE AMERICAN WAY is a 250,000-member citizens' organization dedicated to protecting constitutional freedoms.

# # # # #

NEWS FROM

People For The American Way

FOR IMMEDIATE RELEASE:
Thursday, June 5, 1986

CONTACT: Nancy Stella, David Kusnet, Jackie Blumenthal
(202) 462-4777

JUDICIARY COMMITTEE TURNS DOWN CONTROVERSIAL NOMINEE

WASHINGTON, DC --

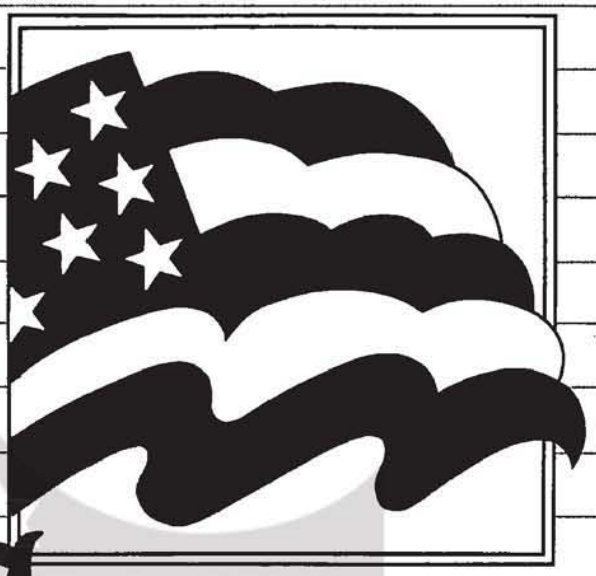
By a 10-8 vote today the Senate Judiciary Committee rejected a controversial nominee for an Alabama U.S. District Court seat, Jefferson Sessions. In a second vote, the Committee stopped a bid by Sessions supporters to keep his nomination alive by sending his name to the full Senate without recommendation.

Sessions is the first of the administration's judge picks to be stopped in Committee. Four weeks ago, another highly controversial nominee, Daniel Manion, was voted out for a full Senate vote on his Court of Appeals nomination after the Committee voted not to approve him.

Anthony T. Podesta, president of PEOPLE FOR THE AMERICAN WAY, said, "In rejecting Sessions, the Judiciary Committee reaffirmed the basic qualifications for federal judges: a demonstrated commitment to impartiality and equal justice, excellent professional credentials, and basic respect for the constitutional freedoms of all Americans. By that same standard, the full Senate should follow the Committee's lead when Daniel Manion's name comes before them, and reject him for the second highest court in the land."

PEOPLE FOR THE AMERICAN WAY is a 250,000-member citizens group dedicated to protecting constitutional freedoms.

# # #



Looking At History

A REVIEW OF MAJOR U.S. HISTORY TEXTBOOKS

People For The American Way

TEXTBOOK REVIEW SERIES

LOOKING AT HISTORY
A Review of Major U.S. History Textbooks

A Summary

Looking at History is a 200-page report on a study of 31 junior and senior high school American history textbooks. The study was initiated by PEOPLE FOR THE AMERICAN WAY and conducted by a five-member panel of distinguished historians and educators.

People for the American Way

People for the American Way is a 225,000-member, non-partisan citizens organization working to protect constitutional liberties. PEOPLE FOR's concern for public schools and excellence in education led to this study of history textbooks, which is the second in a series of textbook reviews. The first examined biology texts; the third will focus on civics textbooks. The reviews are designed to help parents, educators, and others evaluate new textbooks, and to give constructive criticism to publishers. This review will be distributed nationally to groups and individuals involved with textbook selection at both the state and local levels.

The Textbooks

The panel chose to review all history texts submitted to the 1985 Texas State Textbook Committee for adoption at grades eight and ten becuase of the enormous influence Texas exerts over the publishing industry as the single largest bulk purchaser of textbooks in the country. In addition, the panel reviewed six other best-selling texts available in other states. See page 7 for a complete list of the textbooks reviewed, categorized by the panel as "good to excellent," "satisfactory," and "poor."

The Panelists

See page 11 for names and credentials.

Criteria for Review

See page 9 for a detailed breakdown of the criteria.

(OVER)

Major Findings

The review panel studied and commented on each textbook individually. Educators and textbook selection committees will want to examine the complete study in order to accurately assess any particular textbook. However, certain general conclusions can be drawn from the study:

* "The results of our review show that most of these new 1986 U.S. history books are very good; some are excellent. We happily note a reversal of an apparent trend to water down school history." O.L. Davis, Jr., chairman, History Textbook Review Panel, Looking at History, p. 9.

> In reviewing A History of the United States Since 1861 (Ginn), the panel notes that the text, written by Daniel Boorstin, currently director of the Library of Congress, is "an excellent example of an ambitious and worthy idea--that scholars of great stature can write secondary school texts that are both substantive and pedagogically useful." (p. 127)
>
> Another example the reviewers cite is Triumph of the American Nation (Harcourt Brace Jovanovich): "The text is well written and not 'watered down.' Students and teachers are recognized as serious persons who can handle the complexities of American history." (p. 145)

* "The treatment of religion as a force in U.S. history continues to receive short shrift...School histories, with only rare exceptions, treat religion by exclusion or by brief and simplistic reference....The next generation of U.S. history textbooks should attend to religion in American history, but publishers cannot be expected to suffer the outrage of organized groups ranging from ultrafundamentalists to atheists. The American public, as well as practicing educators, if they truly desire U.S. history textbooks to attend to religion, must support vigorously authors' and publishers' efforts and not wilt when controversies erupt publicly." O.L. Davis, Jr., op. cit., p. 11.

> Most of the texts studied follow the pattern of American Spirit, A History of the United States (Allyn & Bacon) in this area: "The last mention of religion in U.S. society occurs in two paragraphs on church involvement in reform in the 1890's." (p. 118)
>
> The reviewers cite The American Nation: Beginnings Through Reconstruction (Harcourt, Brace, Jovanovich) as an exception to the rule: "The importance of

Major Findings continued:

> religion in the founding and growth of our country, both in terms of tolerance and intolerance, is found in the text. Students have been taught that the Pilgrims came to North America for religious freedom, but few know that the Huguenots and Scotch-Irish also came for religious freedom. Examples of religious persecution in American history are documented in the book." (p. 39)

* In half the textbooks the reviewers found that controversial issues were presented fairly. "Consensus and conflict, neither unrecognizably sanitized, should be portrayed honestly and humanly in our history textbooks." O.L. Davis, Jr., op. cit., p. 11.

> The reviewers comment about Triumph of the American Nation (Harcourt Brace Jovanovich): "The narrative in this text...presents uncomfortable historical knowledge in a straightforward manner. The authors stress cause-effect relationships and provide a rich array of information which encourages students to develop their own informed interpretations." (p. 141-2)
>
> The other half of the texts studied, however, received comments similar to this one about Heritage of Freedom, Vol. 1: History of the United States to 1877 (Scribner Educational; MacMillan): "The textbook's interpretations are mainstream and tend to minimize controversy. For example, 'Ever since the Civil War broke out, people have debated what caused the war between the States.'" (p. 73)
>
> Or this review of Volume 2 of the same textbook series: "The brief treatment of topics makes it difficult for the student to gain any perspective on the topics. For example, Reagan sent the Marines to Lebanon to keep peace, but no mention of deaths is given." (p. 174)

(OVER)

Major Findings continued:

* Nearly half of the textbooks studied do a good job of stimulating students' intellectual curiousity by asking thought-provoking questions. "The best books are enlivened by a vital narrative as well as appropriate illustrations and assignments designed to engage students to think about what they have read and to motivate teachers to join their students in the continuing search to learn about our nation's heritage." O.L. Davis, op. cit., p. 10

> The panel comments about Our Land, Our Time: A History of the United States to 1877 (Coronado): "Events and beliefs are explained rather than judged, and often the statements of principals are provided through documents so that they can speak for themselves. Uncharacteristically (at least in textbook writing) students are asked periodically to question statements made in the text by the author. For example, in the activities section in the chapter on Jackson's presidency, students are asked to evaluate the author's interpretation of the Peggy Eaton affair as 'overblown.' In this way, students are made aware of the importance of judging statements fairly." (p. 31)
>
> But in One Flag, One Land, Vol. 1: From the First Americans to Reconstruction (Silver Burdett) the reviewers write: "Generally the book's thin narrative style makes the presentation flat and one-dimensional, which limits the intellectual impact of the material presented. For example, the following statement appears on page 363: 'In 1833 abolitionist leaders organized the American Anti-Slavery Society. These leaders were influenced by the Jacksonian emphasis on equality as well as by humane concerns. As the movement spread, the American Anti-Slavery Society gained 200,000 members. Nevertheless, in spite of these efforts, slavery and racial discrimination continued." (p. 105)

* "Although the former tendency to portray U.S. history without vigorous controversy, without blemishes, and with women and ethnic groups obscured seems to have been reversed, this current crop of U.S. history textbooks is not without problems. The greatest of these problems is uneveness. Overall, treatment of Hispanics, Asians, and American Indians perpetuates their invisible roles in building this nation." O.L. Davis, op. cit., p. 10. While 61% of the textbooks

Major Findings continued:

studied offer relatively good coverage of the role of women and blacks, an equal number are weak in their coverage of other minorities, especially Hispanics and Asian-Americans.

The panel commends Our Land, Our Time: A History of the United States to 1877 (Coronado): "Groups that have been largely excluded from previous presentations of American history are given appropriate prominence in this text. This representativeness includes blacks from all parts of the spectrum, women in many roles, handicapped persons, artists and artisans, and normal, undistinguished people from the common to the aristocratic." (p. 32)

However, in This is America's Story (Houghton Mifflin) the reviewers note that it "doesn't fare well in the area of representativeness. Only three women, one black and two white, are featured in the 'People in America's Story.' The presence of women and minorities seems reserved to times of excitement such as wars or great political upheaval. Compartmentalization is obvious. Blacks are discussed in the pre-Civil War period, Jews in the immigration period or the late 19th century, Mormon farmers in the 19th century settlement period. Hispanics figure little until a section in Chapter 26, which is devoted to brief and broad coverage of a variety of minority groups, despite Hispanic influence in the settling of the West." (p. 64)

In reviewing United States History, Vol. 2: Reconstruction to the Present (Charles E. Merrill), the panel writes: "This textbook contains 528 pages. Only four paragraphs are devoted to Hispanic Americans, a group whose population now exceeds 14 million. To feature a picture of golfer Nancy Lopez, while it pays homage to her accomplishments, does little to redress the wrong. American Indians, blacks and women are allotted similar minimum coverage." (p. 180)

Major Findings continued:

* "Too much attention has been devoted to mechanical 'readability' formulas which emphasize using commonly recognized words and short sentences. The result is often poor writing quality: short, choppy sentences that are actually more difficult for students to read because they lack meaning and interest." O.L. Davis, op. cit., p. 10.

> Many of the books reviewed had problems similar to the comments about Legacy of Freedom, Vol. 1: United States History to Reconstruction (Laidlaw Brothers): "The textbook has a readability level designation of .6 Raw Score and 8th grade equivalency. The sentence structure is uniformly simple. The frequent use of qualifying adverbs, coupled with the lack of a first-word subject, makes it difficult to develop or maintain any rhythm or speed when reading the text." (p. 71)
>
> An alternative approach is noted in A History of the United States Since 1861 (Ginn): "The economical, colorful, but apt word choices that mark good writing sparkle throughout the book. The chapter on the Great Depression, for example, is filled with words like 'aimlessness,' 'despair,' and 'bleakness,' while the demeanor of Britons during the air raids of World War II is "cheerful fortitude." (p. 127)

Conclusion

"U.S. history has held an important position in the school curriculum for almost a century. Its prominence has been derived in substantial measure from America's concern (often expressed in state legislation) that Americans have an obligation to pass on our nation's heritage to future generations.

"Textbooks which make poor choices in selecting topics and ignore the processes of historical study merit severe judgement. They become boring, and, worse, mindless. Further, textbooks must be usable in ordinary classrooms with students representing a wide range of interests. The selection of the best U.S. history textbooks is a shared goal of educators and historians. The term 'quality' may be overused in our nation's concern for 'quality' schooling, but 'quality is an attainable goal." O.L. Davis, op. cit., p. 13.

The Textbooks

GOOD TO EXCELLENT

Our Land, Our Time: A History of the United States to 1877 (Coronado)

A History of the United States Since 1861 (Ginn)

Land of Promise, Vol. 1: A History of the United States to 1877 (Scott, Foresman)

Triumph of the American Nation (Harcourt Brace Jovanovich)

History of the American People (Holt, Rinehart and Winston)

The American People: A History from 1877 (MCDougal, Littell)

United States History to 1877, Vol. 1 (Addison-Wesley)

The American Nation: Beginnings through Reconstruction (Harcourt Brace Jovanovich)

Land of Liberty (Holt, Rinehart and Winston)

America: The Glorious Republic, Vol. 1: Beginnings to 1877 (Houghton Mifflin)

One Flag, One Land, Vol. 1: From the First Americans to Reconstruction (Silver Burdett)

The American Nation: Reconstruction to the Present (Harcourt Brace Jovanovich)

America: The Glorious Republic, Vol. 2: 1877 to the Present (Houghton Mifflin)

SATISFACTORY

The American People: A History (D.C. Heath & Co.)

This is America's Story (Houghton Mifflin)

Legacy of Freedom, Vol. 1: United States History to Reconstruction (Laidlaw Brothers)

Heritage of Freedom, Vol. 1: History of the United States to 1877 (Scribner Educational; MacMillan)

History of the American Nation to 1877 (Scribner Educational; MacMillan)

(OVER)

The Textbooks continued:

SATISFACTORY

The American People: A History to 1877 (McDougal, Littell)

United States History, Vol. 1: Beginnings through Reconstruction (Charles E. Merrill)

A History of the Republic, Vol 1: The U.S. to 1877 (Prentice-Hall)

United States History from 1865, Vol. 2 (Addison-Wesley)

American Spirit, A History of the United States (Allyn & Bacon)

Legacy of Freedom, Vol. 2: United States History from Reconstruction to the Present (Laidlaw Brothers)

Land of Promise, Vol. 2, A History of the United States from 1865 (Scott, Foresman)

POOR

Our Land, Our Time: A History of the United States from 1865 (Coronado)

Heritage of Freedom, Vol. 2: History of the United States from 1877 (Scribner Educational; MacMillan)

United States History, Vol. 2: Reconstruction to the Present (Charles E. Merrill)

A History of the Republic, Vol. 2: The United States from 1865 (Prentice-Hall)

History of the American Nation from 1877 (Scribner Educational; MacMillan)

One Flag, One Land, Vol. II: From Reconstruction to the Present (Silver Burdett)

These categories include both grade eight and grade 10 textbooks. The textbooks are not listed in any order or by any rank within each category.

Criteria for Review

The panel developed eight criteria to use in evaluating texts. Six were chosen on the basis of the canons of history and historiography: Authority, Interpretation, Significance, Context, Representativeness, and Perspective. Two were chosen on the basis of the needs of practical teaching: Engagement and Appropriateness.

1. AUTHORITY

The sense of history portrayed is modern, accurate, and linked to authoritative research. Historical conclusions are supported with valid evidence; the textbook generalizations, therefore, may be traced readily to historical evidence. Historical methods are described accurately and used in presenting the work of historians. The student is enabled to understand the purposes of historical analysis and the reasons for studying history.

2. INTERPRETATION

A framework for knowing the history of the American people emphasized both an accepted, substantial knowledge base and an openness to new and different interpretations. Historical knowledge is neither eliminated, muted, nor given undue emphasis in response to parochial pressure. Significant topics that might be controversial or difficult to understand are treated sensitively and accurately.

3. SIGNIFICANCE

Basic concepts and major turning points, events, and people are treated in sufficient depth to enable students to develop an understanding of their significance and a realistic portrayal of the times. The book is more than a storehouse of facts; it stimulates students to envision ideas and issues.

4. CONTEXT

Terms, practices, ideas, and quotations are embedded clearly in the historical contexts of place and time; presentism is avoided. Students are enabled to see the complexity of real situations and the importance of context; the particulars are not reduced to instances of the general. Whether the text presents history in chronological order or explores themes and events by studying their historical roots and consequences and present-day analogies, the students is always oriented in time. Further, the meanings and judgments of the present are not imposed unfairly on events of the past.

Criteria for Review continued

5. REPRESENTATIVENESS

Pluralism, equity, and a full sense of identity are apparent in the textbooks; stereotypes and simplism are avoided. The history presented to students acknowledges the experiences and contributions of representative individuals and groups. It offers a positive but not romanticized sense of Americans' personal and collective roots. Both famous and ordinary people are presented.k

6. PERSPECTIVE

The text engages students in exploring what it means and has meant to be an American. It reveals how our freedoms have been extended and narrowed, jeopardized, and strengthened; how Americans have acted in the larger world; and how our sense of ourselves has evolved and is seen and experienced differently by different individuals and groups. Origins and consequences of major events and topics in American history are presented evenly and without undue glorification and condemnation. Multiple perspectives, presented in the narrative and through primary sources, emphasize both continuity and change over time. History is offered as a human story within a chronology, rather than as an inevitable progression of events.

7. ENGAGEMENT

The textbook's study tasks (e.g., activities, questions, projects) engage students intellectually and emotionally. They reveal a genuine intent that students think with facts, think about interpretations, and enter into the worlds of others. Critical reading, thinking, and writing are stressed. The variety of activities provided encourages students to become engaged with the historical content and with authentic historical operations; they are not seen as evidence of "dumbing down" the textbook.

8. APPROPRIATENESS

The text is well written. It is stimulating, interesting, and challenging; it is not boring or "watered down." The textbook acknowledges the visual importance of the overall message through appropriate and meaningful design, use of color, and illustrations. The book takes both the student and teacher seriously as thoughtful persons. Reading, activities, approaches, and suggestions make the textbook appropriate for students with a range of cognitive abilities in classrooms with quite different support resources.

The Panelists

O.L. DAVIS, JR., Professor of Curriculum and Instruction, The University of Texas at Austin. An acknowledged authority in social studies education, he received the first Citation for Exemplary Research in Social Studies Education awarded by the National Council for the Social Studies. He is a former president of the 50,000-member Association for Supervision and Curriculum Development.

LYNN M. BURLBAW has taught U.S. and World History in secondary schools in New Mexico. He has a master's degree in Secondary Education and is currently working on a Ph.D. in curriculum and instruction at the University of Texas at Austin. He has been published in the Southwest Journal of Social Education and by the Eastern New Mexico University Press.

MARIA GARZA-LUBECK has taught U.S. history at the junior high and high school levels. She received her bachelor's degree in social studies from St. Mary's University, San Antonio, Texas. Her master's degree is from the Institute of Latin American Studies at the University of Texas at Austin, where she is currently completing work on her Ph.D. She has been a curriculum writer for the Institute of Latin American Studies Secondary School Outreach Project and currently works as a Policy Specialist at the Southwest Educational Development Laboratory.

ALFRED MOSS, Associate Professor of American History, University of Maryland, holds a Ph.D. in history from the University of Chicago, where he studied under John Hope Franklin and Martin Marty. He also holds a Master of Divinity and is an ordained Episcopal priest. He is the author of the book American Negro Academy, as well as numerous articles in scholarly journals. His awards include Rockefeller, Ford Foundation and National Endowment for the Humanities fellowships.

GERALD PONDER, Professor of Education, North Texas State University, has taught U.S. history in Arkansas and Louisiana high schools and at the college level. He is a noted social studies educator with major published contributions in recent yearbooks of the National Council for the Social Studies and the National Society for the Study of Education and is a co-author of the entry on social studies education in the current Encyclopedia of Educational Research.

For a copy of Looking at History: A Review of Major U.S. History Textbooks, send $5.00 to cover postage and handling to PEOPLE FOR THE AMERICAN WAY, 1424 16th St. N.W., Washington, D.C. 20036.

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People For The American Way

CONTACT: Jacqueline Blumenthal, David Kusnet, Nancy Stella (202) 462-4777

STUDY FINDS HISTORY TEXTS 'SMARTEN UP' BUT NEGLECT RELIGION

History textbooks have improved dramatically in recent years but fail to provide adequate coverage of the role of religion in American life, according to a study of 31 junior and senior high school American history texts released today by PEOPLE FOR THE AMERICAN WAY.

The study, conducted by a five-member panel of historians and educators, rated 13 texts "good to excellent," 12 "satisfactory," and six "poor," and found that while the new texts offer better coverage of most subjects, they neglect topics ranging from religion to some racial and ethnic minorities.

"This new crop of books shows that the national trend towards 'dumbing down' textbooks appears to have been reversed," declared Anthony Podesta, president of the 225,000-member citizens organization. "But the poor coverage of religion is evidence that textbook publishers are still gun-shy about certain controversial topics," he said.

"Students aren't learning about America's rich and diverse religious heritage because textbook publishers are still afraid of offending anyone, from moral majoritarians to civil libertarians," Podesta explained. "The fact is: you can't understand American history without understanding the important part that religious people, religious values, religious leaders, and religious institutions have played in shaping our society."

Podesta said: "What is needed is education about religion, not indoctrination for or against any set of religious beliefs. Textbooks and curricula should offer in-depth coverage of the role of religion in American history, without instructing students about what they should or should not believe. Teaching about religion should take place in the public schools. Religious instruction, on the other hand, should take place in religious schools, in the home, or in churches and synogogues."

Despite these criticisms, a summary of the panel's reviews shows that current textbooks are significantly better than history texts in past years. A summary of the panel's findings reveals that out of 31 books:

* 51% do a good job of covering controversial periods in American history, such as the Civil War, Reconstruction, and the Great Depression.

(OVER)

* 45% do a good job of stimulating students' intellectual curiosity by asking thought-provoking questions.

* 61% offer relatively good coverage of the role of women and blacks.

* 60% however, are weak in their coverage of other minorities, especially Hispanics and Asian-Americans.

The panel found that a number of the history books did a particularly good job of encouraging students to think critically and creatively. However, the use of "readability" formulas has actually made the books less readable by producing short, choppy, dull sentences, the panelists concluded.

Among the texts which the panel considered examples of the positive trend towards "smartening up" are: A History of the United States Since 1861 (Ginn and Company); The American Nation and Triumph of the American Nation (Harcourt, Brace, Jovanovich); History of the American People (Holt, Rinehart and Winston); and America: The Glorious Republic (two volumes by Houghton Mifflin).

The panel chose to review all history texts submitted to the 1985 Texas State Textbook Committee for adoption at grades eight and ten, because of the enormous influence Texas holds over the publishing industry as the single largest bulk purchaser of textbooks in the country. In addition, the panel reviewed six other best-selling texts available in other states.

The review panel was chaired by O.L. Davis, Professor of Curriculum and Instruction at the University of Texas at Austin. Panel members were Lynn Burlbaw, a former high school history teacher and now a Ph.D. candidate at the University of Texas at Austin; Maria Garza-Lubeck, a contributor to the curriculum study of the University of Texas' Institute of Latin American Studies; Alfred Moss, Associate Professor of American History at the University of Maryland; and Gerald Ponder, Professor of Education at North Texas State University.

The panel judged the texts on the basis of their use of historical method; their approach to the interpretation of history; their understanding of significant issues and people; their placing events in the proper historical context; their portrayal of representative individuals and groups; their perspective on what it means to be Americans; their use of study activities to engage students in the study of history; and the appropriateness and quality of the writing.

"Looking at History" is the second in PEOPLE FOR's textbook review series. The first examined biology texts; the third will focus on civics texts. The reviews are designed to help parents, educators, and others evaluate new textbooks, and will be distributed nationally to groups and individuals involved with textbook selection at both the state and local level.

People For The American Way

The nonpartisan constitutional liberties organization.

ACTION FUND

September 4, 1987

Dear Editor,

I hope you'll find the enclosed packet helpful for writing about the nomination of Robert Bork for the Supreme Court. The longest document, "Compendium of Bork Materials," lists everything by and about Robert Bork compiled by PEOPLE FOR THE AMERICAN WAY. If you want copies of anything listed, please write or call.

In addition to the compendium on Bork, you should have:

1. The Selling of Robert Bork. PEOPLE FOR's second editorial memorandum explains how President Reagan is trying to package Bork as a moderate and compares the Administration's rhetoric with Bork's judicial record and earlier writings.

2. Action Fund fact sheets. These explain Bork's philosophy on civil rights, separation of church and state, privacy, and other major issues facing the Supreme Court.

3. Two Transcripts of NPR's "All Things Considered." Nina Totenberg's and John Hockenberry's segments on Bork focus on conservative and liberal views of Bork and on Bork's role in the firing of Archibald Cox. One segment describes how conservative intellectuals are upset with White House attempts to portray Bork as a moderate.

4. Philip Kurland's article on Bork and "original intent." Kurland is a law professor at the University of Chicago.

5. Opinion pieces on Bork by John H. Buchanan, John W. Douglas, William Schneider, and Ronald Collins. Each article has a unique perspective on the Bork nomination.

If you have any questions, feel free to call me.

Sincerely,

Nancy Stella
Director of Communications

enc.

1424 16th Street, NW, Suite 601, Washington, D.C. 20036 (202) 462-4777

Compendium of Bork Materials

People For The American Way has thoroughly researched Robert Bork's record and has a complete file of writings, law journal articles, and speeches by and about Judge Bork. Attached is (1) a list of the most significant articles indexed by subject matter; (2) a complete bibliography of Bork's speeches, writings and interviews published in law journals and magazines, including writings on antitrust law; and (3) a list of speeches on law or public policy, many of which are unpublished, that Bork provided to the Senate Judiciary Committee. These materials are available at the People For office, 1424 16th Street, N.W. #601, Washington, D.C. 20036 or call 202-462-4777.

Access to the Courts

(Including Congressional Standing)

The Reporters Committee for Freedom of the Press, Legal Defense Fund - Summary of Judge Bork's Opinions on Media Issues

Phillips, Peter and Robbins, Albert, "The Paradox of Robert Bork," National Law Journal 7/20/87

Advice and Consent

"Bork's Bite," The New Republic 7/27/87

"Appropriate Direction," editorial, National Law Journal 7/13/87

"Judge Bork On the Bench," editorial, Washington Post 7/12/87

Black, Jr., Charles, "The Senate's Day in Court," Washington Post 7/12/87

Kinsley, Michael, "A Democrat's Guide to Robert Bork," Wall Street Journal 7/9/87

"How to Judge Judge Bork," editorial, New York Times 7/7/87

"The Coming Fight Over Bork," editorial, Fayetteville Observer/Times 7/5/87

"Reagan's Choice of Bork Raises Pivotal Concerns," editorial, Buffalo News 7/3/87

"What Would Justice Bork Mean to America's Future?" editorial, Philadelphia Inquirer, 7/3/87

"Bork's Amber Constitution," editorial, The Cleveland Plain Dealer 7/3/87

Schwartz, Herman,"The Senate's Right to Reject Nominees," New York Times 7/3/87

"Judge Bork, the Senate and Politics," editorial, New York Times 7/2/87

Wicker, Tom, "Judging Robert Bork" New York Times 7/2/87

PFAW letter to Senators, 7/1/87

"Nomination To Test Senate Role in Shaping of Supreme Court," Washington Post 7/1/87

PFAW Edit Memo - "Robert Bork: The Wrong Man, The Wrong Place, The Wrong Time," July 1987

This Week with David Brinkley - June 28, 1987. Interview with Laurence Tribe

Senator Kennedy's statement on the Bork nomination

Senator Cranston's statement on the Bork nomination

Statement by Senator Biden on Powell's replacement (pre-Bork nomination)

Schwartz, Herman, "Senate Should Weigh 'ideology'" letter to the editor, The Evening Sun 7/28/86

Schwartz, Herman, "The Supreme Court: It Belongs To the People," 7/4/86

Tribe, Laurence H., "Advice, Consent and Education, New York Times 7/3/86

Black, Jr., Charles L., "Note on Senatorial Consideration of Supreme Court Nominees, The Yale Law Journal Vol. 79: 657, 1970

Analysis of Court of Appeals Record

AFL-CIO study on "Bork Positions on Non-Unanimous Decisions on D.C. Circuit," 8/6/87

Columbia Law Review study on "Bork's Votes in Cases With Dissents on the U.S. Court of Appeals, D.C. Circuit," 8/4/87

PFAW press release on Columbia Law Review study, 8/4/87

Public Citizen Litigation Group study on "The Judicial Record of Judge Robert H. Bork," (summary) 8/87

Phillips, Peter and Robbins, Albert, "The Paradox of Robert Bork," National Law Journal, 7/20/87

Lempert, Larry, "Loud and Clear, Bork Preaches Restraint," Legal Times 10/22/84

Bork, Outside the Mainstream of Judicial Thought

Dworkin, Ronald, "The Bork Nomination," The New York Review of Books Vol. XXXIV, #13, 8/13/87

"The Talk of the Town,," The New Yorker 8/3/87

Dworkin, Ronald, "Reagan's Justice," The New York Review 11/8/84

Church/State

Kamen, Al and Russakoff, "Bork's Appetite is Whetted for Place on Supreme Court," Washington Post, 7/28/87

Bork, Robert, Brookings Institute Speech, 9/12/85

Bork, Robert, "Religion and the Law," speech - Univerity of Chicago, 11/13/84

Civil Rights

(Including 14th Amendment and Affirmative Action)

Furgurson, Ernest, "Bork Resume Can't Hide Record on Rights," Washington Post, 7/15/87

Furgurson, Ernest, "Bork's Holdings," Baltimore Sun, 7/12/87

Vinson v. Taylor 760 F. 2d 1330 (1985); Bork's dissent

Bork, Robert, "The Unpersuasive Bakke Decision," Wall Street Journal 7/21/78

Bork, Robert, "Bakke Should Be Decided By Political Process," Wall Street Journal 10/22/77

Nomination of ...Robert H. Bork to be Solicitor General, Senate Committee on the Judiciary, 1/17/73

Bork, Robert, "Neutral Principles and Some First Amendment Principles," Indiana Law Journal Vol 47, Fall 1971

Bork, Robert, "The Supreme Court Needs a New Philosophy," Fortune, December 1968

Bork, Robert, letter to the editor, The New Republic 9/21/63

Bork, Robert, "Civil Rights - A Challenge," The New Republic 8/31/63

Consumer Protection

AFL-CIO study on "Bork Positions on Non-Unanimous Decisions on D.C. Circuit," 8/6/87

Columbia Law Review study on "Bork's Votes in Cases With Dissents on the U.S. Court of Appeals, D.C. Circuit," 8/4/87

Public Citizen Litigation Group study on "The Judicial Record of Judge Robert H. Bork," (summary) 8/87

McCarthy, Coleman, "Bork and the Pro-Business Bias," Washington Post,

Nader, Ralph and Glitzenstein, Eric, "His Judicial Restraint Is a Myth," New York Times, 7/13/87

Civil Rights

(Including 14th Amendment and Affirmative Action)

Furgurson, Ernest, "Bork Resume Can't Hide Record on Rights," Washington Post, 7/15/87

Furgurson, Ernest, "Bork's Holdings," Baltimore Sun, 7/12/87

Vinson v. Taylor 760 F. 2d 1330 (1985); Bork's dissent

Bork, Robert, "The Unpersuasive Bakke Decision," Wall Street Journal 7/21/78

Bork, Robert, "Bakke Should Be Decided By Political Process," Wall Street Journal 10/22/77

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Bork, Robert, "Neutral Principles and Some First Amendment Principles," Indiana Law Journal Vol 47, Fall 1971

Bork, Robert, "The Supreme Court Needs a New Philosophy," Fortune, December 1968

Bork, Robert, letter to the editor, The New Republic 9/21/63

Bork, Robert, "Civil Rights - A Challenge," The New Republic 8/31/63

Free Speech/First Amendment

"Bork On Speech and the First Amendment: Analysis of Writings" - draft by Jon Haber 7/22/87

Nation Institute, Judge Bork and the First Amendment: How Narrow is His Interpretation? 6/30/87

Moyers: In Search of the Constitution, TV segment including interview with Atty General Ed Meese and Judge Robert Bork, airdate 5/28/87

Ladenson, Robert F., "Scientific and Technical Information, National Security and the First Amendment: A Jurisprudential Inquiry," Public Affairs Quarterly Vol. 1, No. 2, April 1987

The Reporters Committee for Freedom of the Press, Summary of Judge Bork's Opinions on Media Issues

Barber, "The New Right Assault on Moral Inquiry in Constitutional Law," George Washington Law Review, Jan/Mar 1986 (excerpts)

"Constraints of Power," University of Miami Law Review 1986 (excerpts)

McGuigan, Patrick, "Judge Robert Bork is a Friend of the Constitution," Conservative Digest October 1985

"Morality and the Judge," excerpt of speech by Robert Bork to American Enterprise Institute, Readings May 1985

Lauter, David, "Bork Hits Upsurge in Libel Cases," National Law Journal 12/31/84 - 1/7/85

Bork, Robert, "Tradition and Morality in Constitutional Law," AEI - The Francis Boyer Lectures, 10/31/84

Kalven, Jamie, "Round Two For Judge Bork," The Nation 6/16/84

Bork, Robert, "Judge Bork Replies," American Bar Association Journal Feb. 1984

Keeffe, Authur John, "Here Comes Attila the Hun of the Constitution," American Bar Association Journal Dec. 1983

Kalven, Jamie, "Robert Bork and the Constitution," The Nation 10/1/83

Robert Bork testimony, Nominee U.S. Circuit Judge, District of Columbia Court of Appeals 1/27/82 (excerpts)

"A Justice-in-Waiting," Newsweek 8/31/81

Bork, Robert, "The First Amendment Does Not Give Greater Freedom to the Press Than to Speech," The Center Magazine March/April 1979

Donovan, Robert J., "Solicitor General Clarifies Free Speech Views," Los Angeles Times 1974

Robert Bork testimony at Solicitor General Hearings 1/1/73 (excerpts)

Bork, Robert, "Neutral Principles and Some First Amendment Problems," Indiana Law Journal, Fall 1971

"The Supreme Court Needs a New Philosophy," Fortune December 1968

Health and Safety Regulation

(Including Environmental Law)

AFL-CIO study on "Bork Positions on Non-Unanimous Decisions on D.C. Circuit," 8/6/87

Columbia Law Review study on "Bork's Votes in Cases With Dissents on the U.S. Court of Appeals, D.C. Circuit," 8/4/87

Public Citizen Litigation Group study on "The Judicial Record of Judge Robert H. Bork," (summary) 8/87

Nader, Ralph and Glitzenstein, Eric, "His Judicial Restraint Is a Myth," New York Times, 7/13/87

"Imperial Presidency"

(Including Executive Power, Foreign Policy, Independent Counsel, and Congressional Standing)

Phillips, Peter, and Robbins, Albert, "The Paradox of Robert Bork," National Law Journal 7/20/87

Morgan, Perry, "Bork - or somebody - should explain about 'original intent'," Virginia-Pilot 7/19/87

The Reporters Committee for Freedom of the Press - Legal Defense Fund, Summary of Judge Bork's Opinions on Media Issues, 1987

Abourezk v. Reagan 785 F.2d 1043 (D.C. Cir. 1986)

Barnes v. Kline 759 F.2d 21 (1985)

"What Does Tel-Oren Tell Lawyers?" American Journal of International Law January 1985

Nathan v. Smith 737 F.2d 1069 (1984)

Vander Jagt v. O'Neill 699 F.2d 1166 (1983)

Sims v. CIA 700 F.2d 95 (1983)

Law, Intelligence and National Security Workshop (ABA), panel incl. Robert Bork, "Limits on National Security Intelligence in a Free Society" Dec 11-12, 1979

"Foreign Intelligence: Legal and Democratic Controls," AEI forum incl. Robert Bork, 12/11/79

Bork, Robert,"Reforming Foreign Intelligence," Wall Street Journal 2/9/78

Robert Bork testimony before the Senate Select Committee on Intelligence re: proposed intelligence charter legislation 6/21/78

Robert Bork testimony before the House Judiciary Committee, Subcommittee on Courts, Civil Liberties and the Administration of Justice re: foreign intelligence, electronic surveillance, judicial warrant requirements 1/29/78

Robert Bork testimony before the Senate Committee on the Judiciary re: Nomination of William B. Saxbe to be Attorney General 12/13/73

Robert Bork testimony before the Senate Judiciary Committee re: The Establishment of Independent Special Prosecutor for the Watergate Investigation 11/14/73

Irish, Leon E.,"Independent Prosecutor," Washington Post 11/9/73

Robert Bork testimony before the House Judiciary Committee on Criminal Justice 11/5/73

McBee, Susanna, "Cox Backs Bayh Bill on New Prosecutor," Washington Post 10/29/73

"AEI Symposium on U.S. Action in Cambodia," comments by Robert Bork, American Journal of International Law January 1971

Privacy

Sullivan, Kathleen, "Privacy Is a Right Bork Would Ruin," Los Angeles Times 7/19/87

Taylor, Jr., Stuart, "Bork Could Tilt Law on Issues by Fall," New York Times 7/6/87

"In Bork's Words: Abortion, Death Penalty, Gay Rights," New York Times 7/2/87

"An Interview With Robert H. Bork," Judicial Notice June 1986 (excerpt)

Profile, Daily Journal 1/1/85

Dronenburg v. Zech 741 F.2d 1388, 1984; 746 F.2d 1579

The Human Life Bill, hearings - Senate Judiciary Committee, April/May/June 1982

Bork, Robert, "Neutral Principles and Some First Amendment Problems," Indiana Law Journal Fall 1971 (excerpt, for complete document see privacy section)

Role of the Courts/Judicial Philosophy

(Including Activism v. Restraint)

Dworkin, Ronald, "The Bork Nomination," The New York Review of Books Vol. XXXIV, #13 8/13/87

"The Talk of the Town," The New Yorker, 8/3/87

The Nation, editorial "1787 and All That" July 18-25, 1987

"Best Justices Build on Past," Newsday, 7/15/87

Nader, Ralph and Glitzstein, Eric, "His Judicial Restraint is a Myth," New York Times 7/13/87

McGuigan, Pat, "Bork: Judges atypical, so activism is improper," Washington Times 6/87

McGuigan, Patrick, "Judge Robert Bork Is a Friend of the Constitution," Conservative Digest 10/85

"Judge Bork Talks About Judicial, Political Issues In Interview With JN Editor," Judicial Notice Sept/Oct 85

Barnes, Fred, "Reagan's Full Court Press," The New Republic 6/10/85

Lacovara, Philip, "A Talk with Judge Robert H. Bork," District Lawyer May/June 1985

McDowell, Gary, "The Constitution and Contemporary Constitutional Theory," - foreword by Robert Bork 1985

Dworkin, Ronald, "Reagan's Justice," The New York Review 11/8/84

Bork, Robert, "Tradition and Morality in Constitutional Law," AEI - The Francis Boyer Lecture Series, 10/31/84

Bork, Robert, "The Struggle Over the Role of the Courts," National Review 9/17/82

Bork, Robert, "Commentary: Impossibility of Finding Welfare Rights in the Constitution," Washington University Law Quarterly Vol. 1979:695

Bork, Robert, "For Nixon," letter to the editor, New York Times 10/29/72

Bork, Robert, "The Constitution, Original Intent, and Economic Rights," - speech at University of San Diego Law School

Voting - One Person-One Vote

Nomination of Robert H. Bork... to be Solicitor General: Hearings before the Senate Committee on the Judiciary, 93rd Cong., 1st Sess. 5 (1973)

Bork, "Neutral Principles and Some First Amemdment Problems," 47 Indiana Law Journal 1, 18 (1971)

Bork, "The Supreme Court Needs a New Philosophy," Fortune, December 1968, p. 138

Watergate

Noble, Kenneth, "Law vs. Principle: Out of Watergate Comes a New View of Bork," New York Times 7/26/87

Lacovara, Philip, "Take the Watergate Label Off Bork," Los Angeles Times 7/10/87

"Bork on Cox Firing: What He Said in 1982," Legal Times 7/6/87

Barbash, Fred, and Kamen, Al, "Robert Bork: In His Own Words," Washington Post 7/5/87

Noble, Kenneth, "Bork Irked by Emphasis on His Role in Watergate," New York Times 7/2/87

Hearings before the Senate Judiciary Committee re: Confirmation of Federal Judges (incl. Robert Bork) Jan/Feb/Mar 1982

Crewdson, John, "Proxmire Tells Nixon That Bork Is Serving Illegally," New York Times 11/24/73

"Limits on Juridiction," AP 11/22/73

Lewis, Anthony, "Light in the Dark," New York Times 11/12/73

"The Push to Impeach," Time 11/5/73

McBee, Susanna, "Leon Jaworski Expected to Be Cox Successor," Washington Post 11/1/73

Ripley, Anthony, "His Mandate Is to Press Until 'Justice Is Done'" New York Times 10/23/73

Lardner, Jr., George, "Nixon's Immunity Backed," Washington Post 10/6/73

Nader v. Bork, 366 F.Supp. 104 (1973)

Bork, Robert, "Why I Am For Nixon," The New Republic 6/1/68

ARTICLES IN LAW JOURNALS BY ROBERT BORK

"The Constitution, Original Intent, and Economic Rights," 23 San Diego L. Rev. 823 (1986).

"The Role of the Courts in Applying Economics," 54 Antitrust L.J. 21 (1985).

"Styles in Constitutional Theory," Yearbook 1984 53 (published by Supreme Court Historical Society. (Also appears in South Texas Law Journal Vol. 26 (Fall 1985)).

"Introduction," 18 Stanford J. of Int'l. Law 241 (Summer 1982).

"Commentary: The Impossibility of Finding Welfare Rights in the Constitution," 3 Wash. U.L.Q. 695 (1979).

"Ward S. Bowman, Jr.," 87 Yale L.J. 235 (1977).

"Dedication, Senator Roman L. Hruska," 10 Creighton L. Rev. (1976-77).

"Dealing with the Overload in Article III Courts," 70 F.R.D. 79, 231 (1976) (address presented at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, April 7-9, 1976).

"Alexander M. Bickel, Political Philosopher," 1975 Sup. Ct. Rev. 419.

"The Problems and Pleasures of Being Solicitor General," 42 Antitrust L.J. 701 (1972).

"Comments on the Legality of the United States Action in Cambodia," 65 Am. J. Int'l. Law 1, 79 (1971) (Bork and others published comments on the above topic which were included in the article on "Legal Dimensions of the decision to intercede in Cambodia" of the "Symposium on United States Action in Cambodia.").

"Neutral Principles and Some First Amendment Problems," 47 Ind. L.J. 1 (1971).

Magazine and Miscellaneous Articles by Bork

"Will's Testament," New Republic, p.6 (Dec. 22, 1986).

"Judicial Review and Democracy," 24 Society 5 (Nov/Dec, 1986). (Also appears in Encyclopedia of the American Constitution 1061 (1986)).

"Judge Bork Replies," 70 A.B.A. J. 132 (Feb. 1984).

"On Constitutional Economics," Journal on Government and Society (Sept. 1983).

"The Struggle Over the Role of the Court," National Review 1137 (Sept. 17, 1982).

" 'Inside' Felix Frankfurter," Public Interest #65 108 (1981).

"Justice Douglas: His Politics Were His Law," WSJ (Nov. 21, 1980).

"The Court as Best Seller," Public Interest #59, 96 (1980).

"Would a Budget Amendment Work?," WSJ (April 4, 1979).

"The Unpersuasive Bakke Decision," WSJ (July 21, 1978).

" 'Reforming' Foreign Intelligence," WSJ (March 9, 1978).

"Bakke Should Be Decided by Political Process," WSJ (Oct. 22, 1977).

"For Nixon," New York Times (Oct. 29, 1972) (Letter to the Editor).

"We Suddenly Feel That Law Is Vulnerable," Fortune 115 (Dec. 1971).

"Antitrust in Dubious Battle," Fortune 103 (Sept. 1969).

"The Supreme Court Needs a New Philosophy," Fortune 138 (Dec. 1968).

"Why I Am for Nixon," New Republic 19 (June 1, 1968).

"Antitrust and the Judicial Process: The Bench as an Economic Forum," New York L.J. (May 9, 1968).

"The Supreme Court Versus Corporate Efficiency, Fortune 92 (Aug. 1967).

"The Crisis in Antitrust," Fortune 138 (Dec. 1963).

"Civil Rights - A Rejoinder," New Republic 36 (Sept. 21, 1963).

"Civil Rights -- A Challenge," New Republic 21 (Aug. 31, 1963).

SPEECHES, DEBATES, AND PAPERS BY ROBERT BORK

Forward, The Constitution and Contemporary Constitutional Theory by Gary McDowell (1985).

"Tradition and Morality in Constitutional Law," 12 Current Municipal Problems 212 (Fall 1985). (Also appears in American Enterprise Institute for Public Policy Research (The Francis Boyer Lectures on Public Policy) (1984)).

"Foreign Intelligence: Legal and Democratic Controls," American Enterprise Institute (Panel Discussion) (June 14, 1982).

"Law, Intelligence and National Security Workshop," American Bar Association (Dec.11-12, 1979).

"Conference on Judicial Reform: Session on Constitutional Courts," Free Congress (Panel Discussion) (Dec. 11, 1979).

"No-Fault Monopoly, a Debate within a Debate," 16 Across the Board 54 (Nov. 1979).

"Concentration, Oligopoly and Power," 59 Information Bulletin 15 (June 1979).

"The First Amendment Does Not Give Greater Freedom to the Press than to Speech," The Center Magazine 28 (March/April 1979).

"Taxpayer's Revolt: Are Constitutional Limits Desirable?" (A Round Table sponsored by the Program for Tax Policy Studies of the American Enterprise Institute for Public Policy Research) (July 12, 1978).

"Capitalism and the Corporate Executive," American Enterprise Institute for Public Policy Studies, No. 75 (1977).

"Professors, Politicians, and Public Policy," (A Round Table sponsored by the American Enterprise Institute for Public Policy Research) (July 29, 1977).

"Dealing with the Overload in Article III Courts," 70 F.R.D. 79, 231 (1976).

"Dedication Ahmanson Law Center," Creighton Law Review 236 (1975).

"What They said at the Annual Meeting," 60 A.B.A. J. 1224, 1225 (1974) (Excerpts from address by Solicitor General Bork, among others, delivered at annual meeting of the American Bar Association).

"Constitutionality of the President's Busing Proposals," American Enterprise Institute for Public Policy Research, No. 24 (May 1972).

INTERVIEWS WITH ROBERT BORK

"Early Views on Civil Rights 'Libertarian,' Bork explains," Washington Times (July 23, 1987).

"Bork: Don't Prejudge Me; Look at Record," USA Today (July 22, 1987).

"My Record Won't Show Any Political Leaning," USA Today (July 22, 1987).

"The Selling of Bork," Legal Times (July 20, 1987).

"Reagan's Outspoken Nominee to the Court," Newsweek (July 13, 1987).

"In Search of the Constitution, #107 Strictly Speaking," Public Affairs Television (Airdate May 28, 1987).

"An Interview with Judge Robert H. Bork," Judicial Notice (June 1986).

"Judge Robert Bork is a Friend of the Constitution," Conservative Digest (Oct. 1985).

"A Talk With Robert H. Bork," District Lawyer Vol.9 No.5 (May/June 1985).

"Justice Robert H. Bork: Judicial Restraint Personified," California Lawyer (May 1985).

This Week with David Brinkley, ABC News (June 5, 1983) (transcript).

Face The Nation, CBS (November 11, 1973) (transcript).

ANTITRUST ARTICLES BY ROBERT BORK

"The Fire of Truth: A Remembrance of Law and Economics at Chicago, 1932-1970," ed. E. Kitch, 26 J. Law & Econ. 163 (1983) (among the participants at this conference were R. Bork; M. Friedman; G. Stigler; and R. Posner).

"Emerging Substantive Standards -- Developments and Need for Change," 50 Antitrust Bulletin 179 (1981-82).

"Statement by Robert H. Bork," 48 Antitrust L.J. 891 (1979).

"Vertical Restraints: Schwinn Overruled," 1977 S. Ct. Rev. 171 (1977).

"First Affirmative," 41 Antitrust L.J. 8 (1971).

"Antitrust in Dubious Battle," 44 St. Johns L. Rev. 663 (1970).

"Separate Statement of Robert H. Bork," 2 Antitrust Law & Econ. Rev. 53 (1968-69) (as part of White House Task Force on Antitrust Policy).

"Resale Price Maintenance and Consumer Welfare," 77 Yale L.J. 950 (1968).

"A Reply to Professors Gould and Yamey," 76 Yale L.J. 731 (1967).

"An Interview with the Honorable Donald F. Turner, Assistant Attorney General in Charge of the Antitrust Division," (Panel Discussion) Proceedings at the Spring Meeting,

Section of Antitrust Law, American Bar Association 100 (April 14-15, 1966).

"Legislative Intent and the Policy of the Sherman Act," 9 J. Law & Econ. 7 (1966).

"Conflicts Between Patent and Antitrust Laws?" 10 IDEA 38 (1966) (Comments by Bork during panel discussion on above topic as part of Conference entitled "Spotlight on U.S. Industrial and Intellectual Property Systems: Critique, Outlook and Recommendations").

"The Rule of Reason and the Per Se Concept: Price Fixing and Market Division -- Part II," 75 Yale L.J. 373 (1966).

"The Goals of Antitrust: A Dialogue on Policy," with W. Bowman, H. Blake, and W. Jones, 65 Columb. L. Rev. 363 (1965) (symposium of four articles on this subject, two articles each by R. Bork and W. Bowman, as co-authors, and H. Blake and W. Jones, also co-authors).

"The Rule of Reason and the Per Se Concept: Price Fixing and Market Division," 74 Yale L.J. 775 (1965).

"Antitrust for Australia? -- An Evaluation of the American Experience," with Bowman, W. 39 Australian L.J. 152 (1965).

"Control of Sales," 7 Antitrust Bulletin 225 (1962).

"Anticompetitive Enforcement Doctrines Under Section 7 of the Clayton Act," 39 Texas L. Rev. 832 (1961).

"Ancillary Restraints and the Sherman Act," Proceedings at the Annual Meeting, Section of Antitrust Law, American Bar Association 211 (Aug.24-25, 1959).

"Vertical Integration of the Sherman Act: The Legal History of an Economic Misconception," 22 University of Chicago L. Rev 157 (Fall 1954).

LIST OF SPEECHES ON LAW OR PUBLIC POLICY

1. "A Whig View of the Republic," University of Chicago Alumni Association, International Club, Washington, D.C., May 7, 1976

2. Speech by Solicitor General on Appellate Advocacy, American College of Trial Lawyers, Montreal, Canada, August 9, 1976

3. "Morality and Authority," Carleton College, 1977 or 1978

4. "The Individual, the State, and the First Amendment," University of Michigan, 1977 or 1978

5. Seventh Circuit Speech on Congressional Control of Supreme Court Jurisdiction, Chicago, Illinois

1981

6. 1981 Annual Meeting of the Section of Antitrust Law -- Merger Program -- American Bar Association, New Orleans, Louisiana, August 11, 1981

7. Federal Legal Council, Constitutionality of Court-Stripping Proposals, October 29, 1981

8. Lexecon Antitrust Economics Seminar, Chicago, Illinois, October 30, 1981

9. New England Antitrust Conference, Harvard Law School, Nov. 13-14, 1981

1982

10. Catholic University Speech, Washington, D.C., March 31, 1982

11. Columbia University Media and Society Seminar, Philadelphia, Pennsylvania, April 2-4, 1982, Fred Friendly -- Columbia University Seminars on Media and Society, Graduate School of Journalism, Suite 248, 475 Riverside Drive, New York, New York 10115 (videotape)

12. "Federalism and Gentrification," The Federalist Society, Yale University, April 24, 1982

13. Introduction to International Antitrust Symposium, 18 Stan. J. Int'l Law 601 (1982)

14. New York University Law Review Banquet, May 1, 1982

15. Participant, Council on the Role of Courts, St. Louis, May 7-9, 1982, Institute of Judicial Administration, 1 Washington Square Village, New York, New York 10012

16. American Jewish Committee Speech, May 14, 1982, American Jewish Comm./Institute of Human Relations, 165 East 56th Street, New York, New York 10022

17. Judicial Conference of the District of Columbia Courts, June 10-11, 1982

18. A Conference on Judicial Reform, June 14, 1982, Free Congress Research & Education Foundation, 721 2nd Street, N.E., Washington, D.C. 20002

19. "Introduction" to Daniel Kornstein's The Music of the Laws, July, 1982

20. Panel Discussion on "How Federal is the Constitution?," September 10, 1982, American Enterprise Institute, 1150 17th Street, N.W., Washington, D.C. 20036

21. Commentator, "Political Impact of the Modern Corporation," November 13, 1982, Columbia University Center for Law and Economic Studies, 435 West 116th Street, New York, New York 10027

22. Heritage Foundation Speech on Constitutional Economics, November 18, 1982, published in Regulation, p. 14, (Sept/Oct 1983) and in Constitutional Economics: Containing the Economic Powers of Government, ed. Richard McKenzie (1984)

1983

23. Speech to South Carolina Bar, January 15, 1983, Charleston, South Carolina, 1321 Bull Street, P.O. Box 11039, Columbia, South Carolina 29211

24. Roundtable on Judicial Precedent and the New Economics, New York, March 3, 1983, The Conference Board, 845 3rd Avenue, New York, New York 10022

25. Roundtable on Methods of Constitutional Interpretation, Chicago, April 9, 1983, Federalist Society for Law & Public Policy Studies, 1625 I Street, N.W., Washington, D.C. 20006

26. Speech at Chicago World Trade Conference, Chicago, Illinois, April 19, 1983, Thomas Roeser, Quaker Oats Co., Merchandise Mart Plaza, Chicago, Illinois 60654,

27. Supreme Court Historical Society Speech, "Styles in Constitutional Theory", May 6, 1983, published at 26 S. Tex. L.J. 383 (1985)

28. Participant, American Law & Legal Institutions Session of Salzburg Seminar, July 1-22, 1983. Antitrust Laws and their Extraterritorial Reach

29. Speech at Harvard Law School Ass'n, Harvard University, September 15, 1983

30. Speech at Federal Legal Council, Warrenton, Virginia, October 16, 1983 [NOTES ATTACHED]

31. Professor Siegan and the Limits of Judicial Review, Conference on Economic Liberties and the Constitution, San Diego, December 1-3, 1983, published at 23 San Diego L. Rev. 832 (1980)

1984

32. Seminar on Antitrust Policy, William Mitchell College of Law, St. Paul. Minnesota, February 10, 1984 [SPEECH AND

33. "The Constitution and the Armed Forces," Charles L. Decker Lecture to Judge Advocate General's School, Charlottesville, Virginia, May 4, 1984, Department of the Army, The Judge Advocate General's School, Charlottesville, Virginia 22901, William K. Suter

34. Commencement Speech at Brooklyn Law School, New York, June 12, 1984

35. Speech to Presidential Fellows, Washington, D.C., 1984 [NOTES ATTACHED]

36. "Economics and Antitrust: Response", paper delivered at Western Economics Ass'n, Las Vegas, June 24-27, 1984, published in Contemporary Policy Issues (Winter 1984/85)

37. "Business and the Courts," Luncheon Speech to the Chamber of Commerce, Washington, D.C., October 17, 1984

38. "Interpretation of the Constitution," 1984 Justice Lester W. Roth Lecture, University of Southern California, Los Angeles, October 25, 1984

39. "Religion and the Law," Speech to John M. Olin Center for Inquiry Into the Theory and Practice of Democracy, University of Chicago, November 13, 1984

40. Speech before the Bar Association of the District of Columbia, Washington, D.C., December 1, 1984

41. Francis Boyer Lecture, "Tradition and Morality in Constitutional Law," American Enterprise Institute, Washington, D.C., December 6, 1984

1985

42. "The Role of the Courts in Applying Economics," ABA Section of Antitrust Law Annual Spring Meeting, March 21, 1985, published at 54 Antitrust L.J. 21 (1985)

43. West Point Guest Lecturer, West Point, April 9, 1985

44. Speech at Olin Symposium, U.C.L.A., April 24, 1985

45. Speech at University of California, Berkeley, California, April 29, 1985

46. Comments on "Constitutional Review and Moral Premises: The Future of an Illusion," by Thomas Morawetz, Woodrow Wilson International Center for Scholars, Smithsonian, June 13, 1985

47. Speech at Haifa Conference, Israel, July, 1985

48. Foreword to G. McDowell, "The Constitution and Contemporary Constitutional Theory," reprinted in CONSTITUTIONAL COMMENTARIES (Center for Judicial Studies 1985)

49. Speech at Justice & Society Seminar, Aspen Institute for Humanistic Studies, Aspen, Colorado, August 11-24, 1985

50. Speech at Wilson Center, Symposium on Scottish Enlightenment, Mentor Group, Washington, D.C., September 11, 1985

51. Brookings Institution Speech, Washington, D.C., September 12, 1985

52. "Law, Morality, and Thomas More," Speech to Thomas More Society, Washington, D.C., September 26, 1985

53. Speech at Canisius College, Buffalo, New York, October 8, 1985

54. Speech at George Washington University Law Center Enrichment Program, Washington, D.C., October 23, 1985

55. Speech at American Corporate Counsel Association Luncheon, Washington, D.C., November 7, 1985

56. Sharon Siegan Lecture, University of San Diego Law School, November 19, 1985, published at 23 San Diego L. Rev. 823 (1986)

57. Address at Federalist Society Luncheon, Washington, D.C., December 6, 1985

1986

58. Speech at Virginia Bar Association Annual Dinner, Williamsburg, Virginia, January 10, 1986

59. "Federalism," Speech at Attorney General's Conference on Federalism, Williamsburg, January 24-26, 1986

60. "Original Intent and the Constitution," HUMANITIES, National Endowment for the Humanities, vol. 7, No. 1, p. 22 (Feb. 1986)

61. Columbia Law School Alumni Association Luncheon Speech, Washington, D.C., February 12, 1986

62. Testimony Before House Subcommittee on Courts on H.R. 4149 -- Hearing on the Intercircuit Tribunal, February 27, 1986

63. Stanford Federalist Society Symposium, The Political Process and the First Amendment, Stanford University, March 7-9, 1986

64. National Legal Center for the Public Interest Luncheon Speech, Washington, D.C., April 2, 1986

65. "The Future of Constitutional Law," Luncheon Speech at the University of Chicago Alumni Association, Washington, D.C., May 15, 1986

66. Participant, Attorney General's Conference on Economic Liberties, Washington, D.C., June 14, 1986

67. Panelist, Selection of Judges Under Article III, Federal Judges Association, 1355 Market Street, Suite 155, San Francisco, California 94103, October 7, 1986

68. Speech at Luncheon with President's 1986-87 White House and Judicial Fellows, Washington, D.C., October 10, 1986

69. Luncheon Speech at United States Claims Court, 717 Madison Place, N.W., Washington, D.C., October 29, 1986

70. "Antitrust," Association of the Bar of the City of New York, Anticipating Antitrust's Centennial Symposium, New York, November 15, 1986

71. National Endowment of the Humanities TV Project, "Visions of the Constitution," Station WQED, 4802 5th Avenue, Pittsburgh, Pennsylvania 15213, Nov./Dec. 1986

1987

72. Panelist at Federalist Society Lawyers Convention, "Precedent, the Amendment Process, and Evolution in Constitutional Doctrine," Washington, D.C., January 31, 1987

73. TV Series with Bill Moyers, "In Search of the Constitution," Public Affairs Television, Inc., 356 West 58th Street, New York, New York 10019, March 19-20, 1987

74. D.C. Circuit Panel with Judge Abner Mikva on "Interpreting the Constitution," March 31, 1987

75. The Philadelphia Society National Meeting, "The Crisis in Constitutional Theory: Back to the Future," Philadelphia, April 3, 1987

76. Panelist, "Adapting the Constitution to the 21st Century," Georgetown Law Day, Georgetown Law Center, 600 New Jersey Avenue, N.W., Washington, D.C. 20001, April 4, 1987

77. Brookings Institution, Administration of Justice Seminar, "Alternatives to Continued Growth," Charlottesville, Virginia, April 10-12, 1987

78. The Center on Religion & Society Conference, "Law and the Ordering of Our Life Together," Center on Religion & Society, 152 Madison Avenue, New York, New York 10016, April 24-25, 1987

79. American Newspaper Publishers Association Annual Meeting, Columbia University Seminars on Media and Society, Graduate School of Journalism, Suite 248, 475 Riverside Drive, New York, New York 10115, New York, May 6, 1987 (Seminar on Separation of Powers)

80. Federal Circuit Judicial Conference Debate, "Interpreting the Constitution," Washington, D.C., May 8, 1987

81. Commencement Speech, George Mason University Law School, Arlington, Virginia, May 16, 1987

82. Participant, Project '87, American Constitutional Bicentennial Symposium, The American Constitutional Bicentennial, 1527 New Hampshire Avenue, N.W., Washington, D.C. 20036, May 24-25, 1987

83. Participant, United States Information Agency WORLDNET Videoconference on the Bicentennial of the United States Constitution, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, June 10, 1987

84. American Studies Center, Advisory Board of the Bicentennial of the Constitution, June 12, 1987

People For The American Way

The non-partisan constitutional liberties organization.

ACTION FUND

EDITORIAL MEMORANDUM:

THE SELLING OF ROBERT BORK

CONTACT: NANCY STELLA, CAROL BLUM
MATTHEW FREEMAN, MARK KOERNER
202/462-4777

THE SELLING OF ROBERT BORK

Immediately after Robert H. Bork was nominated to the Supreme Court, the Far Right and its supporters inside the Administration hailed the occasion as a victory for their extreme social agenda. Human Events magazine, a Far Right mouthpiece, said that in nominating Bork, "the President could advance his entire social agenda--from tougher criminal penalties to curbing abortion-on-demand to sustaining religious values in the schools, etc.--far beyond his term." White House political director Frank Donatelli said: "The Reagan nomination is another part of the Reagan Revolution."[1] In a direct mail appeal, televangelist Jerry Falwell wrote: "President Reagan has the opportunity of the century. Through his selection of a new conservative Supreme Court justice, he can set the tone of the court for many years to come -- perhaps into the next century."

But the Reagan administration quickly saw that the Far Right's exuberance over the Bork nomination hurt their effort to win his confirmation, particularly among moderate senators. So the White House embarked on an all-out public relations campaign to repackage Bork as a moderate, orchestrating a lobbying campaign to persuade the American public generally and the Senate in particular that Robert H. Bork is a moderate.

In a speech on July 29, President Reagan compared Judge Bork with Justice Lewis Powell, whose June retirement created the vacancy. He said: "It's hard for a fair-minded person to escape

the conclusion that, if you want someone with Justice Powell's detachment and statesmanship, you can't do better than Judge Bork." The President said none of the more than 100 majority opinions authored by Judge Bork had been overruled by the Supreme Court, suggesting that the High Court had approved Bork's decisions. In fact, the Court has never even reviewed any of Bork's decisions.[2]

Robert Bork is not standing idly by while the Administration repackages him. Bork has scheduled private meetings with senators to let them sample the product the White House is selling. In addition, in a highly unusual move, Bork has granted a number of press interviews prior to confirmation hearings. In those interviews, he has described himself as a moderate. In a USA TODAY interview, he refused to discuss "substantive issues," focusing instead on the "human interest" elements: his religion, his family, and the celebration of the bicentennial of the Constitution.

A recent Washington Post/ABC poll confirms the shrewdness of the Administration effort to turn Bork into the moderate he is not. The poll results show that those who consider Bork a "moderate" or merely "conservative" generally support his nomination. Those who believe Bork to be "very conservative" oppose the nomination.

Two eminent constitutional scholars have responded to the White House effort to portray Bork as a moderate. Philip Kurland, a professor of law at the University of Chicago and a well-known traditional conservative, criticized efforts to make Bork over in the "image of a Lewis Powell, Robert Jackson or a Felix Frankfurter." In a letter to the Legal Times of Washington, he wrote:

> The White House staff and the Department of Justice are not entitled to tell contradictory tales to different Senators to entice their votes for inconsistent reasons. Bork is either the moderate, restrained New Deal type jurist -- or he is the Meesian, "original intent", constitutional revisionist, as he has depicted himself in talks to the Federalist Society and in other forums.[3]

Owen Fiss, the Alexander Bickel Professor of Public Law at Yale Law School, also took issue with the characterization of Bork as a "Powell centrist" in The New York Times, July 31, 1987. Fiss showed that Judge Bork has denounced "emphatically and persistently" Powell-supported decisions on such issues as civil rights, including University of California v. Bakke[4], allowing voluntary affirmative action programs, and Roe v. Wade[5], the landmark abortion case. Professor Fiss wrote:

> He owes his pre-eminence as a conservative spokesman-and perhaps his nomination - in no small measure to his rejection of the constitutional doctrine associated with these cases. What Judge Bork's writings - spanning almost 20 years as a professor - reflect is not a concern for precedent but a dogmatic commitment to a comprehensive or general theory and a willingness to denounce, repudiate, even deride decisions that do not agree with his theory. Judge Bork's performance on the Court of Appeals has not revealed a change of outlook. Indeed, his recent effort to confine the right-to-

privacy decisions of the Supreme Court earned him a rebuke by his colleagues, who insisted that "it is not their function to conduct a general spring cleaning of constitutional law."

Bork's own words support the views of these two scholars. Indeed analysis of his record reveals someone who is neither the "moderate" nor the "judicial restrainer" the Administration is advertising. Rather Judge Bork's record is one of a results-oriented judicial activist with a narrow Far Right agenda.

I. Bork: A Judicial Activist Not Judicial Restrainer

The Administration's campaign on behalf of Robert Bork champions him as an apostle of judicial restraint. This is a myth. Traditionally, advocates of judicial restraint find guidance for their decisions in legislative intent and judicial precedent. But Judge Bork has shown a willingness to disregard both. Although Bork cries "judicial activism" when he disagrees with a court decision or when he approves of a law that restricts individual liberty, he is himself an activist when he wants to marshall the power of the court to affect his own political vision.

A. Bork: Legislative Intent When Convenient

Although nominee Bork says that he would give great deference as a judge to the acts of legislators, he attacked the

Supreme Court's decision in Katzenbach v. Morgan[6], upholding the authority of Congress to curb the use of literacy tests in order to protect the right to vote. Bork says that the 14th Amendment gives Congress power only to "implement" or enforce rights already specifically enunciated, not to give new content to rights.[7]

Similarly, Bork has made it plain in his writings that he is willing to ignore the intent of Congress in its enactment of antitrust laws in 1850, 1914 and 1950 where that intent conflicts with Bork's philosophy. The antitrust laws were aimed against economic concentration and at the preservation of small business. However, in interpreting those laws in his writings, Bork gives exclusive weight to those legislative objectives--economic efficiency, for example--with which he agrees, and ignores the ones--breaking up concentrations of economic power--that he opposes.

Bork's rewriting of congressional intent in his 1978 book The Antitrust Paradox, was especially inconsistent with his professed allegiance to original intent. In the book, Bork claims that Congress had "clear and exclusive policy intention of promoting" economic efficiency when it passed the Sherman Antitrust Act in 1890. In fact, antitrust scholars Phillip Areeda and Donald Turner have noted the history of the act is "vague and uncertain, [and] seldom on point," a view supported by

most antitrust experts. Bork's ability to find "unmistakable" congressional intent amidst the contradictory debates on the Act is another indication of his efforts to impose his own views on the law.

Bork has taken a similar approach in interpreting another major antitrust law, the Robinson-Patman Act, which prohibits price discrimination. "In the Robinson-Patman Act," declared Bork, "when Congress said it wanted to forbid price discrimination to protect competition, they said it with a wink. I don't think it's a judge's job to enforce winks."[8]

Similarly, while on the U.S. Court of Appeals for the District of Columbia, Bork joined a decision rejecting the importance of legislative intent. In the case[9], environmental groups in New York State challenged the Justice Department's labelling of Canadian films on acid rain as "political propaganda" under the Foreign Agents Registration Act. The groups aruged that the legislative history of the Act made clear that Congress did not intend the law to apply to films from friendly nations. The opinion joined by Bork rejected that argument, stating that "both the abstract speculation and the reality of the legislative history are beside the point. We do not sit to rewrite laws so that they may address more precisely the particular problems Congress had in mind."

In short, when faced with a choice between what legislators intended to do and what Bork thinks they should have intended to do, Bork trusts his own instincts more than the lawmakers'.

B. Bork: Unsettling Settled Law

Another aspect of Bork's public record belies the White House's claim that Bork is an advocate of judicial restraint. Bork has been unusually frank in declaring his willingness to overturn settled areas of constitutional doctrine where he believes that previous court decisions are wrong:

> Since the legislature can do nothing about the interpretations of the Constitution given by a court, the court ought to be always open to rethink constitutional problems...at bottom, a judge's basic obligation or basic duty is to the Constitution, not simply to precedent.[10]

He reiterated this view in a dissent in Barnes v. Kline[11], where he sought to block members of Congress from challenging actions of the Executive Branch in court, declaring, "constitutional doctrine should continually be checked, not just against words in prior doctrines, but against known constitutional philosophy."

On several other occasions Bork has suggested that new appointments to the Supreme Court are opportunities to rethink settled issues of constitutional law, remarking that decisions of the Court with which he disagrees could be changed most easily when vacancies arise. For example, at his confirmation hearing

before the Senate Judiciary Committee in 1982, Bork remarked that "the only cure for a Court which oversteps that I know of is the appointment power."[12]

Bork's view that judges should be permitted to revisit past decisions is not unusual. But, ironically, it puts him in the company of Supreme Court justices and legal scholars whom Bork and his Far Right allies have decried as activists.

Coupled with his open repudiation of landmark court decisions, there is every reason to believe that, if confirmed, Bork would seek to restrict or reverse numerous decisions that undergird settled points of constitutional law. Bork's antipathy for past decisions covers areas ranging from voting rights to access to the courts, equal protection of the laws to free speech, separation of church and state to environmental protection.

* He attacked the 1962 decision implementing the principle of "one man-one vote," saying that Justice Warren was unable "to muster a single respectable supporting argument"[13] and used "no reputable theory of constitutional adjudication."[14]

* He called a landmark 1942 case guaranteeing equal protection of the laws "improper and intellectually empty."[15]

* He denounced key right to privacy decisions, calling the 1965 case enunciating the right "unprincipled," and declaring that "I do not think there is a supportable method of constitutional reasoning underlying the decision."[16]

* He criticized the 1978 decision permitting voluntary affirmative action, saying it "rest[ed] upon no constitutional footing of its own."[17]

* He condemned a key separation of church and state decision handed down in 1971[18], saying that it is "inconsistent with historical practice that suggests the intended meaning of the Establishment Clause" of the First Amendment.

In short, Bork is in vigorous disagreement with numerous major Supreme Court decisions. In light of his expressed eagerness to set aside precedent and overturn cases with which he disagrees, Bork must be seen as a judicial activist whose confirmation would foreshadow an upheaval of decades of constitutional law. Though the White House wants us to see Bork as a "judicial restrainer," the facts indicate that Bork is a judicial activist with a Far Right agenda.

II. Bork: On the Far Right

Bork's on-again off-again record of deference to legislative intent and his inclination and willingness to upset settled points of constitutional law clearly belie any attempts to define him as a restrainer. Where Bork is consistent is in his Far Right ideology. In case after case, Bork has favored government power at the expense of individual liberty.

A. Bork: Consistent Critic of Civil Rights

Over 25 years, Bork has repeatedly opposed civil rights laws passed by Congress and criticized Supreme Court decisions upholding civil rights.

* Bork found insupportable the Supreme Court's 1948 decision in Shelley v. Kraemer[19], in which the Court held that judicial enforcement of racially restrictive covenants violates the 14th Amendment.[20]

* In 1963, the year Martin Luther King, Jr. delivered his famous "I have a dream" speech, Bork wrote an article for the New Republic opposing passage of provisions of the 1964 Civil Rights Act that barred discrimination in public accommodations.[21] He challenged both the public accommodations and employment provisions of the Act in a subsequent piece published in the Chicago Tribune.[22] He later recanted his position, but only

under the pressure of Senate confirmation hearings in 1973, when he was nominated to be Solicitor General, and only then when he was specifically asked about his past statements on the law.

* In a 1968 article in Fortune, Bork criticized the Supreme Court's decision in Reitman v. Mulkey.[23] Reitman affirmed the California Supreme Court's decision invalidating California's Proposition 14, a state ballot measure that overturned the state's open-housing laws.[24] In Reitman the Court stated that Proposition 14 was "intended to authorize, and does authorize, racial discrimination in the housing market." Bork, criticizing the decision, said it could not be "fairly drawn" from the 14th Amendment.

* In 1972 Bork wrote that the Supreme Court, in Katzenbach v. Morgan,[25] was wrong in upholding provisions of the 1965 Voting Rights Act that banned literacy tests used to prevent minorities from voting.[26] In 1981 he called the decisions in Katzenbach and Oregon v. Mitchell[27], which upheld a national ban on literacy tests, "very bad, indeed pernicious, constitutional law."[28]

* Also in 1972, Bork was one of only two law professors to testify before Congress in support of the constitutionality of legislation drastically curtailing school desegregation remedies that the Supreme Court had held constitutionally necessary to cure violations of the 14th Amendment. Hundreds of law

professors said the legislation was unconstitutional.[29]

* As Solicitor General, Bork continued to oppose school desegregation remedies before the Supreme Court. He was overruled by Attorney General Levi in his effort to have the government enter a brief in the Boston school case advocating that the remedy be curtailed.[30] Bork also unsuccessfully opposed fair housing remedies for low income black citizens even though the federal government had participated in the discrimination.[31].

B. Bork: A Limited Reading of the 14th Amendment

According to Bork, the equal protection clause of the 14th Amendment, which he has disdainfully referred to as the "equal gratification" clause, only prohibits governmental discrimination "along racial lines." Contrary to existing Supreme Court precedent, this reading leaves out discrimination against women, aliens, illegitimate children, and disabled individuals, and it sanctions other irrational and invidious discrimination by the state.

* Bork has criticized as "improper and intellectually empty" a 1942 Supreme Court decision striking down an Oklahoma law that provided for the sterilization of convicted robbers, but not embezzlers.[32] He opposed on the same grounds the Court's

decision in 1968 holding unconstitutional a state law barring "illegitimate children" from bringing wrongful death actions.[33]

* So, too, Bork says that the equal protection clause of the 14th Amendment was an improper ground for the Supreme Court's invalidation of a state poll tax law.[34]

* Bork expressed vigorous opposition to the Supreme Court's decisions establishing the rule of "one man-one vote."[35] He finds no basis for these decisions in the 14th Amendment.[36] While he posits another possible theory (the guarantee of a republican form of government) he makes it clear that many malapportionment schemes now prohibited would be allowed under his theory.[37]

C. Bork: Mixing Religion and Government

The opening words of the First Amendment -- "Congress shall make no law respecting the establishment of religion, or respecting the free exercise thereof" -- have provided the constitutional framework for this nation's blending of religious freedom, diversity, and harmony.

In the past four decades, the United States Supreme Court has repeatedly applied the First Amendment to limit both the federal and states governments' role in religion. In the words

of Thomas Jefferson, the Amendment erects "a wall of separation" between church and state. As Justice Sandra Day O'Connor has said, religious liberty is infringed "when the government makes adherence to religion relevant to a person's standing in the political community. [Thus] direct government action endorsing religion or a particular religion is invalid ... because it sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community."[38]

Two speeches delivered by Bork in 1984 and 1985 show that he would seek to reverse settled judicial standards governing Supreme Court decisions in religion for many years. In the speeches, delivered at the University of Chicago on November 13, 1984 and at the Brookings Institution on September 12, 1985, Bork attacked the Supreme Court's three-part test set out in Lemon v. Kurtzman[39] for judging violations of the Establishment Clause of the First Amendment. The test requires that "a legislative enactment does not contravene the Establishment Clause if it has a secular legislative purpose, if its principal or primary effect neither advances nor inhibits religion, and if it does not foster an excessive government entanglement with religion."

Bork faulted each of the three parts of the test, set down by then Chief Justice Burger, and even derided the concept of such a test.

The speeches advance a Far Right interpretation of a number of other issues related to the separation of church and state. For example, Bork criticized Supreme Court interpretation of both the Establishment Clause and the "Free Exercise Clause" of the First Amendment as "expansive." He concluded with a call for a "relaxation" of current interpretation, citing the introduction of religion into public schools and greater religious symbolism in public life as benefits.

He contended that the application of the First Amendment to the states through the 14th Amendment, resulted in "an enormous expansion of the areas of life from which religion was excluded, most obviously from all of the public schools of the nation. That, of course, is a particular cause of anger."

He argued that legal standards which allow any taxpayer to charge the government with violation of the Establishment Clause are too broad. His views would effectively undermine the separation of church and state by denying to all but a handful of citizens the right to challenge government support for religion.

Bork linked the broadened application of the First Amendment to the "growth of social welfare legislation during the latter part of the twentieth century, legislation that touches individuals at so many points in their lives." He argued that "as government expands and pervades our lives, it carries the religious clauses with it and, through the Establishment Clause, expels religion from more and more areas where it had played a vital role."

Robert Bork's speeches suggest that he would take a sledgehammer to the wall of separation between church and state. On point after point, he would level the legal foundations of the wall. He criticizes the reasoning underlying landmark Court decisions dealing with government-directed school prayer, on public funding for parochial schools, and the teaching of Creationism in the public schools.

D. Bork: No Right to Privacy

Bork argues that the Constitution does not protect the right to privacy and that the entire line of Supreme Court decisions vindicating such rights is improper.

Bork has inveighed against the Supreme Court's decision invalidating a Connecticut law banning the use of contraceptives even by married couples in the home, Griswold v. Connecticut.[40]

He is vehement in his opposition to Roe v. Wade[41], the Supreme Court decision striking down state laws prohibiting abortion.

As an appeals court judge, he expressed his disdain for the right to privacy, writing "[The right to privacy] has no life of its own as a right independent of its relationship to a first amendment freedom. Where that relationship does not exist, the right to privacy evaporates."[42] To Bork's mind the right to privacy protects first amendment activity--for example, a private conversation--but it does not protect such issues as the decision to use contraceptives or whether to have children.

E. Bork: Severely Limit Freedom of Speech

In his view of the limited constitutional protection for speech, Bork's result orientation and internal inconsistency are evident. In numerous articles he criticizes courts and judges for "reading new rights" into the Constitution. However, in the speech area, Bork reads limits into the Constitution--limits that are wholly subjective.

Bork argued in 1971, and again in 1973, that "constitutional protection should be accorded only to speech that is "explicitly political."[43] Nowhere does the Constitution use the word "political" to modify the protection afforded to speech.

This view of the First Amendment excluded scientific, artistic and literary expression from judicial protection. When Bork was challenged in an article in The Nation in 1983, he replied,

> As the result of the response of scholars to my (Indiana Law Journal) article, I have long since concluded that many other forms of discourse, such as moral and scientific debate, are central to democratic government and deserve protection. I continue to think that obscenity and pornography do not fit this rationale for protection.[44]

Bork's revision still would not protect artistic speech or speech advocating any violation of the law, even for purposes of civil disobedience. And contrary to the core meaning of the First Amendment, Bork believes that when an individual's speech conflicts with the prevailing morality of a community, the community is constitutionally capable of limiting the speech.[45] While on the bench Bork has given protection to political speech in libel cases[46], he has sought to uphold restrictions on expression imposed by government in the name of general considerations of foreign policy.[47] FOr example, Bork agreed with State Department attempts to limit Americans' right to information by barring the entry of controversial foreign speakers.[48] Bork also upheld the government's right to restrict peaceful demonstrators who were critical of a foreign government from protesting near a foreign embassy.[49]

F. Bork: Advocate of Unchecked Executive Branch Power

Bork is a consistent advocate of unchecked executive power at the expense of the power of other branches. Accordingly, he has supported restricting access to the Courts to those who challenge the exercise of executive power, argued that Congress' role in foreign affairs policy is exceedingly limited and maintained that there is no constitutional means to have an independent prosecutor investigating executive corruption.

* In a 1971 law review article and again at his Solicitor General confirmation hearings, Bork defended the legality of President Nixon's actions in ordering the bombing of Cambodia as stemming from the "inherent power of the presidency."[50] Bork's view would deny any meaningful congressional role in foreign policy.

* In 1973, Bork, as Acting Attorney General, fired Watergate Special Prosecutor Archibald Cox, in violation of the Department of Justice charter establishing the office, under which the special prosecutor could be removed only for "extraordinary impropriety." A federal district court ruled, at the time, that the firing had been illegal.[51]

* In 1985, Bork, as a federal judge, dissented from a Court of Appeals decision upholding a congressional challenge to a

pocket veto. He challenged the standing of Members of Congress to file lawsuits to overturn executive branch actions they believe are illegal.[52] While Bork's stated rationale was to avoid an expansion of judicial power, the impact of his views would be to expand executive power by preventing it from being checked by the legislative or judicial branches.

These views are of special concern during a period when executive branch actions in foreign affairs have been guided by secrecy and are the focus of intense public and professional scrutiny.

G. Bork: Justice For Some

Judge Bork's record on the D.C. Court of Appeals demonstrates that his brand of judicial restraint results in justice for some, but not all. A recent study of Bork's votes while serving on the D.C. Circuit Court of Appeals demonstrates the point.

The study, conducted by the nonprofit Public Citizen Litigation Group, examined split decisions in which Bork was a party. The study did not consider unanimous decisions because those cases are generally considered less controversial, and rarely reach the Supreme Court for resolution.

The study[53] concluded that contrary to the claims that Bork consistently applies his version of "judicial restraint," Judge Bork's vote in a case could be predicted "with almost complete accuracy simply by identifying the parties in the case."

For example, in the split cases before Bork where the government was opposed in a suit by public interest groups, workers, consumers and other individuals, Bork voted for the government 26 of 28 times. On the other hand, Bork was willing to vote consistently against government, when government was opposed by businesses. In each of eight split decisions, Bork voted for business over government.

Likewise Bork's votes on "standing" are equally predictable. Because the Constitution limits courts to hear only those cases where there is a "case or controversy," only those who have an actual stake in the outcome of a case are permitted to bring suit. Those without a sufficient stake lack standing. According to the Public Citizen report, Bork "has voted to dismiss cases brought by the United States Senate, the State of Massachusetts, veterans, an Iranian hostage, social security claimants, prison inmates, citizens of Japanese descent who were interned during World War II, Haitian refugees, handicapped citizens, an airline, the United Presbyterian Church, homeless citizens of the District of Columbia, and consumer groups. Each of these individuals or organizations filed their claim in federal court, but in each

case Judge Bork voted in favor of closing the courthouse door. Indeed in every one of the 14 cases where the court split on access issues, Judge Bork voted to deny access."

III. Conclusion

Robert Bork's views reflect an underlying hostility to judicial protection for individual rights, a hostility sharply at variance with the views of Thomas Jefferson who urged adoption of a Bill of Rights because "of the legal check which it puts into the hands of the judiciary" and James Madison, author of the Bill of Rights, who saw the courts as "impenetrable bulwarks" against "every encroachment upon rights." They are also at variance with the views of such modern conservative justices as Lewis Powell, who stressed that "the liberties we enjoy to a greater extent than any other country in the world are in effect guaranteed by the [Supreme] Court enforcing the Bill of Rights."

The White House effort to repackage Bork as a judicial moderate can not cover up his record as a Far Right judicial activist. Quite simply, Bork is restrained only when it suits his ideological purposes. He has disregarded clear legislative intent when convenient and he has shown a willingness, indeed an eagerness, to overturn points of settled constitutional law.

Finally, Bork's divergence from mainstream judicial thought is breathtaking. He disagrees with court decisions in dozens of critical areas, including civil rights, voting rights, equal protection of the laws, privacy rights, separation of church and state and free speech.

Robert Bork's America is one where doors are closed on minorities, where the government overlooks discrimination, where individuals lack fundamental privacy rights, where church is inextricably mixed with state. His is an America that Americans reject. For that reason, the Senate should reject Robert Bork.

End Notes

1. Washington Times, July 8, 1987

2. The Supreme Court recently granted certiorari in Finzer v. Barry. The case will be heard during the fall term.

3. Kurland, "Bork's 'Liberalism': A Media Distortion," Legal Times of Washington, July 27, 1987

4. 438 U.S. 265 (1978)

5. 410 U.S. 113 (1973)

6. 384 U.S. 641 (1966)

7. Nomination of Robert H. Bork to be Solicitor General: Hearings before the Senate Committee on the Judiciary, 93rd Cong., 1st Sess. 5 (1973)

8. Bork, The New York Times, March 8, 1983, p. 2.

9. Block v. Meese, 793 F.2d 1303 (D.C. Circuit 1986)

10. Interview, District Lawyer, May/June 1985 at 32

11. 759 F. 2d 21 (1985)

12. Confirmation of Federal Judges: Hearings before the Senate Committee on the Judiciary, 97th Cong., 2d Sess. (1982)

13. Bork, "Neutral Principles and Some First Amendment Problems," 47 Indiana Law Journal 1 (1971)

14. Nomination to be Solicitor General

15. Skinner v. Oklahoma, 316 U.S. 535 (1942), which held that the state practice of sterilizing convicts violated the constitutional guarantee of equal protection, Indiana Law Journal

16. Griswold v. Connecticut, 381 U.S. 479 (1965) in which the Court struck down a Connecticut statute making it illegal for married couples to use contraceptives, Indiana Law Journal

17. University of California v. Bakke, 438 U.S. 265 (1978), which permitted a voluntary affirmative action plan for admission to medical schools, Bork, "The Unpersuasive Bakke Decision," Wall Street Journal July 21, 1978

18. Lemon v. Kurtzman, 403 U.S. 602 (1971)

19. 334 U.S. 1

20. Indiana Law Journal at 15-17

21. Bork, "Civil Rights - A Challenge," New Republic, August 31, 1963

22. Chicago Tribune (March 4, 1964)

23. 387 U.S. 369 (1967)

24. Bork, "The Supreme Court Needs a New Philosophy," Fortune, 138 (Dec. 1968)

25. 348 U.S. 641 (1966)

26. Bork, "Constitutionality of the President's Busing Proposals", 1, 9-10 (American Enterprise Institute 1972)

27. 400 U.S. 112 (1970)

28. Hearings on the Human Life Bill

29. Equal Education Opportunity Act of 1972: Hearings on S. 3395 Before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, 92nd Cong., 2d Sess. 1312 (1972)

30. See Orfield, Must We Bus? pp.352-353 Brookings Institution 1978; Washington Post, May 30, 1976

31. Hills v. Gatreaux, 425 U.S. 284 (1976)

32. Skinner v. Oklahoma, 316 U.S. 535 (1942)

33. Levy v. Louisiana, 391 U.S. 68 (1968). See also, Indiana Law Journal at p. 12

34. Harper v. Virginia Board of Elections, 383 U.S. 663; Nomination to be Solicitor General at 17 (1973)

35. Baker v. Carr, 369 U.S. 86; Reynolds v. Sims, 377 U.S. 533 (1964)

36. Indiana Law Journal at 18-19

37. Indiana Law Journal at 18-19

38. O'Connor, J. (concurring), 465 U.S. 668,688 (1984)

39. 403 U.S. 602 (1971)

40. 381 U.S. 479 (1965), Indiana Law Journal at 9-11

41. 410 U.S. 113 (1973), Hearings on the Human Life Bill at 310

42. Dronenburg v. Zech, 741 F.2d 1388, 1392

43. Indiana Law Journal at 20; Nomination to be Solicitor General at 20-21

44. ABA Journal, February 1984 at 132

45. Bork, "Tradition and Morality in Constitutional Law" 12 Current Municipal Problems 212 (Fall 1985)

46. See Ollman v. Evans, 750 F.2d 970 (D.C. Cir. 1984)

47. See Abourezk v. Reagan, 785 F.2d 1043; Finzer v. Barry, 798 F.2d 1450 (D.C.Cir. 1986)

48. Abourezk v. Reagan, 785 F.2d 1043 (1986) (Bork dissenting) cert granted, 107 S. Ct. 666 (1986)

49. Finzer v. Barry, 798 F.2d 1450 (1986), cert granted, 107 S. Ct. 1282 (1987)

50. Bork, "Comments on Legality of U.S. in Cambodia," 65 American Journal of International Law 79 (1971); Nomination to be Solicitor General

51. Nader v. Bork, 366 F.Supp. 104 (D.D.C. 1973)

52. Barnes v. Kline, 759 F. 2d 21 (1985)

53. The Judicial Record of Judge Robert H. Bork, Public Citizen Litigation Group, Washington, D.C. August, 1987

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ACTION FUND

ROBERT BORK AND CIVIL RIGHTS

For the past quarter century, Robert Bork has consistently opposed landmark civil rights laws and historic Supreme Court decisions guaranteeing equal justice for all Americans.

Bork's opposition to civil rights came at a time when most Americans were awakening to the moral imperative of fulfilling the promises of the Constitution. For instance, in August 1963, when Martin Luther King gave his historic "I have a dream" speech, Bork published an article in The New Republic using the phrase "unsurpassed ugliness" to describe proposals to outlaw discrimination in public accommodations. The proposals Bork attacked became the law of the land one year later, as the Civil Rights Act of 1964.

In 1972 Bork wrote that the Supreme Court, in Katzenbach v. Morgan, 348 U.S. 641 (1966), was wrong in upholding provisions of the 1965 Voting Rights Act that banned the use of literary tests under certain circumstances. (Constitutionality of the President's Busing Proposals, 1, 9-10, American Enterprise Institute (1972)). In 1981 he called the decisions in Katzenbach and Oregon v. Mitchell, 400 U.S. 112 (1970), upholding a national ban on literacy tests, "very bad, indeed pernicious, constitutional law." (Hearings on the Human Life Bill Before the Subcommittee on Separation of Powers of the Senate Judiciary Committee, 97th Congress, 1st Session (1982)).

He also criticized Harper v. Virginia Board of Elections, 383 U.S. 663 (1966), in which the Supreme Court outlawed the use of a state poll tax, as "wrongly decided." He said, "it was a very small poll tax; it was not discriminatory." (Senate Judiciary Hearings on Confirmation of Robert Bork as Solicitor General, p.17 (1973)).

Bork has also opposed important remedies in housing and the public schools. Bork found insupportable the Supreme Court's 1948 decision in Shelley v. Kraemer, 334 U.S. 1, holding that judicial enforcement of racially restrictive covenants violates the 14th Amendment. (Bork, "Neutral Principles and Some First Amendment Problems," 47 Indiana Law Journal 1, 15-17 (1971)).

As Solicitor General, Bork also unsuccessfully opposed fair housing remedies for low income black citizens even though the federal government had participated in the discrimination. (Hills v. Gautreaux, 425 U.S. 284 (1976)). He also criticized the Supreme Court's decision in Reitman v. Mulkey, 387 U.S. 369 (1967), upholding the California Supreme Court's decision invalidating the state's Proposition 14, a state ballot measure that overturned California's open-housing laws.

In 1972, Bork was one of only two law professors to testify in support of the constitutionality of legislation drastically curtailing school desegregation remedies that the Supreme Court had held constitutionally necessary to cure violations of the 14th Amendment. (Hearings of the Subcommittee on Education of the Senate Committee on Labor and Public Welfare on the Equal Educational Opportunity Act of 1972, 92d Congress, 2d Session (1972)). Nathaniel R. Jones, then general counsel of

the NAACP and currently a judge on the U.S. Court of Appeals for the Sixth Circuit, testified after Bork that the proposed legislation was "diabolical," "a racist measure geared to a return to the days of Dred Scott...." Hundreds of law professors said the legislation was unconstitutional.

As Solicitor General, Bork continued to oppose school desegregation remedies before the Supreme Court. He was overruled by Attorney General Levi in his effort to have the government file a brief in the Boston school case advocating that the remedy be curtailed. (See Orfield, Must We Bus? pp.352-353 Brookings Institution 1978; Washington Post, May 30, 1976).

Regarding affirmative action in school admissions, Bork criticized University of California Regents v. Bakke 438 U.S. 265, (1978) the decision of which Justice Powell has said he is most proud, as "resting upon no constitutional footing of its own." ("The Unpersuasive Bakke Decision," Wall Street Journal, July 21, 1978.)

Robert Bork's public career has spanned the same period during which our society made great strides in extending the promise of equal justice to all its citizens. Unfortunately, Mr. Bork has opposed much of this progress. The Senate should examine Mr. Bork's record closely and ask whether it should confirm as Justice a man who does not share most Americans' understanding of what justice is.

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THE BORK DEBATE: CHURCH AND STATE

Few provisions in the Constitution have had so great an impact on our society as the opening words of the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."

In the words of Thomas Jefferson, the Amendment builds "a wall of separation between church and state." Because our government protects the individual's freedom of conscience and avoids favoritism toward any religion, America has become a nation where people with diverse religious beliefs can live in harmony.

In every era, the Supreme Court has reaffirmed the Constitutional principles protecting our religious liberties. Our nation's highest court has understood the truth articulated so eloquently by Justice Sandra Day O'Connor: that religious liberty is infringed "when the government makes adherence to religion relevant to a person's standing in the political community. [Thus] direct government action endorsing religion or a particular religion is invalid...because it 'sends a message to nonbelievers that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.'" (Wallace v. Jaffee, 472 U.S. 38 (1985) (O'Connor, J., concurring)).

Robert Bork's record makes clear that he disagrees with the Supreme Court's protection of First Amendment religious liberties and that he holds views on church-state issues outside the mainstream of American constitutional thought. Bork has endorsed the view that the Framers of the Constitution intended the First Amendment's Establishment Clause to do no more than prevent the establishment of a national church or preferential treatment of one religion over another. This view is contrary to the Court's long-standing interpretation of the First Amendment.

In speeches delivered at the University of Chicago on November 13, 1984 and at the Brookings Institution on September 12, 1985, Bork attacked the Supreme Court's three-part test set out in Lemon v. Kurtzman, 403 U.S. 602 (1971), for judging violations of the Establishment Clause of the First Amendment. Under the three-part test, a statute passes Constitutional muster if: 1) it has a secular legislative purpose; 2) if its principal or primary effect neither advances nor inhibits religion; and 3) it does not foster an excessive government entanglement with religion.

Bork faulted each of the parts of the test. The first, according to the text of Bork's November 13, 1984 address at the University of Chicago, "cannot be squared with governmental actions that we know to be constitutional" and "appears to be inconsistent with the historical practice that suggests the intended meaning of the Establishment Clause."

Regarding the second part of the test, Bork said: "The Court can hardly quantify the effects of laws that are not on their face directed to religion. In any event, the historical evidence cuts against this test, too."

Bork described the third part as "impossible to satisfy." He continues, "Government is inevitably entangled with religion. The test is self-stultifying because the test itself requires a determination of what qualifies as religion in order to know whether government is entangled with it."

Bork branded Supreme Court interpretation of both the Establishment Clause and the "Free Exercise Clause" of the First Amendment as "expansive" and he concluded with a call for a "relaxation" of current interpretation, citing the introduction of religion into public schools and greater religious symbolism in public life as benefits.

He attacked the application of the First Amendment to the states through the 14th Amendment, arguing that it resulted in "an enormous expansion of the areas of life from which religion was excluded, most obviously from all of the public schools of the nation. That, of course, is a particular cause of anger."

He argued that legal standards of standing for plaintiffs charging violation of the Establishment Clause are too broad.

He also argued that "as government expands and pervades our lives, it carries the religious clauses with it and, through the Establishment Clause, expels religion from more and more areas where it had played a vital role."

Robert Bork's speeches suggest that he would take a sledgehammer to the wall of separation between church and state. Bork repeatedly finds fault with the settled judicial standards governing court decisions on religion. He criticizes the reasoning underlying landmark Court decisions dealing with government-directed school prayer, on public funding for sectarian schools, and the teaching of Creationism in the public schools.

On balance, it is clear that Robert Bork's views are a serious threat to the constitutionally mandated separation between church and state that has allowed religion in America to flourish.

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ROBERT BORK AND THE FREEDOM OF SPEECH

The writings and speeches by Robert Bork over a 16 year period demonstrate that Bork holds a very narrow view of the free speech protections provided to American citizens by the First Amendment.

The language of the First Amendment is clear and unequivocal: "Congress shall make no law...abridging the freedom of speech, or of the press...." This Amendment guarantees the most cherished of American principles - the tradition of free speech and robust debate.

By protecting citizens' rights to speak freely about unpopular causes and even to criticize our government, the First Amendment shows that the Framers of the Constitution understood the value of free speech as a cornerstone of our democratic system.

In a theory expressed in his best-known law review article, Bork asserted that the First Amendment should be interpreted only to protect speech that is "explicitly political." He wrote:

> There is no basis for judicial intervention to protect any other form of expression, be it scientific, literary or that variety of expression we call obscene or pornographic. Moreover, within that category of speech we ordinarily call political, there should be no constitutional obstruction to laws making criminal any speech that advocates forcible overthrow of the government or the violation of any law. (Bork, "Neutral Principles and Some First Amendment Problems," 47 Indiana Law Journal 1, 20 (1971)).

In other words, Bork would not give First Amendment protection to teachers explaining evolution in science class or to novelists or their readers if a community wanted to ban their work. Bork's definition of "political speech" would never have included the sermons, marches, boycotts and sit-ins that advocated violation of laws the federal courts eventually found to be discriminatory on their face or in their application.

In 1984, in a brief response to an article critical of this view, Bork announced that he had changed his mind, and that the First Amendment could protect moral and scientific speech. ("Judge Bork Replies," 70 A.B.A. Journal 132 (February 1984)). Despite his change of heart, however, Bork's speeches and opinions as a judge on the U.S. Court of Appeals demonstrated that he continues to adhere to a narrow view of the First Amendment.

For example, Bork has on several recent occasions criticized Cohen v. California, 403 U.S. 15 (1971), a landmark free speech decision of the Supreme Court on the basis that the Court improperly applied the First Amendment. In Cohen, the Court upheld a young man's right to wear a shirt with a political slogan protesting the draft. To Bork, however, a person's right to free expression is at the mercy of the community, not guaranteed by the Constitution. Bork's view that

the prevailing moral standards in each community should define the scope of each individual's right to free speech, would drastically limit First Amendment protections. (Bork, "Tradition and Morality in Constitutional Law," American Enterprise Institute, October 31, 1984.)

In his judicial opinions, Bork has also expressed a narrow view of free speech and has sided with government efforts to limit speech. For example, Bork agreed with State Department attempts to limit Americans' right to information by barring the entry of controversial foreign speakers. (Abourezk v. Reagan, 785 F.2d 1043 (1986) (Bork dissenting), cert granted, 107 S. Ct. 666 (1986)). Bork also upheld the government's right to restrict peaceful demonstrators, who were critical of a foreign government, from protesting near a foreign embassy. (Finzer v. Barry, 798 F.2d 1450 (1986), cert granted, 107 S. Ct. 1282 (1987)).

The First Amendment is a bulwark of American liberty that was designed to protect fundamental individual rights even though the majority might find them unpopular. Open debate is critical to a healthy democracy. Bork's efforts to limit the breadth of protected speech and to allow government to restrict debate would limit the rights of American citizens to free expression and to receive information.

People For The American Way

The nonpartisan constitutional liberties organization.

ACTION FUND

ROBERT BORK AND THE RIGHT OF PRIVACY

For more than twenty years, the Supreme Court has interpreted the Bill of Rights and the 14th Amendment to protect individuals from unwarranted government intrusions into their private lives. Robert Bork, in extensive written and oral comments, has stated that the right to privacy was improperly created by an activist judiciary. He asserts that decisions concerning fundamentally private issues such as intimate sexual and family affairs should be left to the prevailing mood of the community and not the courts. As a member of the Court he would effectively abolish decades of constitutional protection for individual freedom.

On many occasions, Judge Bork has vehemently opposed the Supreme Court decision in Griswold v. Connecticut, 381 U.S. 479, (1965) which is the leading case articulating the principle of the right to privacy (in this case the right of married couples to use contraception). In 1971 Bork wrote, "Griswold...is an unprincipled decision, both in the way in which it derives a new constitutional right and in the way it defines that right, or rather fails to define it....The truth is that the Court could not reach its result in Griswold through principle." (Bork, Neutral Principles and Some First Amendment Problems, 47 Indiana Law Journal, 1, 9 (1971)). In a 1985 interview for the Conservative Digest, Bork said, "I don't think there is a supportable method of constitutional reasoning underlying the Griswold decision." ("Judge Bork is a Friend of the Constitution," Interview with Pat McGuigan, Conservative Digest, October 1985).

Despite Supreme Court decisions to the contrary, Judge Bork has stated that a woman's decision to terminate her pregnancy is not a constitutionally protected right. Testifying before Congress in 1981, Bork stated, "I am convinced, as I think most legal scholars are, that Roe v. Wade is itself, an unconstitutional decision, a serious and wholly unjustifiable judicial usurpation of state legislative authority." (Hearings before the Subcommittee on Separation of Powers of the Senate Judiciary Committee, 97th Cong., 1st Session, pp. 310, 313 (June 1, 1981)).

In his 1984 decision in Dronenburg v. Zech, upholding the Navy's authority to discharge servicemen for engaging in homosexual behavior, Judge Bork attacked the right of privacy and refused to apply it to a consenting adult's choice to engage in homosexual behavior. Bork wrote, that the constitutional source of the right of privacy "was no more than a perception that it is sometimes necessary to protect actions or associations not guaranteed by the constitution in order to protect an activity that is. [The right to privacy] has no life of its own as a right independent of its relationship to a first amendment freedom. Where that relationship does not exist, the right to privacy evaporates." (Dronenburg v. Zech, 741 F.2d. 1388, 1392 (1984)).

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Judge Bork was later sharply criticized for his sweeping language by other members of the D.C. Circuit Court who wrote: "[It is] particularly inappropriate...[to] attempt to wipe away selected Supreme Court decisions in the name of judicial restraint...[I]t is not [the court's] function to conduct a general spring cleaning of constitutional law." (Dronenburg v. Zech, 746 F.2d 1579, 1580 (D.C. Cir. 1984)).

Protecting individual freedoms is one of the greatest responsibilities of the Supreme Court. Unfortunately, Robert Bork does not believe that the Court should protect the right to personal privacy.

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ACTION FUND

BORK'S JUDICIAL PHILOSOPHY

In nominating Robert Bork to the Supreme Court, President Reagan declared him an apostle of "judicial restraint" who believes that "judges' personal preferences and values" should not affect how they decide cases. In fact, a review of Judge Bork's writings and judicial opinions reveals that he is an activist whose political philosophy shapes his judicial decision-making. That philosophy translates into consistent decisions against consumers, environmental groups, and workers challenging actions of the government agencies; against people requesting information under the Freedom of Information Act; against people seeking to exercise their constitutional rights; and for private corporations and business groups when they challenge regulations.

In his writing he has denounced landmark Supreme Court decisions protecting civil rights and individual liberties rendered over the past four decades. He attacked the Supreme Court's decision establishing the rule of "one-man-one-vote," criticized its decision protecting the right to privacy as "corrupt" and "unprincipled," disagreed with the Supreme Court's ruling that a poll tax was unconstitutional, and he has held that the Supreme Court erred in striking down laws discriminating against women, illegitimate children and the disabled under the 14th Amendment's equal protection clause. His record on the bench also shows he is no moderate.

Three recent studies -- by the AFL-CIO, by the Public Citizens Litigation Group, and by two Columbia University Law Review students -- have examined Judge Bork's decisions while on the U.S. Court of Appeals for the District of Columbia. All three studies reach the same independent conclusion: the White House characterization of Judge Bork as a "moderate" is a myth.

All three studies reviewed Judge Bork's decisions in cases in which there was a disagreement among members of the Court. These "split-decision" cases are generally the most controversial, involve areas of law that may not be clear or settled, and revolve around issues most likely to go before the Supreme Court. All three studies support the view that Judge Bork practices judicial restraint when it does not interfere with his political and philosophical views.

In fact, the Columbia Law Review study found that in this regard Bork stood apart even when compared to President Reagan's most conservative judges. Bork is only a strong proponent of judicial restraint in cases brought by individuals or organizations other than businesses. On the other hand, when a private corporation sues, Bork is a judicial activist.

A true advocate of judicial restraint would confine review to the plain words of statutes and to clear legislative history. But Bork does not follow that rule either. In one case Judge Bork concluded that the Occupational Safety and Health Act of 1970 did not ban a chemical company's "safety" policy which essentially required women to either become sterilized or lose their jobs. Bork admittedly

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looked beyond the plain words of the statute to "precedent, usage, and congressional intent." He concluded that while the words of the statute appeared to prohibit the policy, in his view Congress did not intend to cover such policies. (Oil, Chemical & Atomic Workers Int'l. Union v. American Cyanamid Co., 741 F.2d 444 (D.C. Cir. 1984)).

Bork has consistently tried to limit constitutional law principles established by the Supreme Court. In reviewing Bork's record in 1984, legal scholar Ronald Dworkin wrote that Bork has ignored the obligation of appellate judges "to respect Supreme Court decisions by trying in good faith to identify and enforce constitutional principles" in cases that come before them. To Dworkin, the message is clear enough: If the Supreme Court acts in a way Bork thinks wrong, he will not apply its decision in a principled manner. (Dworkin, Ronald, "Reagan's Justice," New York Review of Books, November 8, 1984).

Bork has made clear on numerous occasions that, given the opportunity, he would not hesitate to overturn Supreme Court precedent and he has a long list of decisions protecting individual rights and liberties which he would favor overturning. In his 1982 confirmation hearing to the D.C. Circuit, Bork stated, "The only cure for a Court which oversteps its bounds is the appointment power...." And Bork has repeatedly said that Supreme Court constitutional decisions ought to be overturned if at a later date the Court, composed of different justices, disagrees with those earlier decisions:

> Since the legislature can do nothing about the interpretation of the Constitution given by a Court, the Court ought to be always open to rethink constitutional problems.... ("A Talk with Robert H. Bork," District Lawyer, May/June 1985, Vol.9, No.5.)
>
> Supreme Court justice[s] always can say... their first obligation is to the Constitution, not to what their colleagues said 10 years before. ("Justice Robert H. Bork: Judicial Restraint Personified," California Lawyer, May 1985)

Bork has used the word "restraint" to cloak an activist judicial philosophy. As a law professor, a government official and a judge, Bork has denounced most of the constitutional protections afforded by the Supreme Court during the modern era.

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ACTION FUND

ROBERT BORK AND THE "SATURDAY NIGHT MASSACRE"

Robert Bork's role in the firing of Watergate Special Prosecutor, Archibald Cox, raises important questions about his judgment and willingness to aid executive branch efforts to sidestep the rule of law.

The following events set the stage for what was the pivotal event in the Watergate scandal and the first step toward the resignation of President Nixon. The events of the evening of October 20, 1973, have come to be known as the "Saturday Night Massacre":

-July 23, 1973. Special Prosecutor Archibald Cox subpoenaed the recordings of nine Presidential conversations and meetings.

-July 25, 1973. President Nixon, citing executive privilege, refused to turn over the subpoenaed tapes.

-August 29, 1973. Judge Sirica ruled that the President must surrender the tapes. The White House announced that it would appeal.

-October 12, 1973. The U.S. Court of Appeals upheld Judge Sirica's order that the tapes must be surrendered.

-October 20, 1973. Archibald Cox held a news conference to say he was compelled to inform the Court of Appeals that the President was in contempt of court for ignoring the court's order and merely releasing a written summary of the tapes.

That afternoon, Alexander Haig, Chief of Staff, ordered Attorney General Elliot Richardson to fire Cox. Richardson refused to carry out the order. Richardson had promised the Senate Judiciary Committee he would not interfere with the independence of the Special Prosecutor and issued regulations limiting the dismissal of the Special Prosecutor to instances of "extraordinary impropriety." Richardson believed that Cox had done nothing that could be categorized as an "extreme impropriety," and he chose to resign rather than fire Cox.

Deputy Attorney General William Ruckleshaus believed that he too was bound by the regulations and was dismissed when he refused to carry out the President's order. He clearly believed that Cox was only acting within the bounds of the Justice Department charter. As Solicitor General, Bork was the third person in the order of succession at the Justice Department. Unlike Richardson and Ruckleshaus, he chose to follow President Nixon's orders and fire Special Prosecutor Cox.

- October 23, 1973. Bork issued a departmental order abolishing the Special Prosecutor's office and turning its personnel and functions over to the Criminal Division.

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During his 1982 confirmation hearing for Appellate Court Judge, Bork discussed his decision to fire the Special Prosecutor. After Richardson and Ruckleshaus refused to fire Cox, Bork said he had concluded that no other presidential appointee would be willing to fire Cox if he declined. Bork believed that he was not a party to the promises made regarding the independence of the Special Prosecutor. He asserted that Richardson and Ruckleshaus convinced him not to resign after he signed the dismissal order. He stated, "[t]here was never any possibility the discharge of the Special Prosecutor would in any way hamper the investigation or the prosecutions of the Special Prosecutor's office." (Confirmation of Federal Judges: Hearings before the Senate Comm. on the Judiciary, 97th Cong., 2d Sess. (1982)).

Although Bork stated that he was not, "encumbered by the charter" governing the Special Prosecutors office and had fired Cox legally, a federal district court found otherwise. District Judge Gerhard Gesell of the District of Columbia ruled that the firing had been illegal and held:

> In the instant case, the defendant abolished the office of Watergate Special Prosecutor on October 23, and reinstated it less than three weeks later under a virtually identical regulation. It is clear that this turnabout was simply a ruse to permit the discharge of Mr. Cox without otherwise affecting the Office of the Special Prosecutor – a result which could not legally have been accomplished while the regulation was in effect under the circumstances presented in this case. Defendant's Order revoking the original regulation was therefore arbitrary and unreasonable, and must be held to have been without force or effect.
> Nader v. Bork, 366 F.Supp. 104, 109 (1973).

Bork has consistently spoken out in favor of the president's constitutional authority to control his subordinates, particularly the special prosecutor. He has opposed the constitutionality of any law providing for the appointment of independent counsels to investigate executive branch corruption.

Bork's record raises important and legitimate questions about his judgment. Further, his writings, advocating sweeping executive power, and his judicial record raise questions about his willingness, as a member of the nation's highest court, to require the executive branch to adhere to the Constitution.

MORNING EDITION

Nina Totenberg on Robert Bork
August 31, 1987
(Transcript)

EDWARDS: In about two weeks the Senate will begin confirmation hearings on the nomination of Judge Robert Bork to the U.S. Supreme Court.

The White House says President Reagan will hold a series of meetings with "prominent leaders of the legal community and with concerned citizens" to press for Bork's nomination. In 1984, the President campaigned for the right to name conservatives to the Supreme Court. He clearly said he wanted to change the Court's direction on a wide variety of issues. But now, in an apparent effort to win support for Bork, the President is portraying the Appeals court judge as a mainstream moderate. NPR Legal Affairs Correspondent, Nina Totenberg reports.

TOTENBERG: When the Bork nomination was announced, the White House was surprised by the intensity and ferocity of the opposition it provoked. In the first few weeks, Bork's opponents seemed to dominate the war of words. And perceptions are important. Public opinion polls show that those who view Bork as a moderate or conservative are likely to support him, while those who view him as very conservative are likely to oppose him. So the President and his staff geared up to portray Bork as a mainstream moderate. As part of the new strategy, the President began likening Bork to the man he would replace, the retired Justice Lewis Powell.

REAGAN: Nine of the ten times the Supreme Court reviewed a case that Judge Bork had ruled on, Justice Powell agreed with Bork. It's hard for a fair-minded person to escape the conclusion that if you want someone with Justice Powell's detachment and statesmanship, you can't do better than Judge Bork.

TOTENBERG: Following the President's speech the White House began distributing to Senators and opinion-makers, a thick briefing book on Bork's record. The briefing book says quote "Judge Bork's appointment would not change the balance of the Supreme Court. His opinions on the Court of

Appeals are thoroughly in the mainstream." The book goes on to list and explain a number of Bork's legal opinions, emphasizing the ones that might be considered moderate to liberal. Critics of the briefing book call it a gross distortion of Bork's record. Harvard law professor Laurence Tribe, himself a liberal, is one of those who has examined the briefing book. He claims it is riddled with inaccuracies. For example, the description of Bork's legal opinion while on the Circuit Court in a sex harassment case that later went to the Supreme Court. The High Court in a unanimous opinion written by William Rehnquist ruled in that case that a company could be held liable for sex discrimination if an employee were subject to an environment of sexual harassment. The White House briefing book describes the High Court's position as similar to Judge Bork's position on the lower court.

TRIBE: That is absolutely false.

TOTENBERG: Harvard law professor, Laurence Tribe.

TRIBE: Though the Supreme Court agreed with Robert Bork on one technical issue, what is striking is that the Supreme Court unanimously rejected Judge Bork's vehement view, a view he expressed in his dissent on the D.C. Circuit, that sex harassment claims should be severely limited. In fact, Judge Bork had actually ridiculed the idea that people subjected to a harassing environment, a sex harassment environment, should be able to sue at all under the Civil Rights laws, so that for the White House to say that Bork and the Court were of the same view on this issue is as close to a lie as one can come.

TOTENBERG: This example, says Tribe, is just one of many inaccuracies in the briefing book.

TRIBE: And I think it's important to recognize that the issue is not what any of us might think of sex harassment claims. The point really is that the White House is deliberately distorting what Judge Bork is really up to. Even in his decisions on the D.C. Circuit they are quite desperately trying to hide the real Robert Bork from the public rather than defending Robert Bork on the basis of the views and attitudes and philosophies that obviously led them to nominate him in the first place. They are running from his record.

TOTENBERG: Now you might expect an avowed Bork opponent like

Tribe to criticize the White House briefing book, but what is striking is that quietly, conservatives of many stripes are also critical. Bruce Fein, of the conservative Heritage Foundation, is one of Bork's most ardent supporters.

FEIN: Judge Bork, even if he's portrayed as a moderate and is confirmed is not going to alter his vote that way. And the President will not have a strong or a long-lasting social civil-rights agenda coming in under the banner of Judge Robert Bork unless he's fair and open and forthright with the American people about what he wants to do and why. And I am really quite nonplussed as to the idea that he ought to be embarrassed about suggesting that Judge Bork will bring changes to the Court. I think when you try to be a little too cute as the President is being I believe, that no one is deceived.

TOTENBERG: Fein says that the Bork nomination gives President Reagan his last chance to achieve what Fein calls the President's social civil-rights agenda, an agenda which Fein says the President has been unable to achieve in Congress or the Executive branch.

FEIN: They chose Bob Bork because they wanted him to make changes in the law. He will make a difference and they presumably want him to make a difference and I believe it's counter-productive in American politics and in the long-run for a sensible evolution of the law expounded by the Supreme Court for the President [to] try to pull a fast one on the people and not going straight forward and telling the Senate, telling all the public, and the media, that of course, these are the major areas where he believes the Court has erred in the past and where he believes that Justice Powell perhaps cast an errant vote and he would hope that Judge Bork would correct these. And I don't think American people appreciate being treated rather as docile simpletons.

TOTENBERG: A statistical study of Bork's lower court opinions was conducted by two Columbia Law School researchers. In the first of two studies they concluded that by and large President Reagan's nominees to the lower courts have not been more conservative than other Republican nominees. But as researcher Jess Velona notes, the second study shows that Judge Bork is one of the exceptions, and is outside the quote "Republican mainstream"

close quote.

VELONA: Judge Bork indeed was much more conservative then the average Reagan judge.

TOTENBERG: Moreover, the study concludes that Bork sided often with business groups when they sue the government but in contrast when public interest groups or consumer interest groups sued, Bork usually ruled against them.

VELONA: That reflected, we concluded, an apparently inconsistent application of the doctrine of judicial restraint.

TOTENBERG: University of Chicago law professor, Philip Kurland, a well-known advocate of judicial restraint is considered a traditional conservative in legal circles. Kurland has long held up Felix Frankfurter and John Harlan as the ideal type of Supreme Court justice. The White House briefing book says quote "Judge Bork's legal philosophy follows directly in the mainstream tradition exemplified by Frankfurter, Harlan, and Hugo Black." Responds Professor Kurland:

KURLAND: He's nothing of the sort. Those were people who thought that the Constitution had to be interpreted and applied. They were people who do not, did not think that one's job as a newly appointed justice would be to rewrite the Constitution to eliminate those decisions which prior Courts had written into law, which are not tasteful to the Administration that appoints you.

TOTENBERG: Kurland is particularly critical of Bork because of Bork's many speeches and articles advocating reversal of many Supreme Court decisions of the last four decades. Kurland agrees with Bork supporter Fein that that is why President Reagan named Bork to the Supreme Court. Kurland calls the White House briefing book propaganda.

KURLAND: If they mean what they say, the Far Right, which has been his hard core support, should abandon Bork, but I don't think they believe it and I would hope that nobody else would believe it either.

TOTENBERG: A footnote. According to Senate sources, Robert Bork, in many of his private meetings with individual Senators has been recanting some of his most conservative previously expressed views. These recantations will undoubtedly be the source

of much questioning at the upcoming Senate confirmation hearings. I'm Nina Totenberg in Washington.

ALL THINGS CONSIDERED

Nina Totenberg on Robert Bork
August 26, 1987
(Transcript)

Montaine: The Saturday Night Massacre revisited. I'm Renee Montaine.

Hockenberry: And I'm John Hockenberry with ALL THINGS CONSIDERED.

Announcer: In four swift strokes, a beseiged President tonight took one of the most explosive actions in his career and the country's history. He fired Watergate special prosecutor Archibald Cox because of Cox's refusal to obey Presidential instructions. He abolished at a stroke Cox's 80 man special investigation and prosecution unit, transferring its functions to the Justice Department. Cox's office literally ceased to exist as of 8:00 pm Eastern time.

Montaine: What came to be known as the Saturday Night Massacre was carried out by Robert Bork, the man Ronald Reagan has chosen to sit on the Supreme Court.

Hockenberry: Bork's versions of the events and other recollections, first news...

(Brief news update.)

Hockenberry: It's ALL THINGS CONSIDERED and I'm John Hockenberry.

Montaine: And I'm Renee Montaine. They called IT the Saturday Night Massacre and it precipitated the greatest constitutional crisis of the century. They called him the Executioner and now Robert Bork has been nominated to the Supreme Court. Just what was Bork's role in the firing of Special Watergate Prosecutor Archibald Cox and the events that followed? NPR's Nina Totenberg has been investigating Bork's role and has this report:

Totenberg: The scandal was called Watergate because it began with a foiled burglary at the Democratic National Headquarters in the Watergate Office Building in Washington. But by the time it was over, the entire reign of Richard Nixon had been tainted with abuse of

power from the petty to the petrifying. The White House had ordered break-ins at the homes and offices of friends and enemies, illegal wire-tapping of political foes and White House aides alike. There were enemies lists, political dirty tricks. There was perjury, hush money, obstruction of justice. The institutions of government, from the IRS to the CIA had been used by the President and his men to punish their political enemies and reward their political friends. As the story began to unfold, it became clear to Congress that in these extraordinairy circumstances the President and his subordinates at the Justice Department could not investigate themselves. And so Congress and the Administration carefully negotiated a written plan under which the Attorney General designate, Elliot Richardson, would be confirmed on the condition that he would appoint a special prosecutor to investigate the Watergate Affair. The prosecutor would be guaranteed complete independence and could be removed only for gross impropriety. Richardson announced the appointment with pride.

Richardson: I am pleased to report today that if confirmed by the Senate, I intend to name Archibald Cox, former Solicitor General of the United States, now Williston Professor of Law at the Harvard Law School, as the Special Prosecutor.

Totenberg: While the Special Prosecutor was investigating, the Senate was conducting its own separate inquiry. John Dean was the star witness, relating detail after detail about crimes plotted and executed in the White House. For a while, it seemed it would be Dean's word against the President's, until the day White House aide Alexander Butterfield testified before the Senate committee.

Questioner: Mr. Butterfield, are you aware of the installation of any listening devices in the Oval Office of the President?

Butterfield: I was aware of listening devices, yes sir.

Questioner: When were those devices placed in the Oval Office?

Butterfield: Approximately, the summer of 1970. I cannot begin to recall the precise date.

Totenberg: Watergate Special Prosecutor Archibald Cox subpoenaed nine of the White House tapes, saying he believed they bore evidence of crimes. Two courts ordered the

President to turn over those tapes and by the third week of October 1973, President Richard Nixon seemed to be on a collision course with Cox. It is hard now to remember the fear that gripped Washington in those critical days of October. A week earlier, Vice President Spiro Agnew had resigned to avoid a prison term. As the nation still reeled from that shock, President Nixon ordered Watergate Prosecutor Cox to cease all requests for White House tapes and papers. The President was defying the arrangement that he and his administration had worked out with Congress guaranteeing Cox a free hand. And the normally reticent Cox called a press conference on a beautiful Saturday afternoon, October 20th. He told the assembled reporters that since his charter guaranteed him complete independence, he would not obey the President's order and would continue to press his request for the tapes in Court.

Cox: I was brought up with the greatest respect for every President of the United States. But that isn't what's involved. It's that there's a basic change in the institutional arrangement that was established. There was a widespread feeling that there was need for an investigation conducted by someone wholly outside the Administration who believed in the normal processes of the Grand Jury and the courts, who would follow them and adhere to them, and who wouldn't be subject to instructions that might call him off or impede his work. And the purpose of this was to make it plain that the country would get such an investigation. It happened to be me. It may have been a good choice or a bad choice. But this changes it And I don't think I could properly go on without making it plain that there had been a change.

Totenberg: At the White House, the President ordered Attorney General Elliot Richardson to fire Cox. Richardson refused and resigned. So did the Deputy Attorney General, William Ruckelshaus. The next in line at the Justice Department was Solicitor General Robert Bork. He agreed to do the deed and at 8:25 that evening a grim-faced White House Press Secretary announced what had happened. The reaction was instantaneous. White House Chief of Staff Alexander Haig later called it "The Firestorm." It began that night on radio and TV.

John Chancellor: Good evening. The country tonight is in the midst of what may be the most serious constitutional crisis in its history. The series of events that precipitated

this crisis began at 8:15 o'clock Friday night when the President announced...

Dan Rather: In breathtaking succession tonight, the following historic events occurred: The President of the United States demanded that the Attorney General....

Announcer: Half an hour after the Special Watergate Prosecutor had been fired agents of teh FBI acting at the direction of the White House sealed off the offices of the Special Prosecutor, the offices of the Attorney General, and the offices of the Deputy Attorney General. That's a stunning development and nothing even...

Announcer: In four swift strokes,a besieged President tonight took one of the most explosive actions in his career and the country's history. He fired...

Announcer: In my career as a correspondent, I never thought I'd be announcing these things. My thanks to my colleagues...

Voice from newscast: I was thinking in my car coming in that perhaps it wasn't seven days in May but maybe this is one day in October.

Totenberg: In the days that were to come, government officials talked seriously and publicly about the possibility of civil unrest. Members of Congress went to their offices half expecting to see soldiers stationed on the capitol grounds. It's hard to remember that now, but that's how it was. It is hard, too, to recreate now some fourteen years later what the truth is. We have seen in the Iran Contra hearings how difficult it is to establish what really happened just a year ago. But with the hindsight of history and interviews of the key figures involved in the Saturday Night Massacre, some conclusions are clear. Even many of those who disagreed with Bork believe now he did what he thought was right when he fired Archibald Cox and abolished the Watergate Special Prosecutor's office. However, what also seems to be true is that Bork's version of events in the subsequent years conflicts directly with the accounts of others. In an interview this year with Bill Moyers on Public Television, Bork reiterated the reasons he has always given for firing Cox.

Bork: The President has the right to discharge any member of the Executive Branch he chooses to discharge. I further thought that if I did not do it, but resigned or was discharged, the pattern I set after Elliot Richardson and William Ruckelshaus had refused, would probably lead to mass departures in the Department of Justice and leaving the department in a chaotic condition and badly crippled.

Totenberg: Former Attorney General Elliot Richardson supports Bork's account.

Richardson: Robert Bork stayed on at the Justice Department at the urging of Bill Ruckelshaus and myself because we were about to resign and we were concerned that if Bob Bork also resigned then we might start a chain reaction in effect and who knows who might end up as the acting Attorney General at a very critical time.

Totenberg: But former Deputy Attorney General William Ruckelshaus denies urging Bork to fire Cox. He says instead that he and Richardson left the decision to Bork.

Ruckelshaus: I remember both of us saying, "If you decide it is an appropriate thing to do, if you decide that in your conscience that you can carry out the President's order we'll certainly support your decision to have done so."

Totenberg: Bork's version of events runs into serious difficulty in his various statements about the days that followed. The day after the Cox firing, Bork called a meeting in his office. Present were Bork, the head of Justice Department's Criminal Division Henry Petersen, and Archibald Cox's two principal deputies, Henry Ruth and Philip Lockavara. All agreed that at that meeting, Bork said the Watergate investigation and staff would be transferred to the authority of the Justice Department and that Henry Peterson, the Chief of the Justice Department Criminal Division, would supervise the probe. But Bork is in direct conflict with the other three participants in the meeting about one critical item: Would they be allowed to pursue the tapes and other White House material needed for the investigation?

Totenberg: In 1982, Bork testified before the Senate Judiciary Committee when the Senate was considering his nomination as a judge to the Court of Appeals. He testified about the October 21st meeting saying, "I told them that I wanted them to continue as before with their investigation...that I would guarantee their independence including their right to go to court to get the White House tapes or any other evidence they wanted. Therefore, I ordered them to do precisely what they had been doing under Mr. Cox." Former Deputy Watergate Special Prosecutor Henry Ruth remembers the meeting quite differently.

Ruth: It was a very tense meeting and I think nobody in that room really knew what the future held.

Totenberg: Did you have the impression in that meeting that Mr. Bork was committed to a thorough investigation of the whole Watergate episode?

Ruth: There was still great uncertainty about what powers we would have on the crucial item of subpooenaing materials from the White House.

Totenberg: Former Criminal Division Chief Henry Peterson also says there were no guarantees given about subpoena power over White House tapes and documents. And the third participant in the meeting, Philip Lockavara,

the other Deputy Watergate Special Prosecutor, says too, that Bork made no promises on that key question.

Lackavara: That issue was left a bit fuzzy and perhaps deliberately fuzzy in order to allow all of us a chance to consider the implications of what had just happened a day or two days before.

Totenberg: What had happened , of course, was that Bork had fired Watergate Special Prosecutor Cox because Cox had insisted on trying to get those tapes. The three participants in that Sunday meeting knew how important the issue was and according to the three,Bork would not promise them the authority to go after the White House evidence. Yet the day after that meeting Bork read this statement to reporters:

Bork: I plan to adhere exactly to President Nixon's directive to me regarding these cases. The President said, "It is my expectation that the Department of Justice will continue with full vigor the investigations and prosecutions that had been entrusted to the Watergate Special Prosecution force."

Totenberg: Bork's other major point of conflict is not a matter of public record. But it is important since it came again at a time when he was seeking nomination and confirmation to the U.S. Court of Appeals in 1982. At that time he was interviewed by a representative of the American Bar Association as part of the pre-nomination screening process that the Bar does for every prospective nominee. Without the Bar association's stamp of approval, nominations generally don't go forward. In Bork's case he was interviewed by William Coleman, a man of high reputation in legal circles and himself a life-long Republican. Coleman refused all comment for this broadcast but NPR from two separate and independent sources has viewed copies of his report. In it, Coleman reports that Bork, in the 1982 pre-nomination interview, stated that after the Cox firing he "immediately began searching for another special prosecutor." The record indicates, however, that neither Bork nor President Nixon was immediately interested in a new special prosecutor...that is, until the firestorm. Within hours of the announcement of the Saturday Night Massacre, the idea of impeachment was in the air.

Announcer: And what if the unthinkable happens? What if impeachment becomes not just Capital Hill talk, but a frightening reality?

Reporter: Actually, I think that the chances for the House impeaching are probably at this point pretty strong, fairly good, because the House...

Announcer: ...the Constituion provides for what happens if the Presidency becomes vacant by impeachment, death or any other reason. The Vice President would normally take over, but the country doesn't have a Vice President right now. Gerald Ford has been nominated...

Reporter: Impeachment proposals so far from Senator Mondale, Democrat, and Senator Case, Republican. And Chairman John Anderson of the House Republican Conference calls this a Constitutional crisis. He predicts there will be impeachment resolutions offered next week.

Totenberg: The weekend of October 20th was a long holiday weekend. When the capital came back to work that Tuesday morning, House Democratic leaders had agreed to refer to the Judiciary committee all resolutions of impeachment. Seven such resolutions were referred that morning. House Republican leaders told the White House they would not try to block impeachment proceedings unless the President turned over the tapes to the District Court. And the Republican leaders also urged the appointment of a new special prosecutor. The same day, Elliot Richardson, the resigned Attorney General, held a news conference and called for the appointment of a new special prosecutor. That afternoon the President bowed to growing pressure on the tapes and sent his lawyers to Judge John Siricas courtroom with the news that he would comply with the court order and turn over the tapes originally subpoenaed by Cox. Still, the calls for a new special prosecutor continued to multiply. In both houses of Congress, there were numerous bills being proposed to create a new and independent special prosecutor who would be appointed by the District Court. Senate Republican leaders said they would support the legislation and help get it passed quickly if the President did not name a new Special Prosecutor. Acting Attorney General Bork subsequently testified against the legislation and said he might advise the President to veto it. On October 24th, Wednesday, Bork held a stormy press

conference. Sweating profusely, he answered often hostile questions from the assembled press corps.

Bork: I intend to walk out of this job with my reputation unimpaired. That's the way it's going to be.

Totenberg: On October 26th, Friday, the President relented and said he would have Bork name a new special prosecutor. But Nixon said the new prosecutor would not have the authority to go to court to get any more White House tapes or papers. As the public outcry began anew, the White House backed down that Saturday. And on November 1st, Leon Jaworsky accepted the job of special Prosecutor with the proviso that he would have complete independence and authority to go to court to get whatever evidence he needed. Bork did help select Jaworsky, but the question is: When did he begin the search for a new special prosecutor? Was it immediately after firing Cox, as he apparently claimed when he was interviewed in 1982 by the bar assoociation in preparation for his nomination to the bench? Was he, in 1973, immediately committed to the appointment of a new special prosecutor? I put that question to former Deputy Watergate Special Prosecutor Henry Ruth who, remember, met with Bork the day after the Cox firing.

Ruth: Well, I would say that was a new fact to me compared to what we were going through at the time. And if we had known that that Saturday night, I guess we would not have had a crisis. Nobody seemed to know that, indeed, I don't think Mr. Bork had any idea because it was totally out of his hands and I don't think he was part of the decision process. The one act which is inconsistent with that expressed view is the fact that he abolished us and he abolished us the following Tuesday, three days after the Massacre.

Totenberg: In fact, it now appears that Bork abolished the Watergate special prosecutor's office twice. On October 20th, two top Justice Department aides saw Bork when he returned from the White House having agreed to fire Cox. They distinctly remember an order that Bork had signed that day abolishing the Watergate special prosecutor's office. Bork apparently did not formally promulgate that order, but three days later he did formally abolish the office retroactive to October 21st.
Some of the participants in the drama of that week take a benign view of Bork's role, though none seems to have examined his accounts in great detail. Elliot Richardson, the former Attorney General, is

the staunchest Bork supporter, having urged Bork to do what he would not.

Richardson: That matter should be put aside entirely except perhaps to the extent that it should be recognized as to his credit that in the very difficult aftermath of the so-called Saturday Night Massacre, he stood very firmly and strongly in favor of the necessity for an independent special prosecutor.

Totenberg: Former Deputy Attorney General William Ruckelshaus is less enthusiastic, but still supportive.

Totenberg: Do you think that Mr. Bork did the right thing?

Ruckelshaus: Well, the fact that I did to the contrary would indicate that no, I...in my judgment, what the President was doing was fundamentally wrong and therefore, my course of action was clear. I don't suggest that my judgment therefore, should override everybody else's judgment or that Cox, or that Bork, in the position he was in, couldn't come to a contrary opinion, which he obviously did.

Totenberg: Former Deputy Watergate Special Prosecutor Philip Locovara believes the Saturday Night Massacre should not be held against Bork now.

Locovara: I told him then as I have told him many times since then, that I thought he made the wrong judgment in deciding to obey the order to fire Archibald Cox. I also believe now that it is not a matter that should affect whether he is confirmed as a Justice of the Supreme Court.

Totenberg: Why?

Locovara: Because the decision that he made, on, with relatively little opportunity to reflect, was not in my view a decision that was outside the bounds of reasonableness as a matter of Constitutional law.

Totenberg: But Locovara's fellow Deputy, Henry Ruth, is not so sure. He believes that Bork, in the name of Executive Authority, walked on the narrow edge of violating the law himself.

Ruth: We had a charter. We had a charter with the Attorney General that said that Archie Cox could be fired only for extraordinairy impropriety. And, the fact that that charter was ignored was quite disturbing to all of us.

Totenberg: No one but Elliot Richardson remembers that Robert Bork was a consistent supporter of the idea of a new Special Prosecutor. The participants remember, in contrast, that Bork and the White House were buffetted by political happenings beyond their control and that only later during the week did they finally accept the idea that the investigation could not be contained at the Justice Department, that a new prosecutor had to be named. While Henry Ruth and others dispute Bork's recent accounts of what happened in the days that followed the Massacre, Ruth does not dispute Bork's motivation in firing Cox.

Ruth: I think he made that decision in good faith. I think he made it as a reflection of his view of the complete power of the Chief Executive and I think those views of ...his views of the power of the Chief Executive is what is the most relevant aspect of the Massacre to the confirmation hearings. My only question about his judgment that night in terms of law enforcement is that I have a hard time knowing how someone can make a decision to fire Mr. Cox without first saying that he had to be informed as to the status of the investigation and whether or not it would interfere with the investigation. If you're going to fire the prosecutor for subpoenaing tapes that have evidence of a crime, you should inform yourself first before you participate in that firing. That judgment is relevant.

Totenberg: An epilogue: Federal District Judge Gerhard Gestell later ruled that the firing of Archibald Cox had been illegal because it violated the written regulations that the Justice Department and Congress worked out when Cox was appointed. The Judge ruled, however, that the case was moot since Cox was not seeking reinstatement. Leon Jaworski went on to complete the Watergate investigation. The former White House Chief of Staff H.R. Haldeman, the former Attorney General John Mitchell, the former White House Chief of Domestic Policy John Ehrlichman; and seventeen others went to prison. The House Judiciary Committee voted articles of impeachment against the President. One of the articles of impeachment, one of the high crimes charged against the President, was interfering with the investigation of the Watergate Special Prosecutor. And on August 9th, 1974, Richard Nixon resigned rather than face certain impeachment and trial in the Senate. His succcessor, Gerald Ford, pardoned Nixon a month later. I'm Nina Totenberg in Washington.

JACKSON, MISS.
CLARION-LEDGER
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Bork would wreck current gains in area of civil rights

By JOHN BUCHANAN
Special to Gannett News Service

Since 1981, President Reagan and his attorney general, Edwin Meese, have tried to turn back the clock on the critical gains that have been made in the past four decades to create a fair and just society for all Americans.

Robert Bork's nomination is the culmination of the Reagan-Meese effort. Even a preliminary review of Bork's record makes it clear that he has opposed many of those civil rights gains.

In August 1963, just as Martin Luther King was leading the march on Washington, *The New Republic* published an article by Robert Bork defending the right of white business establishments to refuse to serve blacks.

That was a long time ago, of course, and today Bork has said he's changed his mind. But his article in *The New Republic* is part of a larger pattern:

- Bork has challenged the Supreme Court's 1948 decision in Shelby vs. Kraemer, which outlawed racially restrictive covenants in housing.
- He thinks the court erred in upholding provisions of the 1965 Voting Rights Act banning the use of literacy tests under certain circumstances.
- He opposes the Supreme Court's decisions establishing the ruling of "one man, one vote."
- Bork has disagreed with Harper vs. Virginia Board of Elections, in which the Supreme Court declared a poll tax unconstitutional. The poll tax was universally despised by civil rights leaders as a way to lock blacks out of the voting process — yet Bork claims it was "not discriminatory."

In 1972, Bork was one of two law professors to testify in support of Nixon's effort to curb remedies the Supreme Court had held were necessary to stop unconstitutional school segregation. Five hundred law professors said the legislation was unconstitutional.

Bork's position on civil rights grows from his view of the 14th Amendment's equal protection clause, which says that no state will deny anyone "the equal protection of the laws." Under Bork's theory, the equal protection clause wouldn't apply to women or religious minorities; only racial minorities would be protected.

If Bork had his way, the 14th Amendment wouldn't even protect racial minorities as much as it does today. In a law-review article, Bork wrote that the equal protection clause means only that the states must guarantee "formal procedural equality" and "not distinguish along racial lines." His theory means that courts couldn't order state and local governments to implement affirmative-action hiring plans because that would mean distinguishing job applicants "along racial lines." Courts would then be trapped; they'd be against discrimination, but they'd be powerless to stop it.

If the United States is ever to become the kind of country Abraham Lincoln and Martin Luther King wanted it to be, we will need Supreme Court justices who support the courts' role in guaranteeing basic constitutional rights.

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THE ISSUES/ROBERT BORK

Bork's ideology is far from the mainstream on many issues of settled law.

— JOHN H. BUCHANAN

There's a great irony in the debate over the president's nomination of Robert Bork to the Supreme Court. Suddenly the proponents of Ed Meese's "Doctrine of Original Intent" want the United States Senate to overlook the clear intention of the framers of the Constitution — and two centuries of precedent — and confirm Bork without regard to his ideology.

It seems that so far as judicial nominations are concerned, history and the framers' intent are poor guides. Bork's nomination has drawn vigorous opposition from concerned citizens across the country, and particularly from organizations concerned with civil and constitutional liberties.

But Bork's defenders argue that the president has a right to put any nominee he wants on the court regardless of how the appointment would affect the nation. For them, the Senate's constitutional role to provide "advice and consent" means nothing.

The framers of the Constitution saw it differently. Two hundred years ago, in a hot, stuffy room in Philadelphia, they debated how judicial appointments should be made. Some wanted the president to appoint; others wanted Congress. The result was a compromise: presidential nomination with the "advice and consent" of Congress.

Six short years later, the compromise was tested. President George Washington's appointment of the distinguished lawyer John Rutledge to the Supreme Court was rejected on a 14-10 vote and the reason was plainly ideological.

Rutledge had served on the court before, and Washington wanted to bring him back as Chief Justice. Rutledge's undoing was his opposition to the Jay Treaty, recently negotiated with England. Three of the 14 "no" votes were cast by signers of the Constitution. Rutledge's rejection is by no means unique. Nearly 20% of Supreme Court nominations through history have been rejected, and time after time, ideology played a central part.

In 1811, a candidate was rejected because he was "too partisan." In 1845, a nominee was turned down because of his views on immigration. In the 1880s, several nominees were rejected for their positions on slavery and the civil service. In 1930, the Senate said "no" to a nominee because of his anti-union and anti-black views.

In 1968 conservatives lined up to block President Johnson's nomination of Associate Justice Abe Fortas to be chief justice. Fortas was lambasted for his views on obscenity, law enforcement, free speech, capital punishment and federalism.

Sen. Strom Thurmond of South Carolina, today a key player in the Bork confirmation battle, took to the Senate floor to defend his right to oppose Fortas on ideological grounds: "To contend that we must merely satisfy ourselves that Justice Fortas is a good lawyer and a man of good character," Thurmond said, "is to hold to a very narrow view of the role of the Senate, a view which neither the Constitution itself nor history and precedent have prescribed."

Sen. Sam Ervin of North Carolina, one of the Senate's most respected constitutional scholars, agreed, writing that, "The advise and consent power is not limited to academic training, experience and character but extends to the broader question of the nominee's judicial philosophy..."

In 1986, People For the American Way conducted a public opinion poll on the judiciary. The public gave President Reagan a 73% approval rating, but their position on an independent judiciary was firm.

The public's view: by a margin of 78% to 16%, they rejected the position that the "Senate should let a president put whomever he wants on the Supreme Court, so long as the person is honest and competent."

In Bork's case, consideration of ideology is particularly appropriate because he was clearly nominated "because" of his ideology. More than any president in history, Ronald Reagan has chosen judicial nominees on the basis of ideology rather than qualifications.

Bork's ideology is far from the mainstream on many issues of settled law. On issue after issue, Bork's writings and decisions paint a picture of a justice who would turn back the clock on crucial civil and constitutional liberties.

He's been consistently critical of high court decisions upholding civil rights on issues including racial discrimination, access to the courts, state neutrality in religion, free speech, and constitutional protections for the accused.

His opposition to the right of privacy, his tendency to favor government rights over individual rights, and his narrow definition of free speech are more fitting for the last century than the next.

Surely what a Supreme Court nominee thinks about the Constitution is fair game. The Senate is right to consider Bork's ideology, and after it does so, the Senate should reject Robert Bork.

Buchanan is chairman of People For the American Way, and a former eight-term Republican member of Congress from Alabama. This was written for Scripps Howard News Service.

Bork Proves Divisive for Left, Right

By William Schneider

WASHINGTON

The controversy over President Reagan's nomination of Robert H. Bork to the Supreme Court, which Senate Minority Leader Bob Dole (R-Kan.) calls "the main event of this Congress," means only one thing to senators. It means trouble. Bork has become a symbol of the most divisive issues in American politics—race and religion. No matter how you vote on those issues, some people are going to disagree with you. That means you're going to get into trouble.

As a result, senators are consumed with the immediate political consequences of their Bork vote: "If I vote one way, I get in trouble with my party. If I vote the other way, I risk losing the general election."

What they don't yet understand are the long-term consequences of the Bork nomination. A conservative majority on the Supreme Court would unravel the status quo on race and religion in this country. It would create an explosive political agenda with the potential of disrupting alignments in both political parties. That's not just trouble. That's *big* trouble.

Two groups of senators are on the spot—moderate Republicans and Southern Democrats. Both are under pressure to vote the party line. Thus, conservatives are threatening to "primary" wavering Republicans: Either you vote to confirm Bork or we will run a conservative against you in the Republican primary. They did that to Jacob K. Javits in New York, Clifford P. Case in New Jersey and Elliot L. Richardson in Massachusetts, and it was the end of them. On the other hand, moderate Republicans survive by getting Democratic votes. If they make Democrats angry by voting to confirm Bork, they may end up like Charles H. Percy of Illinois and Edward W. Brooke of Massachusetts—both former Republican senators replaced by Democrats.

Southern Democrats face the same problems in reverse. If they vote to confirm Bork, they get in trouble with the party. "This is what being a Democrat is all about," said one party operative. Black voters can create problems for Southern Democrats in the primaries. Even worse, northern Democrats can charge them with disloyalty to the party and take away their cherished leadership positions in the Senate. On the other hand, if Southern Democrats vote against Bork, they get into trouble in the general election. Republicans have an issue to use against them. A Southerner who votes against Bork can be attacked as "permissive," "soft on crime" and "too liberal" for the folks at home.

But those problems pale in comparison with what would happen if Bork were confirmed.

Southern Democrats survive only by holding together a fragile, biracial coalition. It is a coalition that has virtually disappeared in Southern presidential voting. "As a rule," say political scientists Earl Black and Merle Black in their recent book, "Politics and Society in the South," "presidential candidates of the Democratic Party are no longer competitive among white Southern voters." When northern liberals are at the top of the ticket—Hubert H. Humphrey in 1968, George McGovern in 1972, Walter F. Mondale in 1984—the Democratic share of the Southern white vote falls to less than 30%. Southern whites weren't even loyal to one of their own. Jimmy Carter of Georgia carried only 45% of the Southern white vote in 1976 and 35% in 1980.

Southern Democrats have remained competitive in statewide voting, however, because their share of the white vote is typically 10-15 points higher. Exit polls show that when incumbent Southern Democrats run for reelection to the Senate, they regularly win a majority of the white vote. But it's the first-term Southern Democrats who are really nervous about Bork. There are six in the Senate, and they got elected with an average of 44% of the white vote. Because they are anxious about keeping up their white support, several are considering voting for Bork. They would risk alienating black voters—but blacks, after all, have nowhere else to go.

That conclusion may be shortsighted. The reason is that racial harmony is an essential condition for Democrats to remain competitive in the South. In his book, "The Two-Party South," Alexander P. Lamis describes "the electoral advantage that accrued to Southern Democrats in the post-civil rights era as a result of

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their support by the black-white coalition that formed after the hot battles over race had cooled in the 1970s." A Supreme Court with a conservative majority would likely reverse many of the affirmative action decisions of the last two decades. Result: The race issue would heat up once again. That is why Ronald Reagan nominated Bork, and why the National Assn. for the Advancement of Colored People opposes him.

The message to Southern Democrats is that by voting for Bork, they risk much more than making black voters angry. They risk reopening the racial wounds that have only recently begun to heal. By disrupting the racial status quo, a newly conservatized Supreme Court would mobilize an angry black electorate. And that, in turn, would counter-mobilize an angry white electorate. Confronted by militant and embittered black voters, whites would leave the Democratic Party in droves, just as they did in the 1960s. The Southern Democratic vote for senator would begin to look like the Southern Democratic vote for President. Which is to say, the biracial basis of Southern Democratic politics would vanish. The South would end up with exactly what it doesn't need—a black party and a white party.

"Working-class blacks and blue-collar to middle-class whites" are "the indispensable components of Democratic majorities in the South," says one study of Southern politics. Says the other: "The abatement of the race issue in the 1970s . . . removed the major issue that in the 1960s had driven many whites from the Democratic Party's presidential nominees and from those statewide candidates who could be tied to the national party's racial policies."

It is a law of politics that when the race issue heats up, Democrats lose. And Southern Democrats, elected by an extremely delicate biracial coalition, are likely to go first. While a vote for Bork may mean trouble for them in the short run, in the long run it could mean ruination.

Another law of politics says that religion is to the Republican Party as race is to the Democratic Party. Whenever the issue comes up, it tears the party apart. If a conservative Supreme Court tries to

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Bork: Raising Provocative Issues

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implement the religious right's agenda on issues like abortion, women's rights and school prayer, the consequences may be equally devastating for Republicans. Reagan has kept peace in the Republican Party by *not* putting those issues on his legislative agenda. If, say, an anti-abortion amendment had passed Congress during his first term, Reagan would never have gotten as many votes as he did from young voters in 1984.

Suppose the courts carry out the conservatives' social agenda. The GOP would risk losing the support of yuppies and upper-middle-class suburban voters who like Reagan's fiscal conservatism but are turned off by the Moral Majority strain in the Republican Party. The incipient class tensions in the Republican coalition would explode. And those tensions would destroy the electoral base of moderate Republicans just as surely as racial tensions would destroy the Southern Democrats.

Right now, too many pressure groups are trying to muscle senators on the Bork issue. That strategy may backfire. If the pressure becomes too blatant, senators may try to score points with the voters by openly defying the threats. "They tell me I'd better vote their way or else," a lawmaker will say at the first available television opportunity. "Well, I'm here to tell them this is one senator who can't be pushed around." As one anti-Bork strategist put it, "The worst thing that could happen would be for a Democratic senator to demonstrate his independence by voting to confirm Bork."

Wavering senators should consider this argument: Once you've expanded people's rights, you can't take them away again. A conservative court would try to reverse the progress that has been made on civil rights, women's rights, consumer rights and privacy rights. The result would be a sharp polarization of American politics. Democrats would be driven to the left and Republicans to the right. And two political species—Southern Democrats and moderate Republicans—would quickly become extinct. □

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Bork: The transformation of a conservative constitutionalist

By Philip B. Kurland

For Republican Party stalwarts, Robert Bork's appointment to the Supreme Court represents President Reagan's last chance to put the Reagan social program into effect. So they have said. The President failed early on to persuade the court to retract its position on such things as abortion, privacy, prayers in school and fiscal assistance to religion, and affirmative action. He failed to persuade Congress to effect his programs by way of legislation constitutional amendment.

Now, having appointed two new justices elevated William Rehnquist to chief justice, Reagan proposes another appointment, which he expects to effect the rewriting of the Constitution to his liking. That is the basis on which he is selling his nominee to the right-wing constituencies.

On the other hand, some Washington lawyers and their cabal—mostly holdovers from Democratic administrations who have ...e been executive branch tools, whichever party is in power—are seeking to sell Bork to the moderates as one devoted only to judicial restraint, one who is truly the model of Felix Frankfurter, of Robert Jackson, of John Marshall Harlan. Nobody, of course, is offering Bork as a swinging liberal in the tradition of William Douglas or Frank Murphy.

Organized constituencies such as the Eagle Forum, the anti-abortionists, the Dolphin Society know where Bork stands: with them. Other organized constituencies, like the National Organization for Women, and various civil liberties and civil rights organizations also know where Bork stands: a ...st them. These constituencies on both sides are in agreement about the meaning of a Bork appointment.

For myself, the proper class into which Bork would fall as a Supreme Court justice is ... of Pierce Butler, George Sutherland, Willis Van Devanter and James C. McReynolds. And I don't think the nation can afford to be thrown back to the days when four such as these maintained the critical mass in determining the meaning of the Constitution.

But a Supreme Court nominee ought not to be approved simply because he bears the imprimatur of the right wing of the Republican Party or the nihil obstat of s... holdovers from the New Deal. Nor should he be rejected simply because of the worthiness of the opposition. The Senate's decision should be based on Judge Bork's record, and his record is nothing if not ..., as he has gone from podium to podium since becoming a judge electioneering to become a justice.

What is startling about the record is the violent change from the "conservative" positions he took as an academic to the "conservative" positions he has taken on the hustings. Bork became a different constitutionalist after he wrote "Why I Am For Nixon" in the New Republic magazine in 1968 and found himself rewarded with the post of solicitor general.

Whatever he may have said or thought earlier, since 1969 Bork has paid fealty to the Nixon administration's "strict construction" thesis and the Reagan administration's "original intent." Like "strict construction," "original intent," of course, is not a formula or a theory but only a slogan pursuant to which old decisions can be replaced by new ones.

Immediately before he joined the Nixon administration and before the cry of original intent was heard in the land, Bork, the constitutional scholar, pointed to the deficiencies of attempting to rely on the so-called "intent" of the framers as determinative of the meaning of the Constitution today:

"The text of the Constitution, as anyone experienced with words might expect, is least precise where it is most important. Like the Ten Commandments, the Constitution enshrines profound values, but necessarily omits the minor premises required to apply them. The First Amendment is a prime example. . . . To apply the amendment, a judge must bring to the text principles, judgments and intuitions not to be found in bare words.

"When we turn to the equal-protection clause of the Fourteenth Amendment . . . we know the clause was meant to be important, [but] the words tell the judge very little.

Bork's entire current constitutional jurisprudential theory is essentially directed to a diminution of minority and individual rights.

"History can be of considerable help, but it tells us much too little about the specific intentions of the men who framed, adopted and ratified the great clauses. The record is incomplete, the men involved often had vague or even conflicting intentions, and no one foresaw, or could have foreseen, the disputes that changing social conditions and outlooks would bring before the court. . . ."

Today's Bork, however, iterates and reiterates the formula of "original intention." For him, constitutional decisions can be based on, and only on, the words of the text and the context in which they were promulgated. A judge should not even feel bound by a precedent of his own court. Thus, in the hearings on his nomination to the Court of Appeals, he said that ". . . if a court became convinced that it had made a terrible mistake about a constitutional ruling in the past, I think ultimately the real meaning of the Constitution ought to prevail over a prior mistake by the court." A bit later he was a little more cautious: "I think the value of precedent and of certainty and continuity in the law is so high that I think a judge ought not to overturn prior decisions unless he is absolutely clear that that prior decision was wrong and perhaps pernicious." But he boldly pronounced that the only way to "cure" erroneous constitutional decisions was through "the appointment process." That proposition doesn't require much interpretation.

The problem is that, for Bork, there are a very large number of Supreme Court cases that are "wrong and perhaps pernicious." In testifying on the Human Life Bill, he said: ". . . nobody believes the Constitution allows, much less demands, the decision in *Roe v. Wade* [the abortion case] or in dozens of other cases in recent years."

In an interview in the District Lawyer in 1985, he was asked: "Can you identify any Supreme Court doctrines that you regard as particularly worthy of reconsideration in the 1980s?" He responded: "Yes, I can. But I won't."

Philip B. Kurland is William R. Kenan distinguished service professor at the Un... ity of Chicago. His latest book, edited with Ralph Lerner, is the five-volume set, "The Founders' Constitution," published this year by the University of Chicago Press. He has been consulted on the Bork nomination by Sen. Joseph Biden, chairman of the Senate Judiciary Committee.

A quick currying of just some of his writings, however, reveals a long list of cases damned by Bork as wanting support in the constitutional text or its original context. These include, with varying terms of acerbity or damnation, the abortion cases; the contraception cases; the reapportionment cases; *Shelley v. Kraemer*, making racial restrictive covenants unenforceable; *Katzenbach v. Morgan*, suggesting a congressional power to add to the rights protected by the 14th Amendment; *Skinner v. Oklahoma*, striking down a law providing for involuntary sterilization of criminals; *Engel v. Vitale*, banning the use of a state-created prayer in public grammar schools; *Aguilar v. Felton*, banning the use of federal funds to support parochial schools; *Bakke v. Board of Regents*, allowing race to be taken into account in admitting university students (affirmative action). There are lots more.

The principal difficulty with the thrust of Atty. Gen. Edwin Meese's "original intent" thesis—and it is Meese's thesis that Bork seems to have borrowed—is that its main target of application is the Bill of Rights. Meese properly asserts that the Bill of Rights originally was not to be applied to the states. The logical conclusion—ignoring the 14th Amendment—is to remove the restraints of the national Constitution from state action ranging from violation of the establishment clause in the 1st Amendment to restraints that have been placed on the use of capital punishment, partly based on the 8th Amendment.

Bork's entire current constitutional jurisprudential theory is essentially directed to a diminution of minority and individual rights. In his recent Boyer Lecture to the American Enterprise Institute, he condemns the view that "moral harms are not to be counted because to do so would interfere with the autonomy of the individual. . . . The result of discounting moral harm is the privatization of morality, which requires the law of the community to practice moral relativism. [Horror of horrors!] It is thought that individuals are entitled to their moral beliefs in law." He says later in the same speech: "One of the freedoms, the major freedom, of our kind of society is the freedom to choose to have a public morality." I trust he was not talking about the public morality proffered at the Watergate and Iranscam hearings that the end justifies the means.

But listen to the views of Professor Bork, rather than Judge Bork, who wrote in 1968: "Moral disapproval alone cannot be accepted as a sufficient rationale for any coercion. If it were, there would be no limit to the reach of the majority's power, and that contradicts the basic postulate of a Madisonian system." The fact is that Bork invokes constitutional history often in support of his current positions, but seldom cites chapter and verse. This time he happened to be right in his history, although usually he has been less than accurate.

In a much-cited article in the Indiana Law Journal in 1971, now "recanted," though to what extent we know not, Bork contended that the protection of speech and press should be limited to cover only political speech. (On the bench, Bork seems to have been convinced that the Constitution did not mean for juries to fix punitive damages in libel suits, at least against Evans and Novak. If the purpose of the development at the time of the Founding has any historical significance, it was to enhance, not diminish, the role of juries in libel cases.) But, again, when he was still an academic, in 1968, Bork endorsed the Brandeisian notion of an extensive reading of the 1st Amendment's protected speech, certainly far more extensive than Bork is now prepared to defend:

"Yet, nonpolitical speech too, of course, is entitled to some degrees of constitutional protection. Brandeis cited other values of speech that are not unique to the political variety. For both speaker and hearer, speech may be a source of enjoyment, of self-fulfillment, of personal development. It is often mundane or vulgar or self-serving, but it may be exalted, inspired by the highest motives."

One strain of consistency runs through Bork's jurisprudence from his law school days through yesterday. Strangely, however, it patently fails his notion of adhering to the original intent of the legislature enacting the law. I speak of his commitment to the notion that the Sherman Antitrust Act bars only anticompetitive devices resulting in economic inefficiency. This he learned as a school boy at the University of Chicago. For Bork, it would seem that the only natural law required to be given effect by the Supreme Court is that of supply and demand, unrestrained by moral considerations, public or private.

The Constitution created powers in the national government. Bork would read these as unlimited, so long as they receive a majority vote of the legislature and do not fall directly afoul a specifically worded constitutional limitation. Bork's history here, as most of the history on which he would rely, is myopic.

Is it too much to ask of a member of the high court that he ... display the qualities of humility and compassion and understanding?

It was expected by the Founders that, in light of one of the principal objectives of the Constitution—indeed the one that worried them most, the preservation of individual liberties—the powers of government would be narrowly construed. In a further effort to confine the national government, however, some individual rights were specifically guaranteed in the Constitution, such as the ban on limiting habeas corpus, the ban on bills of attainder, the ban on ex post facto laws, etc. An additional list of rights guaranteed to the people were added in the first eight amendments.

From the beginning, though, the dangers of listing only some of the protected individual rights was seen in the common law maxim *inclusio unius, exclusio alterius* (including one excludes another). Hamilton and Madison both originally opposed a of Rights for that reason. And when Madison brought in a Bill of Rights for promulgation by the 1st Congress, carefully included were the provisions of what is now the 9th Amendment: "The enumeration in the Constitution, of ce rights, shall not be construed to deny or disparage others retained by the people."

The contemporary Bork's constitutional canons would confine individual rights to those safeguarded in terms in the Constitution, despite his pronounced position that the words of the Constitution taken in their historical content are the only proper guide to its meaning. At one time, when he was still a scholar, however, Bork extolled the 9th Amendment as a source of rights. He wrote in 1968:

"A desire for some legitimate form of judicial activism is inherent in a tradition that can be called 'Madisonian.' We continue to believe that there are some things no majority should be allowed to do to us, no matter how democratically it decide to do them. A Madisonian system assumed that in wide areas of life, a legislative majority is entitled to rule for no better reason than that it is a majority. But it also assumes that there are some aspects of life a majority should not control, that coercion in such matters is tyranny, a violation of the individual's rights. Clearly the definition of natural rights cannot be left to either the majority or the minorty. In the popular understanding upon which the power of the Supreme Court rests, it is precisely the function of the court to resolve the dilemma by giving content to the concept of natural rights in case-by-interpretation of the Constitution. This requires the court to have, and to demonstrate the validity of, a theory of natural rights. . . .

"Legitimate activism requires, first of all, a warrant for the court to move beyond the limited range of substantive rights that can be derived from traditional sources of constitutional law. The case for locating this warrant in the long-ignored 9th Amendment was persuasively argued by Justice Arthur J. Goldberg in a concurring opinion in *Griswold v. Connecticut* [the decision invalidating Connecticut's anticontraception law on grounds of the right to privacy]. . . . This seems to mean that the Bill of Rights is an incomplete, open-ended document, and that the work of completion is, at least in major part, a task for the Supreme Court. There is some historical evidence that this is substantially what Madison intended.

". . . The construction of new rights can start from existing constitutional guarantees, particularly the first eight amendments, which may be taken as specific examples of the general set of natural rights contemplated by the Madisonian system and the 9th Amendment."

Bork, although frequently prating about the Constitution and original intent as he has taken to the hustings around the country, has woefully missed what he should have learned from the Constitutional Convention of 1787 and the events surrounding it.

The watchword of the people and the constitutional and ratifying conventions was "liberty." They were intent on framing a government to guarantee liberty to the individuals within the new nation's domain. The liberty of which they spoke was not Bork's liberty of a parliamentary majority to impose its will on everyone with regard to everything. No such elaborate structure as that which emerged was necessary for that.

The liberty of which they spoke and wrote and for which they fought was the liberty of the *individual*, in "substance," as Judge Learned Hand once put it, "the possibility of the individual expression of life on the terms of him who has to live it." Judge Hand added: "Would we hold liberty, we must have charity—charity to others, charity to ourselves, crawling up from the moist ovens of a steaming world, still carrying the passional equipment of our ferocious ancestors, emerging from black superstition amid carnage and atrocity to our perilous present. What shall it profit us, who come by our possessions, if we have not charity?"

Is it too much to ask of a member of the high court that he be more than a technically well-equipped lawyer, that he also display the qualities of humility and compassion and understanding—of statesmanship? Aren't these the qualities that distinguished a Stone, a Frankfurter, a Jackson and a Harlan, conservatives all, from a Butler, a McReynolds, a Van Devanter, a Sutherland?

Almost any adult lawyer can parse the words of the Constitution. If that is all that is wanted, we could probably leave it to a computer. Let us have a judge, if a judge it must be, like a Learned Hand or a Henry Friendly, who were clearly committed to judicial restraint, but who understood the frailties of men and women, judges and judged alike.

People For The American Way

The non-partisan constitutional liberties organization.

MEMORANDUM

TO: Advisory Council

FROM: Tony Podesta

December 4, 1986

The last several months have been very hectic at PEOPLE FOR and I wanted to take this opportunity to update you on our activities. Our election project uncovered more instances of religious intolerance in the 1986 election season than in any time since we began monitoring. I'm enclosing a copy of a report we prepared analyzing the campaign tactics and results of the election.

We've also been very busy with our Legal Defense Fund. The Fund was established to provide pro bono legal assistance to parents, teachers, administrators or school boards against censorship challenges. We are currently involved in two cases. The first is the "Scopes II" trial in Church Hill, Tn. The plaintiffs in this case, backed by Beverly LaHaye's Concerned Women for America, claimed that the Holt, Rinehardt and Winston reading series used in the elementary school violated their First Amendment rights because it taught about a variety of religions. Among the specific stories the plaintiffs objected to were The Diary of a Young Girl by Anne Frank, and a story on Leonardo da Vinci. The judge ruled, in late October, that the school district had indeed violated the rights of the plaintiffs. His ruling allows the parent-plaintiffs to remove their children from the classroom during reading class. It also set forth a damages hearing, to be held December 15. The school board has filed an appeal, and PEOPLE FOR intends to continue supporting the defendants with legal assistance until a final resolution is reached. I'm enclosing a memo from Tim Dyk, PEOPLE FOR Board member and lead attorney in the case which explains the ruling and its significance.

The second case, in Mobile, Ala., potentially has a much broader impact. The case grows out of a school prayer decision rendered by the Supreme Court last year. In the original district court opinion, the judge noted that if his ruling was overturned, he reserved the right to reorganize the parties and try a case to decide whether the schools were propagating a religion of "secular humanism." That case was heard during October. The plaintiffs, backed by Pat Robertson's National Legal Foundation, presented numerous witnesses who attempted to define secular humanism as a religion. While a decision is not expected for

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several months, we are not encouraged by the signs received at the trial. The judge called a court witness during the trial who had edited a book on secular humanism which was dedicated to the judge. In his original opinion in the school prayer case, the judge declared that the Bill of Rights does not apply to the states.

As always, please feel free to contact me with any thoughts or suggestions you might have on these or other PEOPLE FOR issues.

I hope you all have a happy holiday season and a happy and healthy new year.

WILMER, CUTLER & PICKERING

2445 M STREET, N. W.
WASHINGTON, D. C. 20037-1420
TELEPHONE: (202) 663-6000

4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE: (01) 839-4466

November 6, 1986

MEMORANDUM FOR ORGANIZATIONS INTERESTED
IN PARTICIPATING AS AMICI IN THE TENNESSEE TEXTBOOK CASE

On October 24, 1986, Judge Thomas G. Hull of the United States District Court for the Eastern District of Tennessee ruled that the Hawkins County Public Schools had violated the First Amendment right to "the Free Exercise" of religion by failing to allow conservative Christian fundamentalist children to opt out of the schools' regular program of reading instruction.

The Court's decision has provoked enormous public concern, and a number of organizations have inquired about amicus participation. This memorandum is intended to explain the status and importance of the case.

The Plaintiffs' Objections

The plaintiffs object to the Holt, Rinehart & Winston series that is used to teach reading in grades K-8 because of certain themes that they claim are prevalent in those books. Moreover, their testimony at trial demonstrated that they object not simply to a particular reading series, but to a range of ideas and methods of teaching that are common to virtually all of the non-sectarian basal reading series that are on the market today and used throughout our nation's public schools. The Court

recognized this in its decision when it stated that "considerable evidence indicated that no single, secular reading series on the state's approved list would be acceptable to the plaintiffs without modifications."

Nor are the themes to which the families object limited to the reading curriculum. Again the Court recognized this when it stated that, "It is true that many of the plaintiffs' objections suggest that other elements of the curriculum besides the reading program could easily be considered offensive to their beliefs."

It is difficult to convey the wide scope of the families' objections in a short statement, but perhaps a few examples will help. The families maintain that it "is a violation of scriptual principles to eliminate roles, to do away with any stereotype roles of men and women." Thus, they object to "favorable stories about the women's rights movement" or to any portrayal of a woman challenging her husband's authority. The families object to their children being exposed to the beliefs and practices of religious groups who do not share their particular view of fundamentalist Christianity, unless the "error" of these other religious views is pointed out. In this connection, they object to a statement in a selection from "The Diary of Anne Frank" in which Anne states, "I wish you had a religion, Peter . . . . Oh, I don't mean you have to be Orthodox . . . or believe in heaven or

hell and purgatory and things . . . . I just mean some religion." They object to this statement because they say it implies that one religion is as good as another.

The families object to their children being encouraged to use their imagination "beyond the limitation of scriptural authority." For them this is an extremely broad injunction. Thus, they maintain that it would violate their religious beliefs for a teacher to encourage children to imagine what it would be like to be disoriented, to describe "the world community of the future as they would like to see it," to pretend to have wings and fly over their community, or to ask them to "close your eyes and let the sounds that you hear set your thoughts and moods." The families object to their children being encouraged to question and make moral judgments on their own. Thus, they maintain that it violates their religious convictions for a teacher to ask students whether lying or stealing is morally wrong or for a story to portray someone lying, unless the person who lies suffers bad consequences as a result.

Multiply these examples by a hundred, and one can begin to understand why the school district came to the conclusion that it could not accommodate the families' objections. For to satisfy all of their objections would require expunging of the very essence of the public school curriculum.

The Relief Sought By Plaintiffs

While the families sought to have the Hawkins County Public Schools provide them with an alternative program of reading instruction, the Court rejected this claim. It stated that, "The defendants are rightly concerned that any accommodation of the plaintiffs in the schools would have the effect of advancing a particular religion and would involve an excessive entanglement between the state and religion." But the Court felt that the families could be accommodated by being permitted "to attend the Hawkins County public schools without participating in the course of reading instruction," so long as their parents submit written notice of their intentions to provide their children with reading instruction at home.

The Court also recognized the right of plaintiffs to monetary damages. The families are seeking substantial monetary recovery for the alleged deprivation of their constitutional rights from the Hawkins County School Board. The Court ruled that the individual defendants (school board members and school officials) will not be required to pay damages in this case, but the families have indicated that they may appeal this decision. A hearing on the damage issue is currently scheduled to begin on December 15, 1986 in the District Court in Tennessee.

Procedural Status of Case

On the same day that the Court's decision was announced, the School Board appealed to the United States Court of Appeals for the Sixth Circuit in Cincinnati. The School Board has asked the District Court to postpone the damages hearing until after the appeal is decided, and it has asked the Court of Appeals to decide the case as quickly as possible and at least before the beginning of the next school year. (No stay of the injunction has been sought because at the present time none of the plaintiff-children have sought to reenter the public schools. Such a request is unlikely to be made before the next school year.) Nonetheless, even if its expedition request is granted, the case is not likely to be argued before February, 1986. Once the Court of Appeals renders its decision, a petition for certiorari to the U.S. Supreme Court is likely to be filed by the losing side.

Objections to the Court's Decision

The district court, while finding that the defendants had compelling interests in the public school curriculum, found that those interests could still be accomplished if the defendants adopted the less restrictive alternative of excusing the plaintiff-children from reading. We believe that the Court's decision is wrong for several reasons.

First, the purpose of the public schools is to teach the very skills and values to which the plaintiffs object. While the Court stated that "the State of Tennessee has a compelling and overriding interest in the education of its children and the literacy of its citizens," its decision is based on an extremely narrow view of what the teaching of reading entails. The Court's view appears to be that if students can recognize words and understand their literal meaning, then they can read, and the defendants' interest is accomplished. The School Board, in contrast, maintains that teaching reading effectively means teaching students to do many of the things to which the families object -- using imagination, considering moral judgments, evaluating critically, considering controversial issues, etc. The public schools should not be required to offer a public education that does not achieve these essential objectives.

Second, permitting students to shuttle in and out of class when objectionable material is read or discussed is highly impractical. This is particularly the case in Grades 1-4, where there is a single teacher for the entire day and the discussion of reading material is not limited to a distinct period and may occur at any time. In all grades, the reading lesson is used, in part, to teach the other subjects. And, in teaching the other subjects, the reading lesson is frequently reinforced. Excusing students from reading enormously complicates the teaching of these other subjects.

Permitting students to opt out of particular classes or periods of instruction on the basis of religious differences is also likely to be divisive and to work against the public schools' traditional role of bringing people of diverse backgrounds and beliefs together and encouraging tolerance. Finally, if these families are entitled to have their children opt out of the Hawkins County Schools' program of reading instruction, then other families with religious objections to other aspects of the public school curriculum will be entitled to have their children opt out of the subjects to which they object, leading to fragmentation of the entire school curriculum.

The Court's finding that the school district was liable for damages is also particularly troubling. In the future, teachers and school officials may be liable for damages because they fail to excuse students from exposure to objectionable material. Any final decision in favor of the plaintiffs here is also likely to make both school officials and textbook publishers very wary of exposing students to potentially controversial material, and as a result, the quality of public school education is likely to suffer.

Prospect of Teachers and Administrators Having to Pay Monetary Damages

So long as the law is not clearly established, individual officials (administrators, teachers, etc.) are immune from having to pay damages. The Court ruled that since the situation

that arose in Tennessee was rather novel, the officials involved in this case were immune from having to pay monetary damages as a result of the actions that they took. However, once the law becomes clearly established, that is, once it becomes clear that those who claim religious objections are entitled to opt out, officials, including teachers and administrators, who deny this right will be required to pay monetary damages to those whose constitutional rights they have infringed. The decision of a single district court probably does not make the law clearly established, at least outside the bounds of the Court's jurisdiction. However, were the decision affirmed by a U.S. Court of Appeals, other courts throughout the United States might well take the position that the law has become clearly established and might hold that teachers and administrators are no longer immune from monetary damages.

Applicable Legal Precedent

There is no Supreme Court opinion that addresses the issue in this case. In Wisconsin v. Yoder, 406 U.S. 205 (1972), the U.S. Supreme Court held that the Amish did not have to attend public school after completing the eighth grade. The Court did not sanction opting out for Grades 1-8, and explicitly stated in that case that "some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system." Id. at 221. Nor did the Court require that

the schools permit selective opting out from portions of the curriculum. Moreover, in Yoder, the Court confronted the claim of a group that maintained a separate community and way of life. The families involved in the Tennessee case participate in the normal everyday life of their community. The seven families belong to several different churches, and there are many members of those churches who do not share their objections to the reading textbooks.

While the Sixth Circuit has also held that a high school student who has religious objections to war may opt out of a school ROTC program, Spence v. Bailey, 465 F.2d 797 (6th Cir. 1972), and while a district court in Illinois has held that Pentecostal children who had a religious objection to seeing the opposite sex in "immodest attire" need not participate in co-educational physical education classes, Moody v. Cronin, 484 F. Supp. 270 (C.D. Ill. 1979), neither of these cases involved aspects of the public school curriculum that were as important or as central as developmental reading.

On the other hand, just last June, the Supreme Court rejected the claim of Virginia parents that the state's compulsory attendance laws violated their Free Exercise rights because the curriculum taught in the public schools was contrary to their religious beliefs. Snider v. Virginia, 106 S. Ct. 2911 (1986). And in a 1934 case, the Supreme Court rejected a Free Exercise

claim by students who asserted that a university requirement that they take a course in military science and tactics conflicted with their religious-based conscientious objections to war. Hamilton v. Regents of the University of California, 293 U.S. 245 (1934).

Several lower federal courts, which have confronted similar issues, have also sided with the school officials. Thus, in Williams v. Board of Education of City of Kanawha, 388 F. Supp. 93 (S.D.W.Va.), aff'd, 530 F.2d 972 (4th Cir. 1975), the Court rejected parents' claims that the use of certain textbooks in the public schools violated their Free Exercise rights. In reaching its decision, the Court stated that the First Amendment "does not guarantee that nothing about religion will be taught in the schools nor that nothing offensive to any religion will be taught in the schools." And in Davis v. Page, 385 F. Supp. 395 (D.N.H. 1974), the court rejected a Free Exercise claim in which students sought to opt out of a class on the ground that it taught a humanist philosophy.

(A case is presently pending in Alabama in which plaintiffs seek, on Establishment and Free Exercise grounds, to alter the public school curriculum because it teaches "secular humanism.")

Impact of the Court's Decision

Initially, the Court's decision applies to the parties in the case and establishes the law in the Eastern District of Tennessee. While the Court's decision does not legally bind anyone else, given the relatively small number of cases like this and the attention that this case has received, courts in other jurisdictions and school boards all across the country are likely to be influenced by it. If the decision is affirmed on appeal, it will become the law for the entire federal Sixth Circuit, an area including the states of Michigan, Tennessee, Ohio and Kentucky, and it will have considerable precedential impact throughout the country. If the Supreme Court ultimately decides the case, the Supreme Court's decision will become binding throughout the country.

People For The American Way

The non-partisan constitutional liberties organization.

ELECTION 1986: RELIGION AND POLITICS

1424 Sixteenth Street, N.W., Suite 601, Washington, D.C. 20036 202-462-4777

ELECTION 1986: RELIGION AND POLITICS

In 1986, as in recent election years, the interplay of religion and politics was a recurring theme in campaigns throughout the nation. The most significant interaction of religion and politics was the national movement linking ultraconservative ideology with ultrafundamentalist theology: the Religious Right.

The 1986 political season brought mixed results for the Religious Right. The voters, showing their basic decency and good judgment, rejected the most blatant forms of religious intolerance and political extremism, such as attacks upon religious groups ranging from Jews to Christian Scientists and prayers for the death of political opponents.

The climate produced by these examples of the ultimate in negative campaigning may have hindered the Religious Right's bid to win new Senate and House seats. It lost several of its favorite Senators although it did succeed in re-electing most of its incumbent Congressmen. However, winning and losing are not the sole criterion for judging the Religious Right's impact on the electoral process.

In 1986 the movement established itself as a major force within the Republican Party. Religious Right candidates upset party organization-backed candidates in primary contests; activists dominated caucuses and conventions, and in many cases determined the content of party platforms.

There is some irony in the fact that while the Religious Right was making inroads into the GOP, and often embarrassing it with the intolerance of some of its candidates and activists, national Republican committees were courting the Religious Right constituency. Not only did the Republican Party run ads imitating the rhetoric of the Religious Right, but officially sanctioned fundraising letters went as far as examining the religious faith of candidates' children.

The movement's local activity both within the Republican Party apparatus and in other arenas such as school board elections will be significant as Pat Robertson makes his run for the presidency. It would be a mistake to dismiss the Religious Right from the political scene based on their national showing in the 1986 election. In fact, the relationship between the Religious Right and the Republican Party will be a significant story over the next two years.

People For the American Way's report on Religion and Politics during the 1986 congressional elections focuses on the following trends:

I. Religious Intolerance Rejected

During a political season when voters complained of widespread negative tactics, the electorate rejected Religious Right candidates whose campaigns used the ultimate negative tactic: religious intolerance.

Religious Right candidates guilty of blatant religious intolerance were defeated:

*Rep. Mark Siljander of Michigan was defeated in a Republican primary after saying his re-election was necessary "to break the back of Satan."

*Sen. James Broyhill, who defeated a Religious Right candidate in the North Carolina Republican primary, lost the general election after courting the movement. Broyhill's "Christian liaison" sent out a letter linking Terry Sanford with the "one-world government" some fundamentalists believe is related to the Anti-Christ.

*Rep. William Cobey (NC) was unseated after describing his role in Congress as that of "an ambassador for Christ" and urging voters not to replace him with "someone who is not willing to take a strong stand for the principles outlined in the Word of God."

*The Rev. Joe Morecraft, who believes civil law should reflect divine law, was defeated in the Seventh Congressional District in Georgia. Morecraft prayed for the removal of sitting Supreme Court justices by "any means God sees fit." A fund-raising letter on his behalf said "God has provided another man who is willing to serve Our Lord in the halls of Congress."

*In California's 27th Congressional District, Rob Scribner wrote to local ministers asking their support against Rep. Mel Levine: "A year ago, God did a rather unique thing -- he called me to run for Congress...Mr. Levine...is diametrically opposed to nearly everything the Lord's church stands for in this nation...I hope you will agree to link arms with us as we literally 'take territory' for our Lord Jesus Christ." Levine defeated Scribner.

*In Florida's 16th Congressional District, Republican challenger Mary Collins charged that Rep. Larry Smith's "positions on infanticide, gun control, abortion, and prayer in the school make [him] the antithesis of what the Christian community in the District would prefer." Smith, who is Jewish, defeated Collins.

*In Indiana's First Congressional District, William Costas said that a message from God was the reason why he entered the race. Costas was defeated by Rep. Peter Viscloskey.

*In Texas' Fifth Congressional District, Tom Carter attacked Rep. John Bryant, declaring: "We don't want a Congressman who is rated zero by Christian Voice for his opposition to family and moral issues."

Not all religious intolerance came from the Religious Right.

During the Maryland Republican primary, Senatorial candidate Linda Chavez came under attack as a Catholic married to a Jew. During a radio debate before the primary, her leading rival for the Republican nomination, Michael Schaefer, turned to Chavez and said: "I don't know if you're Catholic or Jewish. You have a Catholic background and a Jewish family."

II. Religious Right Matures at the Grassroots Level

1986 was the year of the grassroots for the Religious Right. What was once a phenomenon manipulated by a handful of prominent television evangelists, political operatives, and direct mail specialists has matured into a movement consisting of a new generation of activists, deeply involved at the state and local levels.

Increased Religious Right activity at the grassroots level resulted from organized efforts by national leaders such as Pat Robertson, Jerry Falwell, and Tim LaHaye of the American Coalition for Traditional Values, to recruit candidates, as well as spontaneous activity by local people encouraged by Religious Right successes in 1984.

This grassroots activity was seen in the form of a vast increase in activity in state caucuses, conventions, and party primaries; published ratings of state candidates by Christian Voice; the growing number of challenges by Religious Right candidates for Congressional and state posts; and increased numbers of candidacies by Religious Right activists for school boards.

One example of the growing grassroots activity by the Religious Right was the mass distribution of "Biblical Scoreboards" -- leaflets and brochures attacking some candidates and supporting others by claiming Biblical sanction for specific political issues.

On the national level, Christian Voice claims to have distributed more than 20 million copies of its "Candidates Biblical Scoreboard," a slick magazine rating candidates for the U.S. Senate and House of Representatives, and for the first time,

governorships, lieutenant governorships and State Legislatures. In California alone, leaders of the California Alliance -- a statewide coalition of the Religious Right -- distributed 100,000 copies of a California Christian Voters Guide and 700,000 one-page regional versions.

During the last weeks of the campaign, statewide coalitions of the Religious Right distributed similar campaign literature in Colorado, Idaho, Indiana, North Carolina, Oklahoma, Texas, and South Dakota. These coalitions included Christian Voice, and, in Idaho and Indiana, Phyllis Schlafly's Eagle Forum, as well as statewide groups such as Colorado Citizens for Decency and Oklahomans Against Pornography.

III. Religious Right Becomes Entrenched in the G.O.P.

The major result of Religious Right activity during 1986 was to solidify its position as a major faction within the Republican Party, proving it has the power to defeat the party establishment in primary races, dominate state and local caucuses and conventions, and write the platforms for several state parties.

During 1986, the Religious Right demonstrated its clout within the Republican Party in several primaries and caucuses.

In Indiana, insurgent candidates supported by the Religious Right defeated candidates backed by the Indiana Republican organization to capture Congressional nominations in three districts. In Iowa, the Religious Right dominated Republican Party caucuses in four counties, including the Des Moines area.

In Maryland's Charles County, seven candidates with ties with the fundamentalist New Covenant Church ran as a slate for the Republican Central Committee, and three were elected. In Montgomery County, Maryland, at least 15 members of two fundamentalist churches ran for the Republican Central Committee, and four were elected.

The influence of the Religious Right was also reflected in several state Republican platforms. For instance, the Iowa Republican platform, adopted at the state party convention June 21, includes this plank:

"Whereas the words 'separation of church and state' do not appear anywhere in the U.S. Constitution,

"Whereas the Supreme Court Justice William Rehnquist has termed the phrase a 'misleading metaphor' that should be abandoned,

"We sincerely desire that the First Amendment of the Constitution be interpreted and applied according to the intent

of the framers, which provided for freedom of religion rather than freedom from religion.

"This phrase 'separation of church and state' which appears in the Constitution of the Soviet Union has regularly been used to exclude Godly principles, and we believe this violates the heritage of this nation and the spirit upon which it was founded."

In Texas, some local Republican convention delegates were asked by a Religious Right group called the Texas Grassroots Coalition to sign a "Believers' Decree of Agreement." The decree encouraged delegates to join together in a "mutual and solemn covenant" to adopt positions at Montgomery County and Travis County conventions reflecting their beliefs that "the power to tax is derived from and limited by God's laws" and that "God's laws concerning economics should be consistently held to and applied by civil government; including those biblical principles commonly referred to as 'free enterprise'..." The resolutions taken to the state convention from the local gatherings bore a strong resemblance to these and other "Believers'" positions.

Religious Right activists also had an effect on Republican Party platforms in other states. In Missouri the platform document includes the following: "We believe in God, the Creator, and believe His blessings made this nation great. Therefore, we acknowledge our dependency upon a sovereign God and advocate a return to a nation based on His principles." GOP platforms in Texas and Minnesota support teaching creationism in balance with evolution.

IV. Republican Party Courts the Religious Right

During the final weeks of the campaign, the Republican Senatorial Campaign Committee ran a radio advertisement in Alabama, North Carolina, and Florida--states with close senate races--declaring: "Ever think what's important to you? It's probably simple--a steady job, a healthy family, and a personal relationship with Christ." The advertisements were discontinued after protests by People For the American Way and Jewish organizations.

Major Republican fundraising letters crossed the line from courting the Religious Right with its own rhetoric to proposing that the religious faith of a candidate's children should be significant to voters. In the senate race in Maryland, Republican candidate, Linda Chavez, was frequently--and inappropriately--asked whether she was Catholic or Jewish. In a mailing to Catholic voters, Chavez reaffirmed that she is a Catholic. But in a mailing to Jews, Minnesota senator Rudy Boschwitz sought their support for Chavez, by noting that she is "raising [her] children as Jews."

Boschwitz also sanctioned a fundraising letter, along with President Reagan and Majority Leader Dole, written by Max Fisher, Richard Fox, George Klein and Ivan Boesky which sought Jewish support for five U.S. Senate candidates. The letter urged support in the Missouri race for Republican candidate Kit Bond and criticized his opponent Harriet Woods, who is Jewish, partly on the grounds that "her children were raised as Protestants."

In Michigan's Third Congressional District, Jackie McGregor sent out a letter paid for by the Republican Congressional Campaign Committee attacking her opponent, Rep. Howard Wolpe, and actor Ed Asner for raising campaign funds from "members of their religion." Both Wolpe and Asner are Jewish.

The Republican candidate for governor in Idaho, Dave LeRoy, used national Republican campaign funds to produce and distribute bookmarks that have his name on one side and Jesus on the other.

With the exception of Kit Bond in Missouri, all the candidates aided by the Republican Party in this manner lost.

* * * *

In general, an assessment of the record of the Religious Right during this campaign season should give the Republican Party cause for concern as 1988 approaches. Dr. Robert Grant, chairman of Christian Voice, said this summer that unless the G.O.P. refrained from "Christian-bashing" and welcomed Religious Right activists into the party, the constituency he credits with electing Ronald Reagan would either retreat from politics altogether or return to its roots in the Democratic Party. What is more likely, in light of the grassroots successes of the Religious Right this year, is that it will continue to deepen and strengthen its influence over the Republican Party apparatus at the state and local level.

RELIGION AND POLITICS 1986:
STATE-BY-STATE ACTIVITY

The following is a list of state-by-state activity in 1986. Instances of Religious Right activism are labeled (RR). Instances of Religious Intolerance are labeled (RI). When an instance involves both, it is labeled (RR/RI):

ALABAMA: (RR) Sen. Jeremiah Denton (R), who won with strong Religious Right support in 1980, ran for re-election. Phyllis Schlafly sent out a fund-raising letter supporting Denton. He appears to have lost to Rep. Richard Shelby but is requesting a recount.

**(RR) The Republican candidate for Lieutenant Governor, Don McGriff, who received a contribution from Pat Robertson's Committee for Freedom PAC, lost in the general.

ALASKA: (RR/RI) State Sen. Edna DeVries, a candidate for the Republican nomination for Lieutenant Governor, said she is running because God told her to run. She told The Anchorage Times: "Some would say, 'Edna, you have a safe Senate seat, why are you doing this?' When God speaks, you need to be obedient. I want to look back on 1986 and be able to say, 'God, I have done what you asked me to do, gone where you told me to go, and said what you wanted me to say." Her husband Noel said in a fund-raising letter, "Edna is running for Lt. Governor simply because she believes God is directing her to run."

According to Church and State, she believes the United States is a Christian country and that those who disagree "have a right to do what they want, but they shouldn't live in the United States. Maybe they should live in some other country. If they don't honor the United States as a Christian nation and they don't want to be a Christian, then there are many other countries that are not Christian." DeVries lost in the primary.

ARIZONA: (RR/RI) "Footprints," a fundamentalist newspaper printed in the Phoenix area, published a "Christian Voting Guide for Primary Election Sept. 9th" and promised a similar "Christian Voting Guide" for the general election.

** (RR/RI) In "Footprints," a Republican candidate in the 19th State Senate District ran an ad saying "Elect Jan Brewer State Senator -- Vote for a Christian." Brewer won. And Democrat J. "Sookie" Charles, who ran unsuccessfully for State Representative for the 22nd District, bought an ad which said, "Lord, we acknowledge that we have not sought you and your kingdom above all things. Create new hearts in us and give us the courage to risk what we have and who we are for your sake and the gospel's."

** (RR) Former Rep. John Conlan, head of the FaithAmerica

Foundation, ran unsuccessfully for the 4th District House seat he gave up in an unsuccessful run for the Senate in 1976. FaithAmerica exists to get born-again Christians into the political process.

**(RI) Justice of the Peace David Braun was called a homosexual and attacked for "his disregard for the Christian belief in faith" and for "violating the laws of nature" by the Christian Philosophy Society. Leaflets cautioned: "Take a good look at whoever tries to hand out his flyers at the voting poles [sic] on November 4 -- chances are they could be gay. The materials could be AIDS INFESTED, so for your own protection, please be careful."

ARKANSAS: (RR) Religious Right leaders, including Falwell and Robertson backed Asa Hutchinson who lost his challenge to Sen. Dale Bumpers. Hutchinson has a 92 percent Christian Voice rating, Bumpers a 17.

CALIFORNIA: (RR/RI) In the 27th District, Republican candidate Rob Scribner picked up where he left off in 1984 in his unsuccessful effort to unseat Rep. Mel Levine. Here are excerpts from a letter he sent to pastors in his district: "A year ago, God did a rather unique thing -- he called me to run for Congress in California's 27th District...When God requires a thing of you, you must obey....Encourage your congregation to vote...teach them to vote based on the relationship of the issues and the Word of God. Teach them not to vote according to party or personality, but according to the candidates' integrity before God....I am committed to the vision God is pointing me toward....Mr. Levine...is diametrically opposed to nearly everything the Lord's church stands for in this nation....I hope you will agree to link arms with us as we literally 'take territory' for our Lord Jesus Christ." Scribner has a 100 percent CV rating, Levine a 0. Levine defeated Scribner again in 1986.

** (RR) In the 38th District, Robert Dornan, who won with significant Religious Right support in 1984, won again. He has a 100 percent CV rating.

** (RR) Pat Robertson endorsed State Sen. H.L. Richardson in the Republican primary for Lieutenant Governor and Mike Antonovich in the primary for Senate; both lost.

** (RR/RI) David Balsinger, publisher of Biblical News Service, which co-sponsored the Candidates Biblical Scoreboard with Christian Voice, planned to distribute one million copies of the Scoreboard in the state, with additional ratings of California Supreme Court justices.

**(RR) Pat Fordem, a national board member of Concerned Woman of America, ran unsuccessfully for mayor of La Mesa.

COLORADO: (RR) Ken Kramer was endorsed by and accepted a contribution from Pat Robertson before he won the GOP nomination for the Senate seat being vacated by Gary Hart. Kramer who has a 91 percent CV rating signed a Christian Voice fundraising letter; Wirth's rating is 0. Wirth won a very close race.

** (RR/RI) Ted Strickland, Republican candidate for governor, called for a "Christian-centered" government during an interview on a fundamentalist radio program the night before the primary election. Strickland lost in the general election.

** (RR) Pat Robertson endorsed Mike Norton in the 2nd District who lost a close race to Democrat David Skaggs.

** (RR/RI) Christian Voice, Concerned Women for America, Coalition on Revival, Colorado Citizens for Decency, Pro-Family Forum, Freedom's Quest, National Caleb Campaign, Morality in Media, and Christian Research Associates distributed a local version of the Biblical Scoreboard.

FLORIDA: (RR) The Religious Right made a priority of the re-election of Sen. Paula Hawkins, who was endorsed by Falwell. Her 82 percent CV rating did not protect her from losing to Governor Bob Graham.

** (RR/RI) In the 16th District, Republican challenger Mary Collins distributed material saying about her opponent, "His positions on infanticide, gun control, abortion and prayer in the school make Larry Smith the antithesis of what the Christian community in the District would prefer." Collins lost her bid.

** (RR/RI) Bob Plimpton, Freedom Council coordinator for South Florida, distributed the following flyer at Palm Beach County churches: "Wanted: Qualified Christian Candidates for Palm Beach County School Board....if you are willing to pray about becoming a candidate, please call Bob Plimpton...fear not, we can train you and get you elected with God's help." (Three Religious Right candidates were overwhelmingly defeated.)

** (RR/RI) In Sarasota, a group called "We the People" took out a full-page ad entitled "Election Guide: A Christian Perspective" in the Sarasota Herald-Tribune. The ad featured a questionnaire which asked questions such as "Are you a Born-Again Christian?"

** (RR/RI) Dr. James Kennedy, a will known televangelist, based in Coral Ridge, Florida, sent copies of his own "Congressional Legislative Report," based on the Christian Voice Scoreboard, to his followers across the country.

GEORGIA: (RR) In an upset, Rep. Wyche Fowler defeated Sen. Mack Mattingly who won in 1980 with significant Religious Right support and was endorsed by Falwell in 1986.

** (RR) In the 4th District, Rep. Pat Swindall, who defeated Elliot Levitas with strong Religious Right support in 1984, was re-elected.

** (RR/RI) Also in the 4th Congressional District, the Freedom Council sent out a candidate questionnaire which asks, among other things, "Are you a Born-Again Christian?"; "Is Jesus Lord of Your Life?"; "Do you believe the Bible is the infallible Word of God?"

** (RR/RI) In the 7th District, Democrat Buddy Darden was challenged by the Rev. Joe Morecraft, minister of the late Rep. Larry McDonald, a John Bircher who held the seat until his death in 1983. Morecraft is a member of a splinter group of Presbyterian fundamentalists called "theonomists" who believe that civil law must conform to biblical law. Morecraft is also a member of the "Pray-for-Death" movement. As an "October Surprise" tactic, Morecraft distributed flyers claiming Darden was being influenced by national groups like People For the American Way.

Two fund-raisers who supported Rep. Pat Swindall in his defeat of incumbent Elliot Levitas in 1984, James Zauderer and Nancy Schaefer, have sent out a fund-raising letter for Morecraft in which they refer to Swindall and say "God has provided another man who is willing to serve Our Lord in the Halls of Congress." In another fund-raising letter, David and Marlene Goodrum said "Imagine what kind of nation the United States would be if the Senate, the House of Representatives and the Supreme Court had the commitment to Christ and the knowledge and dedication to God's Word that Joe Morecraft has." Morecraft lost overwhelmingly.

IDAHO: (RR) Sen. Steve Symms won with significant Religious Right support in 1980 and again in 1986.

**(RR/RI) Christian Voice, Eagle Forum, Concerned Women for America, ACTV, Freedom Council, Conservative Caucus distributed state versions of the Biblical Scoreboard highlighting the Senate race. Symms has a 100 percent CV rating, Gov. John Evans a 67.

**(RI) In his successful gubernatorial bid, Republican Dave LeRoy used national Republican campaign funds to produce and distribute book marks that have his name on one side and Jesus on the other. LeRoy lost.

INDIANA: (RR/RI) In the 1st District, State Sen. William Costas "said that a message from God was the reason he entered the race in the heavily Democratic 1st District," according to the Gary Post-Tribune. The paper quoted Costas: "I said Lord, you have to show me. I was waiting for bright lights and a voice out of the sky, but that didn't happen. So I said, Lord, show my wife. And one day, when she was driving home from Indianapolis, she had the

thought that God was telling her that 'This thing with your husband is of me and you should encourage him to run.' That was the important step." Costas has a 100 percent CV rating, Rep. Peter Viscloskey a 0. Costas lost.

** (RR) In the 3rd District, Donald Lynch, associate minister of the Beachgrove Nazarene Church, upset Jay Whitcliff. Lynch had help from Greg Dixon, head of the Indiana Moral Majority. In the general election, Lynch had help from Tim LaHaye of the Religious Right group American Coalition For Traditional Values. In a letter that Tim LaHaye sent to local pastors, he asked them to "pray for Don Lynch, God's will for the 2nd district, and for America." LaHaye suggested that the pastors set up a phone tree to get out the vote. Lynch lost to incumbent Phil Sharp.

** (RR) In the 5th District, State Sen. James Butcher defeated State Treasurer Julian Ridlen in the primary but lost in the general. Butcher received help from Pat Robertson, who raised $30,000 for him at a fund-raiser. Butcher has a 100 percent CV rating.

** (RR/RI) In the 8th District, the Rev. Donald Brooks of a fundamentalist group called The Agora sent local and congressional candidates a questionnaire which included these questions: "If a regular church attender, how many times each month are you in attendance for a regular church service?"; "What is the name of your church and pastor?"; "Have you been or are you now a member of any group considered subversive, anti-God or anti-American?"; "In your opinion, is the Bible 1. A good book 2. A collection of religious writings 3. Literal, inerrant Word of God?"

** (RR) In the 8th District, Rep. Frank McCloskey has a 0 CV rating, challenger Richard McIntyre a 100. This election was so close and so contested in 1984 that it was decided by the U.S. House of Representatives. But, the voters were able to decide this year and chose McCloskey.

** (RR/RI) Statewide, Christian Voice, the American Coalition for Traditional Values, Concerned Women for America, Eagle Forum, Indiana Alliance, Crisis Pregnancy Center, Citizens for Decency Through Law, American Coalition of Unregistered Churches, Christian Action Council and Americans for Biblical Government distributed flyers during the last weeks of the campaign attacking the voting records of Reps. Sharp, McCloskey and Jacobs (10th District) as well as those of state candidates.

IOWA: (RR/RI) Fundamentalists organized by Steve Sheffler, a Freedom Council worker, dominated Republican Party caucuses in four counties, including the area of Des Moines. They tried to purge party regulars: Mary Louise Smith, former chairman of the Republican National Committee, was elected a delegate after five

ballots when she convinced fundamentalists that her experience would be valuable. (These were the caucuses where the flyer on "How to Participate in a Political Party" was distributed).

While party regulars retained control, they made major concessions to the fundamentalists on the platform. Resolutions adopted June 21st included a call for the teaching of creationism in public schools. The platform also includes this plank:

"Whereas the words 'separation of church and state' do not appear anywhere in the U.S. Constitution,

"Whereas the Supreme Court Justice William Rehnquist has termed the phrase a 'misleading metaphor' that should be abandoned,

"We sincerely desire that the First Amendment of the Constitution be interpreted and applied according to the intent of its framers, which provided for religion rather than freedom from religion.

"This phrase 'separation of church and state' which appears in the Constitution of the Soviet Union has regularly been used to exclude Godly principles, and we believe this violates the heritage of this nation and the spirit upon which it was founded."

LOUISIANA: (RR/RI) Jimmy Swaggart sent his followers in the state a local version of the Christian Voice Scoreboard in advance of the open primary in September.

MARYLAND: (RR) Several fundamentalist activists in Maryland were elected to Republican Central Committee posts. In Charles County, seven candidates with ties to the New Covenant Church in Waldorf ran as a slate for the Central Committee; three were elected. Ousted committee members, including the chairman, Marvin Green, claimed the fundamentalists had used deception by distributing leaflets which created the impression that they were backed by the committee.

** (RR) Three other members of New Covenant Church ran for school board on a pro-Creationism, pro-home-schooling platform. None was successful.

** (RR) In Montgomery County, at least 15 members of two fundamentalist churches -- the Great Commission Church and Damascus Christian Community -- ran for seats on the Republican Central Committee; another four from the two churches ran for the House of Delegates. Four of the GOP candidates were elected; none of the Democratic candidates was elected, but regular party candidates claim the church members drew votes which cost them.

** (RI) In a debate between candidates for the Republican Senatorial nomination, Michael Schaefer told Linda Chavez, "I don't know if you're Catholic or Jewish. You have a Catholic background and a Jewish family."

** (RI) Chavez, the victim of religious intolerance in this instance, became the practitioner late in her unsuccessful campaign against Democrat Barbara Mikulski. Chavez, who was raised as a Catholic and claims to be a Catholic, charged that Mikulski was behind the revelation that Chavez signed a paper converting to Judaism when she married her husband in 1967. Chavez said the document was the result of a misunderstanding. Mikulski denied the charge. Chavez wrote a letter to Catholics in the state saying, "The very last thing I want to do is to write you a letter appealing to you as a Catholic but religious intolerance and bigotry have left me no choice." At the same time, Sen. Rudy Boschwitz (R-Minn.) sent a letter to Jews in Maryland saying Chavez' relationship to the Jewish community was unique because of her support for Israel, her opposition to quotas and her marriage to Christopher Gersten, a Jewish activist.

MICHIGAN: (RR/RI) In the 3rd District, Republican Jackie McGregor sent out a fund-raising letter paid for by the Republican Congressional Campaign Committee which said, "California actor Ed Asner and Howard Wolpe are raising money by sending a letter to one-half million members of their religion outside our district." (Wolpe is Jewish.) McGregor mounted an unsuccessful challenge to Wolpe in 1984, when Rep. Mark Siljander (R), sent a letter to 3rd District voters urging them to "send another Christian to Congress." These tactics were rejected by the voters who elected Wolpe by a large margin.

** (RR/RI) Siljander himself was defeated in a primary in the 4th District after saying that his re-election was necessary "to break the back of Satan."

**(RR) Freedom Council candidate Patricia Hartnagle won the Republican nomination for State Board of Education but lost in the general. Hartnagle, known as an "anti-sex zealot" in her community, according to a local reporter, supports the teaching of creationism. Hartnagle soundly defeated David Kellom a member of the Midland Intermediate School Board, for the GOP nomination. Kellom said "My greatest disappointment is not that I was defeated but that the Freedom Council did not come up with a candidate who has a broader and more positive record of achievement."

MINNESOTA: (RR) A flyer distributed anonymously in GOP caucuses advised Christian activists to hide their church connections.

** (RR) Cal Ludeman, backed by the Religious Right, beat a

moderate Republican for the nomination but lost the governorship to Democrat Rudy Perpich.

MISSOURI: (RI) Republican fundraisers urged Jewish voters to support senate candidate Kit Bond over Harriet Woods (who is Jewish) partly on the grounds that "her children were raised as Protestants." Bond won.

**(RR) Pat Robertson campaigned for Republican nominee Margaret Kelly in her successful bid to be State Auditor. Kelly's campaign slogan was "In God we trust, all others we audit."

NEBRASKA: (RR/RI) Rev. Everett Sileven sent out a fund-raising letter in his unsuccessful attempt to win the Republican gubernatorial nomination which said, "I have God. I know I can count on God. Can I count on you?...I thank you and God thanks you." When both parties nominated women for governor, Sileven said, "Biblically and constitutionally, it is a great step backward. Jeremiah plainly tells us that when the people of a nation are willing to accept the leadership of a woman, it is a sure sign of God's curse."

** (RR) At the Douglas and Lincoln County Republican convention, which includes Omaha and Lincoln, the Religious Right made major gains in electing delegates to the state convention. Freedom Council State Coordinator Bob Garrett successfully controlled delegate selection in Douglas County.

NORTH CAROLINA: (RR/RI) The Rev. Kent Kelly of Southern Pines, N.C., wrote a letter supporting James Broyhill, named to fill John East's Senate seat and accusing Democratic Senate candidate Terry Sanford of favoring a "one-world government." Kelly said "We know what government that is -- that which is foretold in the Book of Revelation." (This is a reference to the Anti-Christ.) This letter was mailed with Broyhill's campaign funds by his "Christian liaison." In the letter, "Christian Leaders" were told "God's people must not sit idle while the battle rages! Please contact as many leaders <u>of our persuasion</u> in your county as possible." Broyhill lost his Senate seat.

** (RR) Broyhill himself had to fight off a challenge from Jesse Helms' Congressional Club and its senatorial candidate, David Funderburk, 41, despite having a 100 percent rating from Citizens for Constitutional Action and a 67 percent rating from Christian Voice. Funderburk and other Religious Right activists said Broyhill was too liberal because he had once voted for the Equal Rights Amendment and had voted to make Martin Luther King's birthday a national holiday.

Funderburk actively courted fundamentalist groups. Among other efforts, he responded to a questionnaire prepared by a group called Students for Better Government which included these

questions: "Can you honestly say that you have a personal relationship with Jesus Christ? How well do you know him?" and "If you answered yes...would you, if elected, seek God's guidance for your decisions? If no, how would you determine your answers and solutions?" Funderburk's answers included: "I think that only by a strong belief in the Lord can we restore the foundation values of the value of human life, the family, home & church (& a fixed right & wrong) as central to our country's survival...I stand for conservative beliefs and traditional values to keep this nation free and one Blessed by God...I believe in Jesus Christ as my Lord and Savior, relying on his guidance first."

** (RR/RI) In the 4th District, Rep. William Cobey, who won with Religious Right backing in 1984, distributed a fund-raising letter addressed "Dear Christian Friend" which says "As an ambassador for Christ, I see my ministry to the other members of Congress as twofold: as an encourager, and as a Christian example.....Will you help me so our voice will not be silenced and then replaced by someone who is not willing to take a strong stand for the principles outlined in the Word of God?"

Cobey's opponent, David Price, who won the race, is a Southern Baptist graduate of Yale Divinity School and teaches political science and ethics at Duke University.

** (RR) In the 6th District, Howard Coble, who has a 100 percent CV rating, is in a toss-up with Robin Britt, who has an 8 percent CV rating. The vote count will be contested in court.

** (RR) In another rematch from 1984, Rep. Bill Hendon who has a 100 percent CV rating, lost to James McClure Clarke, whose CV score is 8.

** (RR/RI) The voting records of Britt, Neal, Price and state candidates were attacked by Christian Voice, Christian League, N.C. Coalition for Traditional Values, Concerned Charloteeans, Freedom Council, North Carolina for Concerned Government, North Carolina for Concerned Citizens, Concerned Women for America, and Christian Action Council.

OHIO: (RR/RI) A campaign letter sent out by the campaign of Republican gubernatorial candidate James Rhodes and addressed "Dear Christian Leader" declares "As a leader under God's authority, you cannot afford to resign yourself to idle neutrality in an election that will determine the future moral environment of our state....It is vital you know that there is a distinct contrast between Dick Celeste and Jim Rhodes on the question of traditional family values."

** (RR/RI) In a letter mailed on Rhodes' behalf, the Ohio Citizens for Decency and Health PAC said, "The Lord is calling for mighty men of God who will stand in the Gap for our land,

that God should not destroy it." Rhodes lost.

** (RR) Republican Senate candidate Tom Kindness has accused Sen. John Glenn of waging war on fundamentalist Christians. Kindness lost his challenge for a Responsive Government.

** (RI) A flyer with anti-Semitic overtones was distributed by Christian Democrats in Cleveland, Ohio. The group accused Rep. Edward Feighan (a Roman Catholic) of voting to "send 12.72 Billion Dollars of your tax money to Israel" and only responding to the needs of "One Eastside Community" (a predominately Jewish neighborhood) while "he turns his back on the other 38 Communities of the 19th District." The flyer accused Edward Feighan of "accepting one quarter million dollars from the Jewish Community in payment for his give-away of Billions of Tax Dollars to Israel."

** (RI) James Condit, Jr., an anti-abortion leader in the Cincinnati area, said that groups like Planned Parenthood, the American Civil Liberties Union and the National Organization of Women are part of "an anti-Christian network whose cause is to work for anti-Christian goals. That network is overly peopled by members of the Reform Jewish community and men who I believe to be Free Masons."

OKLAHOMA: (RR) Sen. Don Nickles is, along with Denton, one of two Senators who can most clearly point to Religious Right support as making a difference in 1980; he won for re-election in 1986.

** (RR) In the 1st District, Jim Inhofe, former mayor of Tulsa and former state Freedom Council board member, ran for Congress and won. Pat Robertson held a fund-raiser for Inhofe.

** (RR/RI) The Christian Action Coalition, composed of local offices of Christian Voice, Pat Robertson's Freedom Council and Oklahomans Against Pornography distributed a questionnaire which asked candidates, "Do you believe that the basic premise of government and of the law is the Bible, rather than the word of any person?"

** (RR/RI) The following groups distributed a flyer attacking the voting records of Rep. Jones, Attorney General candidate Robert Henry and State Superintendent of Public Instruction candidate John Folks: The Freedom Council, Oklahomans Against Pornography, Christian Action Coalition, Oklahoma Grassroots Coalition, and Concerned Women for America.

OREGON: (RR) Joe Lutz, a 35-year-old fundamentalist Baptist minister, won a surprising 43 percent of the vote against Sen. Bob Packwood in the Republican primary. Lutz spent less than $40,000, while Packwood spent $2 million on TV ads and phone banks. Lutz received organizational and other help from the

Freedom Council, the American Coalition for Traditional Values and Concerned Women for America and claimed to have 5,000 church-based volunteers. Lutz' positions included calling for dismantling the Federal Reserve Board and the Social Security system, withdrawing from the United Nations, lifting all sanctions against South Africa, enforcing the Monroe Doctrine, selling off federal lands and phasing out property and income taxes.

PENNSYLVANIA: (RR/RI) Richard Stokes ran an unsuccessful campaign in the Republican primary against Sen. Arlen Specter because, he said, God told him to run. He says "It was 3 o'clock in the morning and I came straight out of bed. I was scared to death. I was told to write down what I was supposed to do, and I did. I was told to run for the United States Senate in the 1986 primary. I was told to hand out pamphlets, and I was told what to put in the pamphlets."

**(RI) In Bob Casey's successful gubernatorial bid against Republican Bill Scranton, his campaign sent out a last minute mailgram which implied that Scranton's past affiliations would not be a good role model for children: "Then he grew bored with journalism and became a disciple of Marharshi Mahesh Yogi, traveling the world evangelizing for transcendental meditation."

SOUTH CAROLINA: (RR) The successful Republican candidate for governor, Carroll Campbell, has a 100 percent Christian Voice rating, and Tom Hartnett, who ran unsuccessfully for lieutenant governor is rated 75. Campbell won while Hartnett lost. Vice President Bush said in campaigning for them that their election was necessary to "do the Lord's work at the state level."

** (RR) The Religious Right mounted a strong challenge to Dr. George Graham, the party chairman, who was re-elected only after promising to give the chairmanship to the fundamentalists after this year's election.

** (RR) Pat Robertson and local Religious Right activists backed Henry Jordan, who lost the Republican nomination to challenge Sen. Ernest Hollings.

** (RR) In the primary for an open seat in the 4th Congressional District, three of four candidates had ties to different Religious Right constituencies. The establishment candidate was Greenville Mayor William Workman. Tom Marchant ran with the endorsement of fundamentalist leader Bob Jones; Richard Rigdon, a charismatic, had backing from charismatics in the district; pilot Ted Adams had support from fundamentalists. Workman fell only 132 votes short of the 50 percent needed to win the primary and faced a run-off with the second-place finisher, Marchant, who had 22.5 percent of the vote. But Marchant dropped out of the run-off after a local scandal, and Adams, who had 20 percent of the vote,

faced Workman in the run-off, which Workman won. However, Workman lost in the general.

This primary introduced a new issue into Republican politics: according to The Washington Post, Jack Buttram, a former aide to Sen. Strom Thurmond and a leader in the Greenville Fundamentalist Forum said he could not support Rigdon because "He's involved now with a radio station in Greenville that plays 'contemporary Christian music,' and it's not a good influence on our youth."

SOUTH DAKOTA: **(RR) Sen. James Abdnor, who won with Religious Right support in 1980, ran for re-election and lost to Tom Daschle in a close race.

** (RR) Dale Bell, a Religious Right activist who has worked for NCPAC and the Conservative Caucus, won the Republican primary to run for the House seat being vacated by Thomas Daschle. Bell was endorsed by Pat Robertson and received funds from Robertson's Committee for Freedom PAC. Although more than hundred fundamentalists protested at the Sioux Falls Argus claiming unfavorable press coverage of Bell's race, he lost.

**(RR/RI) Christian Voice, Eagle Forum, Christian Action Coalition, South Dakota Pro-Life and South Dakota PSALM (People Serious About Liberty and Morality) distributed local versions of the Biblical Scoreboard.

TENNESSEE: (RR) In the 3rd District Republican Primary, Pat Robertson endorsed Jim Golden. Golden defeated John Davis, who had held Democrat Marilyn Lloyd to 52 percent of the vote in 1984. (Lloyd, a member of the Christian Voice Congressional Advisory Committee, received a lower rating than Golden.) Golden won the primary. Golden disassociated himself from Ed McAteer's Roundtable, but still lost to Lloyd in the general election.

TEXAS: (RR) Religious Right groups were split in the gubernatorial race, with some backing Rep. Tom Loeffler and some, including Robertson, backing former Rep. Kent Hance. Former Gov. William Clements, a moderate, won the nomination, but hired a "religious liaison" to woo the Religious Right in the general election which he won. David Davidson, a Religious Right activist supported by the Texas Grassroots Coalition, won the GOP nomination for Lieutenant Governor but lost the general.

** (RR/RI) In the 5th District, Tom Carter unsuccessfully challenged Rep. John Bryant (D). Pat Robertson sponsored a fund-raiser for Carter, who said, "We don't want a congressman who is rated 0 by Christian Voice for his opposition to family and moral issues."

** (RR) In the 6th District, Rep. Joe Barton, who had strong Religious Right support in 1984, was re-elected. Falwell

contributed to his campaign.

** (RR) In the 13th District, Beau Boulter, who won with Religious Right support in both 1984 and 1986, signed a Christian Voice fund-raiser and he received money from Robertson's PAC.

** (RR) In the 14th District, Mac Sweeney, elected with Religious Right support in both 1984 and 1986, has a 100 percent Christian Voice rating. Sweeney won a tight race.

** (RR) In the 19th District, Larry Combest, elected with Religious Right support in 1984, has a 100 percent Christian Voice rating. He was re-elected.

** (RR) In the 26th District, Richard Armey, elected with Religious Right support in 1984, has a 100 percent Christian Voice rating and has signed a CV fund-raiser. Falwell contributed to his campaign. Armey won easily.

** (RR/RI) A coalition consisting of Christian Voice, Freedom Council, Texas Eagle Forum, Texas Grassroots Coalition, American Coalition for Life, American Coalition for Traditional Values distributed flyers attacking the voting records of Mark White, Bill Hobby, Jim Mattox, Jake Pickle, Ron Coleman, John Bryant and Martin Frost.

** (RR) Religious Right activists tried to remove George Strake as state party chairman, but were unsuccessful.

** (RR/RI) Adrian Van Zelfden, leader of a group called the Texas Grassroots Coalition PAC, asked delegates to the Republican county conventions to sign a "Believers' Decree of Agreement." (Slightly different versions of the decree were circulated). The preamble said: "We, citizens of the State of Texas, by the providence of God, adhering to the Christian faith, having as our desire the glory of God and the advancement of the kingdom of Our Lord and Saviour Jesus Christ, as well as true public liberty, safety and peace; have resolved to enter into a mutual and solemn covenant with one another., before the most High God, to uphold the following truth..."

The decree's conclusion said: "We further commit ourselves to support and encourage those elected officers and candidates who pledge to faithfully serve God in the administration of their office. We also solemnly warn that violation of such a sacred trust invites the judgment of God upon not only elected rulers, but also the communities which they represent and serve."
The state platform adopted a number of planks reflecting the Believers' Decree of Agreement, including a ban on the regulation of state schools, equal time for creationism in the classroom, an attack on "Secular Humanism" in the schools, a call for a quarantine of AIDS victims, a proposed Constitutional Amendment

to elect federal judges every six years and force Supreme Court justices to retire at 80.

But even while adopting many of the positions advanced in the Believers' Decree, the Texas GOP platform said "The Republican Party of Texas does not require the endorsement of any particular 'Solemn Oath and Covenant' to participate in our party."

** (RI) In the primary to determine the Republican nominee for a vacant seat in Texas' 21st congressional district, Van Archer attempted to use a religious test against his opponent, Lamar Smith, a Christian Scientist. Archer said he "would think" that Smith's religion would be an issue; he said that if Smith were elected to Congress and legislation involving health treatment arose, he would have to choose between being a good congressman and a good Christian Scientist. Christian Scientists believe that prayer and understanding will cure sickness and avoid medical treatment, but do not impose their views on others.

Smith said he had not faced such a conflict as a state representative or as a county commissioner. He said "I believe in the best medical attention for those who want it" -- and, in fact, he was endorsed by the American Medical Association. Smith said "Attacking an individual's religion is an attack on one of our most sacred institutions -- freedom of religion. It has no place in American society." Smith won the nomination and the general election.

VIRGINIA: (RR) In the 1st District, a conservative Christian group called Peninsula Citizens for Freedom circulated a flyer which claimed that the Democratic challenger to Rep. Herbert Bateman, State Sen. Robert Scott, has supported measures which definitively would have meant state control of certain religious activities. This district includes suburbs of Virginia Beach, Pat Robertson's home district. Bateman was re-elected.

** (RR) In the 6th District, Falwell's home district, Falwell and Robertson endorsed Flo Neher Traywick who lost her challenge to Rep. James Olin.

** (RR) In the 10th District, challenger John Milliken (D) attacked Rep. Frank Wolf's support for Religious Right positions, including organized school prayer. Wolf won.

WISCONSIN: (RR) Sen. Bob Kasten (R), who won with Religious Right support in 1980, was re-elected in a very close race.

HISTORY OF THE RELIGIOUS RIGHT

The Religious Right emerged on the national scene in the late 1970s as the marriage of the New Right, led by Paul Weyrich,

Howard Phillips and others, with the Fundamentalist movement, led by Jerry Falwell, Pat Robertson and others. From the beginning, the movement used religious rhetoric to disguise a partisan, extreme right-wing political platform. The movement talked of "Christianizing America," of "godly" candidates and "biblical" positions on political issues. Not every act of the Religious Right involves a direct expression of religious intolerance, but the entire movement is grounded in intolerance.

The shape and tactics of the Religious Right changed in 1986, reflecting growing activity at the grassroots level, shifts in national leadership and institutionalization within the Republican Party.

The first year the Religious Right made a concerted national effort was in 1980, when it worked to elect Ronald Reagan and to target liberal Democrats, primarily in the Senate. The most visible personality was Jerry Falwell, who became the living symbol -- sometimes the caricature -- of the movement. His organization, the Moral Majority, shared the spotlight with two other organizations -- Christian Voice, which produced a "Christian voting record," and the Religious Roundtable, led by Ed McAteer, a Republican activist. It was the Roundtable which sponsored a national pastors' conference in Dallas at which Reagan appeared and made a strong appeal to the Religious Right. James Robison, a Southern Baptist evangelist, was a second-rank personality in the movement.

It is arguable how great a role the Religious Right played in Reagan's election; it may well have made a difference in voter registration and turn-out in some southern states Reagan won by a close margin. It is less clear how much of an influence the movement was in the Senate elections, but most political observers credit it with helping elect Sen. Jeremiah Denton (R-AL) and Sen. Don Nickles (R-OK). A number of other Republican senators elected that year had the support of the Religious Right: James Abdnor (South Dakota); Charles Grassley (Iowa); Robert Kasten (Wisconsin); John East (North Carolina); Steve Symms (Idaho); Dan Quayle (Indiana); Paula Hawkins (Florida) and Mack Mattingly (Georgia).

The 1982 mid-term elections were a different story. Reagan was not running at the head of the ticket and, with the economy in the depths of a recession, it was clearly a "Democratic year." The Religious Right was all but invisible.

But it returned to prominence in the 1984 elections. Falwell was again the most visible leader; he and Robison preached at the Republican National Convention in Dallas. The televangelists played a more visible role: Pat Robertson, Jimmy Swaggart and others called for the election of "godly people" and "men and women...who believe in The Bible." Falwell, Swaggart, Robison,

Jim Bakker, D. James Kennedy, Rex Humbard, Kenneth Copeland and Jack Van Impe joined with other Religious Right leaders to form the American Coalition for Traditional Values (ACTV), which was chaired by Tim LaHaye, best known for his attacks on "secular humanism."

The Roundtable faded, but Christian Voice was still active, distributing 5 million copies of a "Candidates Biblical Scoreboard" and organizing heavily in Texas as a pilot project for 1986 and beyond. In 1984, moderate and conservative Democrats were the major target and most political observers credit the Religious Right with helping elect Republican congressmen in Georgia (Pat Swindall); North Carolina (Bill Hendon, Bill Cobey and Howard Coble); Texas (Joe Barton, Mac Sweeney, Richard Armey and Beau Boulter) and California (Robert Dornan).

There were several important differences in 1986:

1) Grassroots activity by the Religious Right greatly increased.

2) After targeting liberal Democrats in 1980 and moderate and conservative Democrats in 1984, the Religious Right turned on moderate and traditionally conservative Republicans and made a concerted effort to take over the Republican Party.

3) Falwell had a lower profile, being eclipsed by Pat Robertson, who announced his intentions to run for president as a Republican in 1988. Robison had faded, but Swaggart positioned himself to become the most visible "political" televangelist on the air after Robertson left "The 700 Club" to campaign and Falwell avoided politics on his TV program. Swaggart, as well as LaHaye and Dr. James Kennedy, was still less vocal on politics than in 1984, investing more of his time in related parts of the Religious Right agenda, attacking the courts and the public schools. Robison faded from prominence, but the Christian Voice announced in a recent fund-raising letter plans to distribute 20 million copies of its "Candidates Biblical Scoreboard."

While Falwell claimed to be backing out of electoral politics, he was still on record endorsing a number of candidates and his "I Love America Committee" PAC made contributions to candidates. On Oct. 6, 1986, he sent out a fund-raising letter for the Liberty Federation which said: "You and I may be only a few weeks away from a national disaster -- and for that reason -- we have just launched a 'Thirty Day National Blitz' -- a strategic action which we used very successfully in 1982...the liberals are already bragging that conservatives and pro-moral candidates will lose 30 seats in the House and -- worst of all -- that the liberals would take control of the Senate for the first time

since 1980." Falwell said contributions would help him "launch a

desperately needed telephone campaign to reach hundreds of thousands of people right before the election" and "contact millions of voters by direct mail, television and radio."

4) In 1986, the Religious Right had to play more defense than offense in order to protect the "Senate Class of 1980" and the "House Class of 1984"; about half the candidates with Religious Right backing in key races in 1986 were incumbents.

5) In the past, the movement has been forthright, in its activity; in 1986, however, there was outright deceit. The best example is a flyer on "How to Participate in a Political Party" distributed anonymously among Fundamentalists organizing within Republican county caucuses in Iowa. The flyer said "The activities of the church must not become public knowledge. There are those who seek to undermine our work."

"To a degree, keep your positions on issues to yourself," the flyer said. "Jesus didn't overwhelm even his disciples with the truth -- John 16:12....Give the impression that you are there to work for the party, not to push an ideology....Come across as being interested in economic issues...Try not to let on that a close group of friends are becoming active in the party together."

The flyer said "Hide your strength. When you control a political party, the only times you want to show your strength is when 1. Electing officers; 2. (Technically, when voting on resolutions, everyone votes his own conscience)....It is important not to clean house of all non-Christians....When you have control of a party, it might not be wise to place 'our' people into any and every position. Get the counsel of wise Christian politicians when in doubt."

In addition to advocating deceit, the flyer advocated something clearly contrary to the spirit of the First Amendment -- using the political process to make religious conversions. The flyer advised, "Determine to win both friend and foe to the Lord. Don't do anything that will harm your testimony."

A flyer distributed anonymously in Republican caucuses in Minnesota said "Experience has shown that it is best not to say you are entering politics because of Christian beliefs on life issues. It is better to say you favor the Republican Platform (it is pro-life) and support President Reagan. You will probably be asked outright if you are pro-life or pro-choice. Answer truthfully, of course. If the people asking this information are pro-choice, you can put them in a bad light by adding -- I am pro-life, but that is not the only issue."

Pat Robertson deserves special attention not simply because he is running for president, but because of the degree to which his organization dominated national Religious Right activity in 1986. He was involved in a network of political organizations:

** The Committee for Freedom PAC.

** The Michigan Committee for Freedom PAC.

** The National Committee to Draft Pat Robertson for President, headed by Richard Minard, former director of Robertson's Freedom Council.

** The Pat Robertson for President Draft Committee, headed by Rob Flowe, former finance director for The Freedom Council.

** Robertson's own exploratory committee, Americans for Robertson.

But despite the existence of all these organizations, the most important Religious Right organization of 1986 was one which no longer exists -- The Freedom Council. The council was disbanded after the Internal Revenue Service began investigating it and it refused to comply with Virginia registration laws. The Council is presumably being re-constituted at the national level, but local councils are still operating.

The Council, a tax-exempt foundation, served as the de facto campaign organization for Pat Robertson's bid for the 1988 Republican presidential nomination. It organized local activity in Michigan, Iowa, Texas, New Hampshire and other states and coordinated Robertson's visits to some 20 states.

The Freedom Council described itself as "a non-profit, non-partisan Christian organization dedicated to reinforcing the traditional Judeo-Christian principles and values upon which the United States was founded. The council distributes practical political information through Bible-believing churches and a growing bipartisan grassroots network. The council also maintains information bureaus in Washington, D.C., and in several state capitals to give local people a national and statewide perspective."

The council claimed 200,000 contributors, 40 full-time field workers and organizers in at least 41 states. Robertson, who founded the council in 1981, said he no longer had any formal connection to it, but his actual control was obvious:

** Robertson's Christian Broadcasting Network contributed $250,000 a month to the council, accounting for half its budget.
** Robertson introduced a novel fund-raising technique at a May

16 dinner in Washington, D.C.: contributions ranged from $1,000 to $25,000 (for host couples). Because the limit on PAC contributions is $5,000, large donors gave their first $5,000 to the Committee for Freedom and the rest to the Freedom Council.

** The Freedom Council's original president, Gen. Jerry Curry, resigned and was replaced on an interim basis by Bob Slosser, president of CBN University.

Robertson, who has consulted with New Right leader Paul Weyrich about his candidacy, has drawn heavily on people with connections to Weyrich to run the Freedom Council and his Committee for Freedom PAC:

** National Field Director Dick Minard was Northwest field director for Weyrich's Committee for the Survival of a Free Congress in 1979.

** James Ellis, assistant national director of the Freedom Council, is executive director of Weyrich's Free Congress Political Action Committee.

** R. Marc Nuttle, president of the Committee for Freedom PAC, has been a consultant to the Committee for the Survival of a Free Congress.

The Freedom Council recruited thousands of candidates to run for delegate slots in Michigan, which is selecting some delegates who will choose the 1988 presidential nominee earlier. The council also engineered the takeover of a number of Iowa Republican caucuses and is gearing up to operate in New Hampshire and Florida.

Robertson was courted by the national Republican Party. He claimed to be "the third most prolific fund-raiser" for the party -- presumably after President Reagan and Vice President Bush -- and he accepted an invitation from the Republican Senatorial Campaign Committee to campaign for 16 Senate candidates.

RELIGIOUS INTOLERANCE IN 1986

The most striking finding about religious intolerance in the 1986 mid-term elections is that there was so much of it -- the most since PEOPLE FOR was founded in 1980 and quite likely the most since the 1960 election. Also striking is the variety of religious intolerance: it can come from anywhere, including from respected national figures. Much, but by no means all, of this religious intolerance has come from members of the Religious Right; but religious intolerance has also been used against the Religious Right.

The breadth and diversity of religious intolerance found in 1986 confirms the belief that religious intolerance breeds more religious intolerance; when it is not condemned, it takes root and spreads.

A. NATIONAL FIGURES

The widespread presence of religious intolerance in 1986 is illustrated by the fact that the list of offenders includes official agencies of both political parties and Vice President George Bush.

The Republican Congressional Campaign Committee paid for a fund-raising letter in which Jackie McGregor, challenging Rep. Harold Wolpe in the 3rd District in Michigan, criticized Wolpe, who is Jewish, for soliciting funds from members of his religion outside the district.

In the last week of the campaign, the Republican Senatorial Campaign Committee ran ads on fundamentalist radio stations in Alabama, North Carolina and Florida which began: "Ever think about what's important to you? It's probably simple -- a steady job, a healthy family and a personal relationship with Christ. That's the easy part."

The committee pulled the ads after two days following protests from Jewish groups and PEOPLE FOR THE AMERICAN WAY. The ads attempted to identify one political party with a particular religious worldview.

Republican fund-raisers also crossed the line in an appeal to Jewish voters. In a memorandum from Max Fisher, Richard Fox, George Klein and Ivan Boesky supporting five Republican Senate candidates on the grounds that they were strong supporters of Israel urged Jews to support Kit Bond in the Missouri Senate race, over Harriet Woods, who is Jewish, partly on the grounds that "her children were raised as Protestants."

On the Democratic side, Democratic National Committee Chairman Paul Kirk attacked Pat Robertson in a DNC fund-raising letter in which he mistakenly equated Evangelical Christians with the Religious Right and found fault with Robertson not only for supporting a quota program for fundamentalists in government, but for wanting to "get more Christians involved in government." Kirk added a P.S. which said "When President Pat Robertson finishes his Scripture reading and begins his televised State of the Union address, it will be too late," implying that a president does not have the right to read the Bible before such an event.

Bush deserves a special award for offering religious intolerance out of both sides of his mouth. He has been seeking Religious Right support, wooing and accepting Jerry Falwell's endorsement

and telling a Liberty Federation conference, "What great goals you have!" He told a crowd in South Carolina it was necessary to elect Republicans in order "to do the Lord's work at the state level." But when Robertson delegates made a major effort in the Michigan caucuses, Bush delegates passed out flyers saying "Keep Religion Out of Politics."

The most visible national figure, however, continues to be Pat Robertson, president of Christian Broadcasting Network and a candidate for the 1988 Republican presidential nomination. PEOPLE FOR has treated Robertson at length in a separate report, but some of his recent comments are relevant here:

-- According to the June 3, 1986, Jackson, Miss., News, Robertson said this at a rally in Jackson: "On April 25, 1980, 500,000 Christians gathered on the mall in Washington and prayed that God would please heal our land. It was no coincidence that Ronald Reagan was elected president; it was the direct act of God, and that Strom Thurmond became head of the (U.S. Senate) Judiciary Committee rather than Teddy Kennedy."

-- After some early success in the Michigan presidential caucuses, Robertson sent out a fund-raising letter for The Freedom Council proclaiming "The Christians have won!...What a thrust for freedom! What a breakthrough for the Kingdom!...As believers become involved in this process, they will be able to turn the nation back to its traditional moral values."

-- Robertson told a crowd in Michigan that Christians (by which he means only Born-Again Christians) "maybe feel more strongly than others do" about "love of God, love of country and support for the traditional family."

-- PEOPLE FOR's report on Robertson noted identifies himself with God and that he calls those who disagree with him atheists and communists and says they are in League with Satan. On the Sept. 7 "700 Club," Robertson noted the report and replied by calling Norman Lear an "atheist," saying PEOPLE FOR "want to move us toward a collectivist, socialist model" and saying "God's people have to understand that the enemy is the Father of Lies."

Robertson's campaign has brought another practitioner of religious intolerance to the political forefront -- televangelist Jimmy Swaggart who initially opposed Robertson's running for president but was later pressured into an endorsement.

Swaggart's religious intolerance easily earns him the title of "Robertson's Farrakhan": Swaggart has called Catholicism a "false religion" and its teachings the "doctrines of devils"; he has called the Catholic Mass and Mainline Protestant services "liturgical, religious monstrosities"; he has defended using scenes of the Holocaust to illustrate his belief that "Whenever a

person does not accept Jesus, he takes himself away from God's protection. He then places himself under Satan's domain, who kills, steals and destroys"; he has condemned Mormonism and Christian Science.

Tim LaHaye, chairman of the American Coalition for Traditional Values, said on "Nightline" that "Secular humanists should not hold political office in America. And the reason I say that is because our Constitution is not compatible with secular humanism without twisting it and changing it." Last year, LaHaye said that an ACTV plan to increase grassroots activity by his members to keep the Republicans from losing the Senate was "a workable plan, and it's a plan that God wants us to fulfill."

CANDIDATES BIBLICAL SCOREBOARD

A staple of religious intolerance on the part of the Religious Right has been a voting record or issues questionnaire which purports to measure candidates against the "Christian" or "biblical" positions on political issues. Some questionnaires take the added step of asking candidates questions about their personal religious faith.

There is a very simple reason why claiming the correct "biblical" basis for a political position, like claiming God's endorsement, amounts to religious intolerance: it cuts off debate by arguing a position not on the basis of its political merits, but on the basis of religious authority. To do so demands that others accept -- not tolerate, but consent to -- the candidate's religious beliefs.

Some of those who have displayed religious intolerance or imposed a religious test on candidates have compounded the situation by claiming that critics are unfairly attacking or ridiculing their religion. In a sense, they try to have it both ways -- cloaking their partisan political views in the garb of religion and appealing to religious tolerance as a defense.

As in 1984, a major source of religious intolerance in politics is the "Candidates Biblical Scoreboard" compiled and distributed by Christian Voice and Biblical News Service. Christian Voice claims that 5 million copies of the Scoreboard were distributed in 1984 and that 20 million copies will be distributed this year.

This year's edition of the Scoreboard is also larger than the previous one and is more ambitious because it includes scores for races for governor, lieutenant governor and state legislatures. This reflects the growing grassroots trend in religious intolerance.

The Scoreboard points to a "disclaimer" saying that the

Scoreboard "is not intended, nor implied, to be a statistical judgment of a person's personal moral behavior or relationship with God." But the whole publication is based on the premise that Christian Voice knows the "biblical" position on current political issues based on a reading of selected passages from scripture. As noted above, this style of debate constitutes religious intolerance and imposes a religious test for office.

The introduction to the Scoreboard, signed by Robert Grant of Christian Voice and David Balsinger of Biblical News Service, adds to the tone of religious intolerance: "The Christian exodus from political involvement during the past 85 years has left most of our government offices and institutions in the hands of amoral or immoral leaders.

"....Although most political candidates claim a Judeo-Christian heritage, it's important to examine carefully their actual position on the biblical-family-moral-freedom issues. Their personal convictions on these issues will determine whether they lead our nation toward or away from Judeo-Christian values.

"...By using our Scoreboard and voting for candidates who support Judeo-Christian values, you will be doing your Christian duty in helping to rebuild our nation and its institutions on the God-given foundation of Biblical truths."

The "Biblical" positions stated in the Scoreboard -- a dozen each in the House and Senate -- include: opposition to the Legal Services Corporation as an agent of "secular humanism"; support for "Star Wars"; a balanced budget constitutional amendment; opposition to "comparable worth" legislation; support for the Contras and elimination of Library of Congress funding for a braille edition of Playboy.

The Scoreboard takes the words of the authors of the Old and New Testaments written for diverse audiences over a period of centuries and purports to find in them direct application to contemporary political issues. For example:

-- The Scoreboard cites Genesis 2:18 ("And the Lord God said, 'It isn't good for man to be alone; I will make a companion for him, a helper suited to his needs'") as the biblical basis for opposing the Equal Rights Amendment.

-- It cites Galatians 5:1 ("It was for freedom that Christ set us free; therefore keep standing firm and do not be subjected again to the yoke of slavery") as the biblical basis for supporting military aid to the Contras in Nicaragua.

-- It cites II Chronicles 19:2 ("Should you give hope to the wicked and love those who hate the Lord? Because of this, indignation shall come upon you") as the biblical basis for

opposing trade with the Soviet Union.

-- It cites Romans I:28-30 ("So it was that when they gave God up and would not even acknowledge him, God gave them up to do everything their evil minds could think of. Their lives became full of every kind of wickedness and sin...They were backbiters, haters of God, insolent, proud braggarts, always thinking of new ways of sinning") as the biblical basis for opposing "secular humanism," which the Scoreboard found in the Legal Services Corporation.

As in the past, ministers in Congress do not score well on the "Biblical Scoreboard": Sen. John Danforth (R-Mo.), an Episcopalian priest, received a 58 percent score, a "failing" grade; Rep. Bob Edgar, a Methodist minister, and Rep. William Gray, a Baptist minister -- both Pennsylvania Democrats -- scored 0.

Members of leading religious denominations in general did not fare well:

-- 107 of 140 Catholics in Congress failed.

-- 32 of 38 Jews failed.

-- 26 of 46 Baptists failed.

Women and minorities did not fare well either:

-- 15 of 19 women in Congress failed.

-- 10 of 11 Hispanics failed.

-- All 20 Blacks failed.

The "Scoreboard's" partisanship is reflected in the fact that 36 of 53 Senate Republicans and 138 of 180 House Republicans passed, while 41 of 47 Senate Democrats and 227 of 255 House Democrats failed.

QUESTIONNAIRES

Candidates' questionnaires are a common tool used by virtually every interest group in the country and as such are legitimate. Interest groups at both ends of the political spectrum circulate such questionnaires, and every candidate receives dozens of them to consider.

But in recent years, a new type of questionnaire has emerged. These don't simply ask a candidate's position on Contra aid or abortion or even "secular humanism"; they ask questions about the candidate's belief in God, relationship to Jesus or

interpretation of the Bible.

Like the Biblical Scoreboard, these questionnaires constitute a form of religious intolerance; they are not designed to obtain information about political positions, but about religious beliefs which have no direct impact on political decisions. They clearly convey the impression that one type of religious belief is politically superior to others.

One organization clearly crossing the line is Pat Robertson's Freedom Council. Its branch in the 4th Congressional District in Georgia sent out a candidate questionnaire which asks, among other things, "Are you a Born-Again Christian?"; "Is Jesus Lord of Your Life?"; "Do you believe the Bible is the infallible Word of God?"

A cover letter signed by John Sauers, Vice Coordinator, says "We are concerned with our elected official's relationship to the God of the Bible which is also the same GOD of the Declaration of Independence, U.S. Constitution, Pledge of Allegiance and all founding fathers of this great nation. We believe that our country needs to turn back to the basic Christian values which these God's men so clearly established in composition of our founding documents. We are not supporting any political party, but we are only seeking each candidate's spiritual beliefs with regard to the God of Abraham, Isaac, Jacob and Jesus Christ."

In Oklahoma, the Christian Action Coalition, composed of local offices of Christian Voice, Pat Robertson's Freedom Council and Oklahomans Against Pornography distributed a questionnaire which asked candidates, "Do you believe that the basic premise of government and of the law is the Bible, rather than the word of any person?"

A questionnaire circulated in Sarasota, Fl., similarly crossed the line while reaching a new plateau in the use of the Bible for partisan political ends. A group called "We the People" took out a full-page ad entitled "Election Guide: A Christian Perspective" in the Sarasota Herald-Tribune. The ad featured a questionnaire which asked questions such as "Are you a Born-Again Christian?"

The ad said: "Many candidates stated they were Christians, but not born again. However, people use the term 'Christian' in many different ways. Therefore, a 'YES' answer to this question was limited to those individuals who said they were 'born again' as discussed in the third chapter of the gospel of John. This question is asked to help voters know which candidates are dependent on God's Word for the wisdom necessary to make their public decisions. Non-Christians usually are limited to making their decisions based on their limited knowledge and common sense."
The "correct" answers to this questionnaire were based on Bible

verses, including the "correct" responses to five questions related to the real estate business -- "Are you in favor of government mandated rent controls (to protect the public) such as in mobile home parks? -- and purported to find a biblical basis for answers. (The correct answer to the rent control question is "No.") As it happens, the head of "We the People" is Scott Carver, president of Creative Reality, Co.

-- In North Carolina, a group called Students for Better Government distributed a questionnaire asking "Can you honestly say that you have a personal relationship with Jesus Christ? How well do you know him?" and "If you answered 'Yes'...would you, if elected, seek God's guidance for your decisions? If no, how would you determine your answers and solutions?"

-- In the 8th Congressional District in Indiana, the Rev. Donald Brooks of a fundamentalist group called The Agora sent local and congressional candidates a questionnaire which included these questions: "If a regular church attender, how many times each month are you in attendance for a regular church service?"; "What is the name of your church and pastor?"; "Have you been or are you now a member of any group considered subversive, anti-God or anti-American?"; "In your opinion, is the Bible 1. A good book 2. A collection of religious writings 3. Literal, inerrant Word of God?"

-- In Arizona, "Footprints," a fundamentalist newspaper distributed free in the Phoenix area, published a "Christian Voting Guide for Primary Election Sept. 9" and promised a similar "Christian Voting Guide" for the general election.

PRAY FOR DEATH

The year 1986 has seen the emergence of the ultimate form of religious intolerance -- Religious Right leaders have been praying for the death of Supreme Court justices and political officials with whom they disagree. Pat Robertson stopped just short of doing this when he told the National Right to Life Committee meeting in Denver that abortion opponents could look to "the wonderful process of the mortality tables" to change the make-up of the court and bring about a new decision on abortion in the same speech in which he called court members "despots." For the first time, a major party congressional candidate has joined the pray-for-death movement. The Rev. Joe Morecraft, a fundamentalist pastor, John Birch Society member and Republican nominee for the 7th District seat in Georgia, said on a local radio program that he prays for God to remove Supreme Court justices who support legal abortion "in any way he sees fit."

Morecraft said "I've prayed God would remove the Supreme Court justices of the United States Supreme Court who have consistently voted for the legalization of abortion on demand several times

and I'll do it in the future, but I'll leave it to God to determine how he wants to do it." (Marietta Daily Journal, July 3, 1986).

The most detailed description of the "Pray-for-Death" approach comes from the Rev. Everett Sileven of Nebraska, who received national notoriety several years ago when he was jailed for refusing to comply with state regulations concerning a Christian school he ran. He began a cause celebre for the Religious Right; Jerry Falwell broadcast a program from Sileven's church.

Sileven says he along with the Rev. Greg Dixon, Indiana Moral Majority leader, and the Rev. Robert McCurry of Atlanta have established a "Court of Divine Justice" in which they pray to God to "judge" public officials they consider "wicked rulers." Sileven claims that as a result of the "Courts of Divine Justice," a tornado hit the city of Fort Worth and the sheriff of the city was injured when he horse bucked and he came down on his saddle-horn; a judge in Oregon had a heart attack and the son of a judge in Washington was seriously injured in an automobile accident. Sileven is planning to hold a session of the courts on the steps of the U.S. Supreme Court in the near future.

Sileven's partner, Greg Dixon, pastor of an 8,000-member church in Indianapolis, has a "Prayer Hit list" of public officials condemned by his "Court of Divine Justice." In Austin, he prayed for the removal of office of Texas Attorney General Jim Mattox "by whatever method, whether it be illness or whether it be death, whatever pleases God." Mattox says he has been harassed by late-night phone calls and has found a dead cat in front of his house.

There are other examples:

** The Rev. Robert Hymers of the Fundamentalist Baptist Church in downtown Los Angeles hired an airplane to carry a banner saying "Pray for death: baby-killer Brennan" as Supreme Court Justice William Brennan, who in 1973 voted with the majority to legalize most abortions, was to deliver the commencement address at Loyola Marymount University. Hymers first released a press release saying his congregation would pray for Brennan's death, but after deciding that would sound like "a lunatic fringe," Hymers merely prayed for Brennan's removal from the court.

But two weeks later, after the court upheld the right of a couple to withhold medical treatment from their handicapped daughter, Hymers prayed for the five justices in the majority -- Marshall, Stevens, Blackmun, Powell and Burger -- to repent, retire or die for their votes. "We will pray that God take the lives of these Hitler-like men from the face of the Earth," Hymers said.

** A group called Americans for Biblical Government, based in

Hyattsville, Md., urged in its newsletter that members offer prayers "For the Supreme Court -- that either their minds be changed or that God would remove them and replace them with men who fear Him."

** The Rev. Tim LaHaye, head of the American Coalition for Traditional Values, said in a October, 1985, newsletter that he was launching a national prayer campaign "for the removal (by any means God sees fit) of at least three of the Supreme Court members while Ronald Reagan is president."

The major danger of the "pray for death" movement was expressed succinctly by Rev. Hymers himself when he backed off of his prayer for the death of Justice Brennan -- "We don't want to put into someone's mind that they should go out and kill him." But that is exactly what Hymers and others have done. By using the same kind of inflammatory rhetoric some in the Religious Right used before the outbreak of bombings at abortion clinics, they run the risk of inciting an unbalanced follower to attempt to do what they think is God's will by trying to kill a public official with whom they disagree.

LYNDON LAROUCHE

The major upset of the 1986 political season occurred in Illinois on March 18 when two followers of extremist Lyndon LaRouche defeated regular party candidates for the Democratic nominations for Lieutenant Governor (Mark Fairchild) and Secretary of State (Janice Hart). LaRouche candidates won a primary for a congressional seat in a heavily Republican district -- Domenick Jeffrey in the 13th District.

LaRouche and his followers call themselves the National Democratic Policy Committee to create the false impression that they are associated with the official Democratic Party. They claim to have fielded candidates in 14 Senate races, 149 congressional races and 7 governor's races and a total of 780 candidates nationwide in 29 states.

LaRouche is a former Leninist who has moved to the extreme right. Conservatives say he is really a leftist, and liberals say he is really a right-winger, but LaRouche operates in an area in which the extreme left and extreme right meet. He is best-known for his bizarre conspiracy theories in which the Queen of England is a drug dealer and Henry Kissinger and Walter Mondale are Soviet agents.

But a key part of LaRouche's agenda consists of classic religious bigotry. He has had friendly contacts with both the racist and anti-Semitic Liberty Lobby and the Ku Klux Klan; his tone became more anti-Semitic after making those contacts around 1974. LaRouche once sued the Anti-Defamation League for libel because

it called him anti-Semitic; in October, 1980, a New York State Supreme Court justice dismissed the suit and said calling LaRouche anti-Semitic was "fair comment" and that the facts in the case "reasonably give rise" to the ADL characterization.

LaRouche believes that there is an international Jewish conspiracy to control the world; it involves Jewish bankers and the drug lobby; prominent Jews installed Hitler; the Holocaust was a Jewish hoax because the Nazis killed "only...about a million-and-a-half" Jews. He has called the ADL "a treasonous conspiracy" against the United States and said it "today resurrects the tradition of the Jews who demanded the crucifixion of Christ." LaRouche has said that there is "a hard kernel of truth" in the Protocols of the Elders of Zion, an anti-Semitic forgery first published in the 19th Century and purporting to reveal a Jewish plot for world domination.

LaRouche believes that the Catholic Church is controlled by the "Anglo-Jesuit penetration" using Georgetown University as a base as part of the international Zionist conspiracy; that British intelligence controls the World Council of Churches, which in turn controls the National Council of Churches, which in turn control U.S. Protestant church bodies. According to Insight, published by The Washington Times, LaRouche believes that the Women's Christian Temperance Union was "a violent cult of ax-wielding lesbians."

Democratic National Committee Chairman Paul Kirk says that since the LaRouche candidates' victories in Illinois, party officials have monitored races closely to expose LaRouche candidates and that they have been defeated in 85 of 85 contested races. But so far five LaRouche candidates have won uncontested races for Democratic nominations:

-- Dominick Jeffrey in the 13th District in Illinois

-- Clem Cratty in the 4th District in Ohio.

-- Joylyn Blackwell in the 21st District in Pennsylvania.

-- Harry Knissen in the 7th District in Texas.

-- Susan Director in the 22nd District in Texas.

For a time Robert A. Patton, a LaRouche candidate, was the only announced candidate for the Democratic nomination for the Senate seat now held by Republican Warren Rudman. Former Massachusetts Gov. Endicott Peabody later won the nomination.

In addition, Mary Jane Shirley, a LaRouche supporter, was elected

to one of nine seats on the Democratic Central Committee in Charles County, Maryland.

LaRouche backers had a major non-electoral victory in California. They gathered enough signatures to place an initiative on the California ballot in November that would redefine AIDS as an infectious disease -- like measles or tuberculosis -- and pressure public health officials to quarantine AIDS victims and those suspected of carrying the virus. Medical officials and politicians across the state have organized a group called Stop LaRouche to fight the initiative, which opponents say has no justifiable public health purpose. LaRouche backers gathered 683,576 signatures, nearly twice the number necessary to qualify the initiative for the ballot, but many of the signatures were collected by LaRouche workers carrying signs that said only "Sign here to help stop AIDS."

A bipartisan coalition of political, civic and religious leaders including both party's candidates for governor, the state council of churches and the state's Catholic bishops campaigned against the AIDS initiative.

The initiative lost by a 2-1 margin. All LaRouche candidates lost: Jeffrey had 28% of the vote; Cratty had 19% of the vote; Blackwell had 19% of the vote; Knissen had 12% of the vote; Director had 27% of the vote.