VOICE OF REASON

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Bork Supreme Court Confirmation Rated Tossup

Senate confirmation of Robert Bork's nomination to the Supreme Court is rated a tossup as we go to press on the eve of the Senate Judiciary Committee's hearings on Bork's fitness. Of 142 nomintions to the Supreme Court since George Washington's first administration, 34 (24%) have been rejected or withdrawn, about a third of them for ideological reasons. While the president may nominate anyone to serve on the Supreme Court, all appointments must be either approved or rejected by the Senate.

Bork's nomination has been endorsed by Jerry Falwell and many ultraconservative groups and publications, such as William Buckley's *National Review* and *Human Events*. The public affairs committee of the Southern Baptist Convention endorsed Bork in August.

Among the many organizations opposing the Bork nomination are Americans for Religious Liberty, American Civil Liberties Union, Board of Homeland Ministries of the United Church of Christ, American Jewish Congress, B'nai B'rith Women, Catholics for a Free Choice, Episcopal Women's Caucus, National Council of Jewish Women, United Methodist Women, Union of American Hebrew Congregations, AFL-CIO, American Association of University Women, American Federation of State, County, and Municipal Employees, American Federation of Teachers, Common Cause, United Auto Workers, Leadership Conference on Civil Rights, Mexican American Legal Defense and Education Fund, the NAACP, the National Abortion Rights Action League, National Association of Social Workers, National Council of Senior Citizens, National Education Association, National Organization for Women, Organization of Chinese Americans, People for the American Way, Planned Parenthood Federation of America, Public Citizen.

Although the Reagan administration is trying to portray Bork, currently a judge of the U.S. Court of Appeals in the District of Columbia, as a "moderate," Bork's long trail of speeches, writings, and court rulings make clear that he is a rigid ideologue with a "moral majority" mentality and far to the extreme right of the Supreme Court moderate, Lewis Powell, whose vacancy he hopes to fill. His confirmation would throw the Supreme Court off balance until the next century. At present the Court is evenly divided between justices friendly to the Bill of Rights (Brennan, Marshall, Stevens, Blackmun) and those who are in varying degrees unfriendly to it (Rehnquist, White, O'Connor, Scalia).

In a series of speeches in 1984 and 1985 Bork insisted that "the major freedom of our kind of society is the freedom [of majorities or pluralities] to have a public morality." By this Bork means the "freedom" of a legislature to impose majority moral or religious views on everyone, as in the case of birth control or abortion. Bork declared at Canisius College in October 1985 that, "The Bill of Rights is itself a way of privatizing some aspects of

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Public Schools Win Textbook Rulings

Religious radical right attacks on public schools were rebuffed in major rulings by federal appeals courts in Cincinnati and Atlanta on August 24 and 26.

The Sixth Circuit U.S. Court of Appeals in Cincinnati overturned a lower federal court ruling in *Mozert v. Hawkins County Board of Education,* which had ruled that several fundamentalist families could opt their children out of elementary English classes in Church Hill, Tennessee, which offended the parents' religious views. The Sixth Circuit also overturned the lower court's award of $51,000 to the fundamentalist plaintiffs to reimburse them for private school tuition and other expenses.

In Atlanta the Eleventh Circuit U.S. Court of Appeals overturned Mobile, Alabama, federal judge Brevard Hand's ruling in *Smith v. Board of School Commissioners of Mobile County.* Hand had ruled that 44 elementary social studies and secondary U.S. history and home economics textbooks teach "the religion of secular humanism" and thus violate the First Amendment's no establishment clause.

Americans for Religious Liberty had joined *amicus curiae* briefs in both cases.

A curious irony in the two cases is that the Tennessee fundamentalist plaintiffs complained that textbooks said too much about religion, while the Alabama plaintiffs said there was too little religion. Another difference between the two cases was that district court judge Thomas Hull in Tennessee found no fault with the textbooks but allowed the offended parents to opt their children out of classes using the books in question, while in Alabama district court judge Brevard Hand ruled the textbooks to be unconstitutional. Hand had held that the relative scarcity of material about religion was equivalent to teaching "secular humanism." Hand had even held that the presence of "foul language" in a textbook story was arguably the "advancement of humanism, secularism, or agnosticism."

In ruling against the Tennessee plaintiffs, the appeals court in Cincinnati noted that, "the plaintiffs' own testimony casts serious doubt on their claim that a more balanced presentation [about religion] would satisfy their religious views," and added, "The

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Our Secular Constitution

September 17 marks the 200th anniversary of the completion of the drafting of the United States Constitution. Despite its faults (tolerance of slavery, no mention of women, etc.), the Constitution has endured as the best blueprint for a democratic government for a diverse, pluralistic people ever to be put into practice.

Although Jerry Falwell's ideological kinsmen like to read some of their religious views into the Constitution, the plain truth of the matter is that the Constitution is a secular document intended to set up a secular government, one neutral toward all religions.

Unlike the claims of many governments of the past to rule "by the grace of God," the United States Constitution states that our federal government derives its "just powers from the consent of the governed," as the Declaration of Independence stipulated. "We the People," the Constitution begins, "do ordain and establish this Constitution for the United States of America" for certain specified secular purposes: "to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."

The Constitution gave the federal government no authority whatever to meddle with religion, to tax citizens for the support of religion, or to interfere with freedom of expression and other liberties, which is why the Framers did not consider it necessary to include a bill of rights in the original document. Public pressure, however, led the Framers to promise that a bill of rights would be high on the order of business of the first Congress if the new charter were ratified.

In the original Constitution the only mentions of religion are in Article VI, where religious tests for public office are prohibited and where all federal and state office holders are permitted to substitute an affirmation for an oath, in deference to the conscience claims of Quakers and others to exemption from oath-taking.

Getting ahead of our story, the First Amendment, ratified four years later, prohibited federal government action or laws "respecting an establishment of religion or prohibiting the free exercise thereof," thus erecting a "wall of separation between church and state," as Jefferson explained it in 1802. Finally, the Fourteenth Amendment, pressed after the Civil War, applied the Bill of Rights to state and local government.

It is unfortunate that some of our highest officials—President Reagan, Attorney General Meese, Chief Justice Rehnquist—want to read into the Constitution and Bill of Rights ideas that the Founders/Framers rejected, such as the notions that government may provide "nonpreferential" aid to all religions, that government agents should have the power to regiment our children in religious activities, and that there is no constitutional right to be let alone by government in private moral decisions that do not violate the equal rights of other persons.

Although the Constitution is not perfect, it is the best we are likely to get. And it can be and has been amended from time to time to extend rights or improve the structure of government.

The Constitution faces two serious challenges today. One is the threat of a new constitutional convention, which Congress must call if 34 state legislatures pass the requisite resolutions. To date 32 have done so, though most of them did so without adequate hearings or debate. The danger is, as Madison himself warned two centuries ago, of a runaway convention which would change the Bill of Rights to allow all sorts of violations of the liberties we have come to take for granted.

The other danger is that President Reagan will succeed in packing the Supreme Court and lower federal courts with judges unfriendly to religious liberty, church-state separation, the right to privacy, and other liberties. That is why the Senate contest over confirmation of Robert Bork to the Supreme Court is so important. Bork would very probably tip the balance of the Court against individual liberties. Bork has ranted for years about the importance of giving "moral majorities" the right to impose their view on everyone else.

Those who love our Constitution and Bill of Rights should do all they possibly can to prevent a new constitutional convention and to get the Senate to block the Supreme Court nomination of Robert Bork or any other person hostile to our basic liberties.

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Americans for Religious Liberty is a nonprofit public interest educational organization dedicated to preserving the American tradition of religious, intellectual, and personal freedom in a secular democratic state. Membership is open to all who share its purposes. Annual dues are $20 for individuals; $25 for families; $10 for students and limited income.

Bork Confirmation, *continued from page 1*

morality," and asserted in another speech that "the enforced privatization of morality deprives most individuals of freedom," i.e., the "freedom" to impose by law a "moral majority" morality. In a 1985 speech at West Point, Bork spoke of the "right, found in the Constitution, of the rest of us to legislative about our . . . moral environment." With such a view, it is no wonder that Bork has been endorsed by Mr. Moral Majority himself, Rev. Jerry Falwell.

In a Brookings Institution speech in September 1985 Bork said that one of the tests which the Supreme Court has devised to determine whether an enactment is constitutional under the establishment clause of the First Amendment, whether the enactment creates an "excessive entanglement between religion and government" (a test promulgated by conservative former Chief Justice Burger), is "obviously designed to erase all traces of religion in governmental action, to produce as [ultraconservative propagandist] Richard John Neuhaus put it, a 'public square naked of religious symbol and substance'." In a 1984 University of Chicago speech, Bork expressed support for the notion that "the first amendment was not intended to prohibit the nondiscriminatory advancement of religion." However, the recently published *Religious Liberty and the Secular State,* by John M. Swomley, and *The Establishment Clause,* by Leonard Levy, show clearly that the framers of the First Amendment intended to prohibit nonpreferential, nondiscriminatory government aid, especially financial aid, to religion. As he shows elsewhere, Bork does not understand that the "original intent" of the Framers of the Constitution and Bill of Rights really was, as Jefferson pointed out, to "build a wall of separation between church and state." Church-state separation is not hostile to religion; it protects religion from government.

Bork told a 1982 New York University Law School audience that the Supreme Court erred in the 1962 *Engel v. Vitale* ruling, which held that public school officials could not require students to recite a state-sanctioned prayer. At his 1985 Brookings appearance, Bork indicated that he saw nothing wrong with a teacher calling on a student for a devotional reading of scriptures of a different religion. At the same meeting, Bork sharply criticized the Supreme Court's 1985 ruling in *Aguilar v. Felton,* which held unconstitutional placing public school teachers in sectarian private schools. Bork also called for "a relaxation of current rigidly secularist [Supreme Court] doctrine" in order to allow tax aid to sectarian schools and "the reintroduction of some religion into public schools and some greater religious symbolism in our public life." Since public schools may now offer academic instruction *about* religion, and since individual students have never lost the right to engage in personal, private prayer, Bork seems to have in mind the reintroduction of sectarian religion into public schools and government intrusion into the area of religion.

The Bill of Rights, Bork has stated, is a "hastily drafted document upon which little thought was expended." He has also said that the Fourteenth Amendment, which applies most of the Bill of Rights to state and local government, was something most of those who voted for it "had not even thought . . . through." Bork apparently ignores the record of the congressional deliberations on these vital amendments because he does not approve of their full application.

Bork has argued that the Supreme Court was wrong in its rulings explaining constitutional privacy rights. He has sharply criticized the 1965 ruling in *Griswold v. Connecticut* that a state law banning use of contraceptives by married couples violated the constitutional right to privacy, as well as the 1973 *Roe v. Wade* ruling that the right to privacy covers a woman's right to choose to terminate a problem pregnancy. Bork believes, in other words, that legislatures should have the power to decide whether people can practice birth control and whether women can be forced to bear children against their will.

Bork wrote in the *Indiana Law Journal* (Fall 1971) that the First Amendment guarantee of freedom of speech applies only to "explicitly political speech," but not to "scientific, educational, commercial or literary expressions as such." In an interview with *Conservative Digest* in 1985 Bork said he agreed with the views he expressed in the 1971 article.

Bork has criticized the Supreme Court's 1962 ruling requiring that both houses of state legislatures be apportioned according to population. He evidently believes that a state legislature may be organized in such a way as to give some voters far greater weight than others.

A report by the Public Citizen Litigation Group (2000 "P" St., NW, Suite 700, Washington, DC 20036, $8), *The Judicial Record of Judge Robert H. Bork,* analyzed Bork's record on the D.C. Circuit Court of Appeals and concluded:

"Judge Bork's performance on the D.C. Circuit is not explained by the consistent application of judicial restraint or any other judicial philosophy; instead in split cases, one can predict his vote with almost complete accuracy simply by identifying the parties in the case. In split cases where the government is a party, Judge Bork voted against consumers, environmental groups, and workers almost 100% of the time and for business in every such case. In 14 split cases, Judge Bork denied access to the courthouse every time; among the many losers was the U.S. Senate, which, according to Judge Bork's dissent, could not bring a case of major constitutional significance to the federal courts. Judge Bork is far less a friend of the First Amendment than some have suggested, as evidenced by four cases in which he voted against the First Amendment claims of political demonstrators. On several occasions, Judge Bork's colleagues have been extremely critical of him for misinterpreting Supreme Court precedent and going beyond the facts of a particular case. Judge Bork generally adhered to the policy [of judicial restraint] only in cases brought by individuals or organizations other than a business."

According to the Public Citizen report, Bork sided with government over individuals and public interest groups in 24 out of 26 split decisions, for business over government in 8 out of 8 split decisions, and against access to the federal courts in 14 out of 14 split decisions. "In summary, when split cases in which Judge Bork participated during his five years on the D.C. Circuit are combined, on 48 out of 50 occasions (or 96% of the time) Judge Bork voted to deny access, voted against the claims of individuals who had sued the government, or voted in favor of the claims of businesses which had sued the government." The report analyzed only split rulings because unanimous rulings in a court rather evenly divided between liberals and conservatives are generally noncontroversial and tell little about a judge's views. (Bork supporters have noted that Bork voted with his liberal Court of Appeals colleague Judge Ruth Bader Ginsburg in 90% of the cases decided by the Court of Appeals. However, 86% of that court's rulings were unanimous. In split decisions Bork voted with the liberal judges only about 12% of the time.)

Back in 1973, during the Watergate investigation, President Nixon ordered Attorney General Richardson to fire special prosecutor Archibald Cox. Richardson refused and resigned his

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post. So did Assistant Attorney General Ruckelshaus. Solicitor General Robert Bork fired Cox and did not resign. In the only litigation on the matter, *Ralph Nader v. Bork,* federal judge Gerhart Gesell said that, "The discharge of Mr. Cox precipitated a widespread concern, if not lack of confidence, in the administration of justice." Judge Gesell held that, "the firing of Archibald Cox in the absence of a finding of extraordinary impropriety was in clear violation of an existing Justice Department regulation having the force of law and was therefore illegal."

When asked by Bill Moyers in a May 1987 interview what he thought of the Ninth Amendment ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."), Bork evaded a straight answer.

Robert Bork, it is fair to conclude, is not a moderate. He is not in the mainstream of judicial philosophy. He stands the principles of the Declaration of Independence on their head with his oft-repeated preference for the power of government and majorities over the rights of individual citizens. Bork's views appear to be held so strongly that, if confirmed by the Senate, he would very probably join Rehnquist, White, Scalia, and possibly O'Connor in voting to overturn well-established Supreme Court rulings vindicating basic constitutional liberties.

Organizations opposing the Bork nomination are stressing the importance of all concerned citizens writing or phoning their Senators to urge them to reject Bork. Letters can be addressed to: The Honorable _____, U.S. Senate, Washington, D.C. 20510.

Textbook Rulings, *continued from page 1*

tolerance of divergent . . . religious views" referred to by the Supreme Court is a civil tolerance, not a religious one. It does not require a person to accept any other religion as the equal of the one to which that person adheres. It merely requires a recognition that in a pluralistic society we must 'live and let live'." The court concluded: "We . . . hold . . . that the requirement that public school students study a basal reader series chosen by the school authorities does not create an unconstitutional burden under the Free Exercise Clause when the students are not requireed to affirm or deny a belief or engage or refrain from engaging in a practice prohibited or required by their religion."

In the Alabama case the appeals court in Atlanta declined to offer a definition of religion, but said that "we find that, even assuming that secular humanism is a religion for purposes of the establishment clause, Appellees [the fundamentalist plaintiffs] have failed to prove a violation of the establishment clause through the use in the Alabama public schools of the textbooks at issue in this case."

The appeals court held that the district court was wrong in concluding that "the home economics, history, and social studies textbooks both advanced secular humanism and inhibited theistic religion." The court added that "use of the challenged textbooks has the primary effect of conveying information that is essentially neutral in its religious content to the school children who utilize the books; none of these books convey a message of governmental approval of secular humanism or governmental disapproval of theism."

The home economics books, the appeals court found, do not endorse "secular humanism or any religion. Rather, the message conveyed is one of a governmental attempt to instill in Alabama public school children such values as independent thought, tolerance of diverse views, self-respect, maturity, self-reliance and logical decision-making. This is an entirely appropriate secular effect. . . . Nor do these textbooks evidence an attitude antagonistic to theistic belief."

On the history books the court said, "There is simply nothing in this record to indicate that omission of certain facts regarding religion from these textbooks of itself constituted an advancement of secular humanism or an active hostility towards theistic religion prohibited by the establishment clause."

While educational, religious, and civil liberties groups supported the public schools in the two cases, the fundamentalist plaintiffs in the Tennessee case were supported by the "moral majoritarian" group Concerned Women of America and those in Alabama by the National Legal Foundation, founded by televangelist Pat Robertson.

Books, etc.

The Establishment Clause: Religion and the First Amendment, by Leonard W. Levy (Macmillan Publishing Co., 236 pp., $16.95), like ARL president John Swomley's *Religious Liberty and the Secular State,* is an eloquent, authoritative response to the Rehnquist-Meese-Falwell-Catholic bishops campaign to twist the First Amendment to allow nonpreferential government support to all religions. Levy shows that, "To the generation that adopted the First Amendment an establishment had also come to mean, in the main, the financial support of religion generally, by public taxation," and that the establishments still surviving in 1789 in several states were multiple or nonpreferential establishments. He makes clear that the Framers agreed with Alexander Hamilton's 1775 view that "an established religion" is "a religion which the civil authority engaged, not only to protect, but to support." The Levy and Swomley books are must reading for lawyers litigating establishment clause cases, and for others who are concerned about extremist efforts to undermine the First Amendment.

The only flaw in Levy's book is his apparent willingness to allow some tax aid to sectarian private schools in the interest of social compromise. He seems unaware that such aid would generate Fourteenth Amendment and public policy problems with which he does not deal.

Toward Benevolent Neutrality: Church, State, and the Supreme Court (Third Edition), by Robert T. Miller and Ronald B. Flowers (Baylor University Press, P.O. Box 6325, Waco, TX 76706, 612 pp., $36.00), contains edited texts of all of the Supreme Court's major rulings on religious liberty and church-state relations, together with introductory and explanatory material. Includes texts of Jefferson's Bill for Establishing Religious Freedom and Madison's Memorial and Remonstrance Against Religious Assessments. Up-to-date to the beginning of 1987, this hefty volume is an extremely useful tool for lawyers, scholars, and interested laypersons.

Religion in Public Education

"Educators call for end of silence on religion in nation's classrooms." That and similar newspaper headlines point up the growing "demand" being built up for public schools to "do something" about religion. While there is little evidence for appreciable grass roots demand for teaching about religion in school, opinion polls have registered solid approval for teaching or promoting values in schools. Though related in intricate ways, however, teaching about religion and promoting ethical or moral values are two different things and pose different sets of problems for educators.

It is true that religion is not adequately dealt with in public schools (or, it might be added, in the media or anywhere else). Psychologist Paul Vitz produced a study for the Reagan administration ostensibly to document the charge, though scholars have found his work sloppy and Vitz himself has an ax to grind: he dislikes public education and favors tax support of sectarian private schools. A study of textbooks by People for the American Way also found inadequate attention to religion. Meanwhile, the Alabama textbook censorship case (Judge Brevard Hand ruled in March 1987 that 44 textbooks slighted religion and therefore were "teaching secular humanism," a ruling overturned in August by a federal appeals court) has further highlighted the sparse treatment of religion in school.

But rather than being the result of some dark conspiracy against or hostility toward religion, the slighting of religion in public schools stems from a justifiable fear on the part of educators and textbook publishers of handling a very hot, controversial potato, from lack of real demand for academic study of religion, and from simple lack of agreement as to precisely what should be taught.

In the most recent development, the Association of Supervision and Curriculum Development has just released a report and recommendation on *Religion in the Curriculum* (ASCD, 125 N. West St., Alexandria, VA 22314, 36 pp., $6.00). The report deplores the slighting of religion in social studies and literature classes, and notes that the Supreme Court in the 1963 *Schempp* school prayer ruling said that objective, neutral, academic study of religion in public schools is both advisable and constitutional.

The ASCD report suggests that educators must be committed to pluralism and democracy, that religion is not "too hot for them to handle in an informed, descriptive, and impartial way," that schools should respect the beliefs students bring with them from home, that teaching materials should be "accurate, objective, honest, fair, and interesting," that educators should carefully avoid usurping the religious role of the family and the family's religious institution(s), and that study about religion should be included in the core curriculum.

The ASCD study recommends that textbook selection committees should require in all curricular materials fair, factual, "adequate treatment of diverse religions and their roles in American and world culture and to include appropriate religious and moral themes in literary and art history anthologies"; teachers should have both substantive and methods training to deal with religion; educator organizations should promote "public support for the teaching of rigorous, intellectually demanding accounts of religion in society, particularly in American society."

The ASCD recommendations are all right as far as they go. But the report does not come to grips with the enormous complexity and difficulty of the subject.

Fair, factual, and adequate teaching about religion means, of course, that the teaching should be comprehensive and present a balanced picture of the bad as well as the good. In world history and, to an extent, in U.S. history, schools would have to deal with such thorny subjects as how to treat the Jewish, Christian, Muslim, and other scriptures; Catholic and non-Catholic differences over the development of the papacy; syncretism in the history of Christianity; the extermination of the Albigensians and persecution of the Waldensians; the Inquisition; Calvin's Geneva; the religious wars after the Reformation; the unpleasant facets of the Crusades; the wars between Christians and Muslims; the long history of anti-Semitism and other often murderous forms of bigotry; the role of religion in social and international tensions; the conflicts between religion and science; the religion-related "troubles" in Northern Ireland; the role of religion in French, Spanish, and other European colonizations; religion and the Vietnamese quagmire; religion and liberation theology in Latin America; religion in the Spanish Civil War and World War II. And these are just some of the problems in world history that would require fair, factual treatment.

In U.S. history, some of the equally thorny issues would be native American religion; French and Spanish missions; the European religious background of migration to North America; the execution of Quakers in and expulsion of Anne Hutchinson from Massachusetts; Salem witchcraft trials; colonial establishments of religion and bigotry; revivalism; Deism; anti-Catholicism; anti-Semitism; pacifism; the evolution of religious liberty and church-state separation; the history of various denominations and movements; denominations and religions founded in the U.S.—Christian Science, the "Campbellite" churches, Shakers, Mormonism; new religions—Unification Church, Hare Krishna movement, Scientology; "deprogramming"; religious utopian experi-

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ARL in Action

Since our last report, ARL president John M. Swomley and executive director Edd Doerr spoke at a workshop on church-state issues at the ACLU biennial in Philadelphia in June. Swomley spoke at Rockhurst College in Kansas City. Doerr spoke on church-state issues at the American Humanist Association conference in Montreal, at a Refuse and Resist conference in New York, in churches in Dallas, Indianapolis, and Rockville, MD, and at American University. Associate director Maury Abraham conducted a workshop at the Unitarian Universalist General Assembly in Little Rock.

Since June 1 Doerr has been a guest on radio talk shows on KOA and KNUS, Denver; WORT, Madison, WI; WHIS, Middletown, CT; KXLY, Spokane; WWDB and WDVT, Philadelphia; WTOP, WDCU, and WNTR, Washington, DC; WWJY, Crown Point, IN; WTAC, Flint, MI; KGIL and KABC, Los Angeles; WTUX and WTPI, Indianapolis; KFDO and KSDO, San Diego; WCKY, Cincinnati; WOAI, San Antonio; WNWS, Miami; WBZ, Boston; KBFA and KPSA in Berkeley; WQBX, Albany, NY; WALE, Fall River, MA; KIRO, Seattle; WAMJ, South Bend, IN; KCBI, KNON, and KLIF, Dallas; WKIS, Orlando.

ARL Abortion Rights Conference a Success

On May 30 in Washington, Americans for Religious Liberty sponsored the first interdisciplinary conference on "Fetal 'Personhood,' Brain Development, and the Abortion Rights Issue: Scientific, Ethical, and Legal Perspectives." More than three years in planning, the conference was put together to examine the question of fetal "personhood" because the claim that fetuses are persons from the earliest stages is the basis for the political/propaganda campaign to outlaw or restrict abortion.

Only a brief summary of the richly productive conference can be reported here, due to space limitations, but ARL is planning to have all of the conference papers published in book form.

Marjorie Reiley Maguire, Catholic theologian and consultant to Catholics for a Free Choice, said that government should protect a woman's right to free choice on abortion regardless of when "personhood" begins. She decried the reductionist view that a mere "genetic package" at conception is a person, and expanded on her view that "the touchstone of personhood is sociality in our human community," that biology necessarily provides the physical substrata for personhood but that a woman may subjectively attribute personhood to a fetus at any point, and, finally, that government must allow the woman the final say in the determination of whether to continue a pregnancy.

Paul Simmons, professor of Christian ethics at Southern Baptist Theological Seminary, scored anti-choice fundamentalist misuse of the Bible and showed that both the Jewish and Christian scripture are silent on abortion. He noted that a biblical perspective supports the view that "personhood" implies the "God-like" capacity for consciousness, introspection, self-transcendence, choice-making. He concluded that government imposition by law of a minority theory of "personhood" is not compatible with our constitutional principles of individual religious liberty.

Attorney Judith Rosen showed how woman's rights and bodily integrity are being threatened by some state legislatures and lower courts in the supposed interests of fetal welfare. She noted that courts have forced at least 21 women to have Caesarian sections and that women can be sued for damages for "prenatal negligence." Yet, she pointed out, the same lawmakers neglect to set up or fund programs for prenatal medical care.

Janet Benshoof, director of the ACLU Reproductive Rights Project, expanded on Rosen's theme. She showed that notions of fetal personhood are being used to void "living wills" and to deny women employment in certain industries rather than cleaning up workplace health hazards.

Luncheon speaker Fredrica Hodges, executive director of the Religious Coalition for Abortion Rights, highlighted the importance of educating the public "to the fact that within mainline religious America there exists a wide range of theological perspectives on the abortion issue." She criticized the misuse of religion by anti-choice activists and the "bogus clinics" operated by anti-choice people which are victimizing pregnant women with misinformation and propaganda.

Michael J. Flower, professor of biology at Lewis and Clark College, discussed the relevance of neurobiological development to the "personhood" question. He agreed with theologian Maguire that a certain level of neural development is needed to provide the physical basis for "personhood." The part of the brain needed for consciousness, the neocortex, does not have its component cells in place until 20 or 21 weeks of gestation (and 99% of all abortions are done before that stage), but the "wiring into place" of the neocortical neurons does not take place until 28 to 32 weeks. Flower acknowledged that there is early fetal movement but said that it cannot be intentional.

Michael Bennett, chairman of the Department of Neuroscience at Albert Einstein College of Medicine, agreed with Flower and commented that although a fetus begins some learning before birth, such as to recognize the sound of its mother's voice, it is still not a person. Nor is personhood, except in the legal sense, acquired at a particular moment; rather, it develops over a period of a number of months after birth.

Lynn Morgan, assistant professor of anthropology at Mt. Holyoke College, reviewed the extraordinary diversity of definitions of personhood in various cultures, showing that there has never been a fixed or absolute definition of personhood. Personhood, she said, is a social and legal concept and not a scientific category. In our culture we "equate biological birth with social birth." She noted that social birth rites serve the purpose of conferring moral status on and granting social protection to infants or young children.

Leigh Minturn, professor of psychology at the University of Colorado, examined the history of abortion and infanticide in Western Christian society and showed that both were common and tolerated. She agreed with Maguire that the law should allow each woman to decide for herself when to attribute personhood. Minturn concluded that "if you stop decent contraception you get abortion. If you stop abortion you get infanticides. If you stop infanticide you get child neglect and indirect infanticide, and the primary course cause of death of children in the United States before the age of ten is parental neglect."

Neuropsychologist James W. Prescott, who helped to plan the conference, reported on his studies of voting patterns in the U.S. Congress and Canadian Parliament. He concluded that lawmakers who vote against free choice are far less likely than pro-choice legislators to vote for school lunch programs for children and for medical use of narcotics for dying cancer patients, and far more likely to vote for capital punishment and contra aid. His studies of primitive cultures showed similar relationships.

ARL's Distinguished Service Award was presented at the conference to Patricia A. Jaworski for her production of the audio documentary, *Thinking About the Silent Scream,* which featured interviews with scientists Isaac Asimov, Michael Bennett, Clifford Grobstein, Patricia Goldman-Rakic, and Dominic Purpura on fetal "personhood" and abortion rights. The documentary is a response to the anti-choice propaganda film *The Silent Scream.*

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We depend on our members and readers to send us clippings of news items, editorials, columns, and letters to editors, as commercial clipping services are prohibitively expensive.

When you see an item in a newspaper, magazine, or professional journal you feel is relevant, please cut it out (or photocopy it), indicate the date and source, and send it to ARL, Box 6656, Silver Spring, MD 20906.

MOVING?

Send both old and new addresses, with both old and new zip codes, to **ARL, Box 6656, Silver Spring, MD 20906.**

Resources

Available from ARL, Box 6656, Silver Spring, MD 20906.

Religious Liberty and the Secular State, by John M. Swomley. A clearheaded, authoritative response to the Rehnquist and other revisionist attempts to discredit church-state separation. ($15.95 hardcover, $10.95 paperback, plus $1.50 for postage and handling.)

Religion, the State and the Burger Court, by Leo Pfeffer. A comprehensive up-to-date examination of the whole range of church-state issues by the dean of constitutional authorities on religious liberty. An indispensable resource for layperson and lawyer alike. ($22.95 plus $2 for postage and handling.)

American Freedom and the Radical Right, by ARL co-founder Edward L. Ericson. An excellent guide to the aims and methods of the movement bent on "piecemeal repeal of the Bill of Rights." ($4.95 plus $1 for postage and handling.)

James Madison on Religious Liberty, edited by Robert S. Alley. Madison's own writings plus authoritative essays analyzing their importance. ($20.95 plus $2 for postage and handling.)

Religion and the State, edited by James E. Wood, Jr. A 596-page treasury of essays on every aspect of religious freedom, published as a tribute to Leo Pfeffer, dean of church-state constitutional lawyers. ($30, plus $2 for postage and handling.)

Crusade of the Credulous, by William J. Bennetta. A collection of articles about "creationism" and the effects of that fundamentalist movement on public education. ($2 plus $1 for postage and handling.)

Public Funds and Private Schools, by ARL executive director Edd Doerr (50¢ each, 10 for $4.00. Postage and handling included).

Does Religion Belong in Our Public Schools? Reprint of Edd Doerr's September 1987 *USA Today* article on school prayer, "creationism," "secular humanism," censorship, "equal access," missionaries in public schools. (50¢ each, 10 for $4.00. Postage and handling included.)

The Case Against Robert Bork, by Edd Doerr. Summary of objections to Bork's nomination to the Supreme Court. (60¢ each, 10 for $2.50, 50 for $10. Postage and handling included.)

Update

Reproductive Rights

The Reagan administration campaign against reproductive freedom has accelerated with promulgation of new rules for the $142.5 million Title X (of the 1970 Public Health Services Act) federal family planning program. The new rules, bypassing Congress, will prohibit clinics receiving Title X funding from even mentioning abortion as a legal option in counseling women with unwanted pregnancies, and from referring clients to an abortion clinic even if they request such help. Also, clinics offering federally funded birth control counselling and privately funded abortion services must have separate sites for each activity.

Health care professionals believe that withholding legal information about abortion from clients is unethical and also a violation of free speech, while requiring physically separate facilities for counseling and abortions will make both services more expensive. Many clinics would be forced to give up federal funding rather than deny clients adequate services. The result of the new Reagan rules will be to reduce family planning counseling and thus increase the demand for abortion. Family planning groups will ask either Congress or the courts to void the rules. About 800,000 unintended pregnancies are now averted annually by Title X programs. None of the Title X funds are used for abortions. Title X now funds about 4,000 clinics serving 4.3 million women per year, 85% of whom are poor and/or adolescent. State and local health departments serve 40% of the people getting Title X help, Planned Parenthood clinics serve 27%, hospitals 13%, and other nonprofit centers the rest.

In other action, President Reagan, not content with cutting off federal funding for abortions, has asked Congress to forbid the District of Columbia from using its own funds to pay for abortions for poor women. Illinois governor James Thompson in August vetoed a bill that would have ended teenager access to contraceptives at public school health clinics. In June Alabama governor Guy Hunt (who is a Primitive Baptist preacher) signed into law a bill to require minors to have parental permission before having abortions. Although more than half the states have parental consent laws, the statutes in 17 states are not enforced, are under court challenge, or have been ruled unconstitutional.

An Alabama woman, Kathryn Wood, has won a $117,500 judgment against a Catholic priest, Rev. Edward Markley, who injured her in an attack on a Huntsville abortion clinic. Markley was sent to prison for attacks on two clinics. Wood is asking the state supreme court for $25 million from the Catholic Church, which she says is responsible for Markley's attack.

In July a priest and 13 other persons were arrested for blocking the entrance to a Montclair, NJ abortion clinic.

Chicago Creche Ruled Unconstitutional

Chicago's controversial Christmas nativity display in the City Hall is unconstitutional, according to an August ruling by the U.S. Seventh Circuit Court of Appeals. The appeals court overturned a November 5, 1986, federal district court ruling upholding the religious display.

The suit, *American Jewish Congress v. City of Chicago,* was brought by several Jewish organizations and Jewish and Catholic individuals. The ACLU of Illinois and Americans for Religious Liberty joined in an *amicus curiae* brief in the case on the side of the plaintiffs.

The appeals court ruled that, "A creche in City Hall thus brings together church and state in a manner that unmistakably suggests their alliance," and that, "the display at issue in this case advanced religion by sending a message to the people of Chicago that the city approved of Christianity."

Falwell's Funny Finances

Jerry Falwell's Moral Majority and Liberty Federation, both political organizations, shifted more than $6.7 million to his other ministries over a recent 3-year period, according to an August 23 report by the Lynchburg *News and Daily Advance.* Falwell said that many who give to his political groups would not have given directly to his religious organizations. Falwell said that one person donated $1 million to Moral Majority specifically designated for "political science and political activities" and "we sent it across the street" to a religious organization. The Lynchburg paper also reported that of the $24 million collected by Falwell's political operations from 1984 to 1986, "financial records for the three previous years ending in August 1986 show no substantial [political] organizing or lobbying." According to Falwell biographer and White House domestic policy analyst Dinesh D'Souza, Falwell provides "rhetorical leadership."

Falwell's operations have started paying back taxes of $1.85 million to

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Religion in Public Education

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ments; religion on both sides of the slavery issue; Black religion; non-Western religions in the U.S.; nativism; the temperance movement; the controversy over evolution and other conflicts between religion and science; religion and welfare programs; contemporary church-state problems; religious conflict and abortion rights; religoin, war, and conscientious objection; the modernist-fundamentalist debate; important theologians; religion and the Vietnam War; women and religion; religion and the civil rights movement; religion in public education; the relation between religion and values, daily life, and behavior; the new Religious Right and politics; the "unchurched"; liberal religion and Humanism.

Are educators and textbook publishers ready to deal with these issues fairly and factually? Will most parents go along with factual treatment of these issues? Will religious leaders? At what grade levels will these issues be dealt with? As crowded as the social studies curriculum is—and critics point out that U.S. history and world history are presently poorly taught (and all too often by coaches with little interest in teaching)—where will all this vast amount of material fit?

What about teacher preparation and certification? Will schools erect firm safeguards against proselytizing or slanting of material?

The Association for Supervision and Curriculum Development has madde a good start at approaching the subject of religion in the curriculum. But it's obvious that a great deal more needs to be done.

On the subject of values we have another sticky issue. Schools cannot avoid teaching values, so it's a question of which values are taught. Without going into great detail most of us should be able to agree that there are common, civilized, democratic values which can and should be taught—through example and through the curriculum. There are common values which peoples of all religious and ideological persuasions should be able to agree on, values embodied in the Declaration of Independence, the Constitution, the Bill of Rights, and ethical teachings of most religions and life stances.

Educators and all citizens should concern themselves with the question of values education. As for teaching about religion, we should avoid rushing into something so serious without extreme caution and adequate preparation.

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the city of Lynchburg at the rate of $50,000 per month. Falwell's various ministries took in more than $91 million in the year which ended June 30 and spent $85 million. The balance went to paying of debts estimated to total $52 million.

Creationism Redux

Although Louisiana's equal-time-for-creationism law was ruled unconstitutional, the battle to protect the integrity of public school science teaching is not over. The Institute for Creation Research, a fundamentalist outfit dedicated to promoting creationism in schools, is claiming that teaching creationism would be constitutional if done for a "secular purpose." The ICR is also trying to persuade teachers to stop teaching evolution.

Oberlin College biology professor Michael Zimmerman reports that nearly 40% of Ohio biology teachers polled favored teaching creation in public schools. He said that most high school biology teachers are themselves poorly educated about evolution. Further, he reports, on a multiple choice question only 11% of the teachers polled selected the correct explanation of evolutionary theory.

Miscellaneous

On July 6 the U.S. Sixth Circuit Court of Appeals ruled that public high schools cannot include prayers of a particular religion in their graduation ceremonies, but they may use religiously neutral "civil invocations or benedictions" (sic?) without violating the First Amendment. The case, *Stein v. Plainwell Community Schools,* arose in two Michigan school districts. On July 24 a California appeals court in San Francisco ruled that religious invocations at public high school graduations violate both the state and U.S. constitutions.

In July the Elizabethtown, TN school board voted to bar CBM Ministries, Inc. from holding Bible classes in county public schools until a federal court rules on the issue.

A Fairfax County, VA public school teacher has been fined for holding after school prayer sessions with her seventh grade students. Parents had complained that the sessions involved prayer, faith healing, and "anointing with oil." She had reportedly asked the students not to tell their parents who was "encouraging them to be witnesses for Christ."

The Ninth Circuit U.S. Court of Appeals has upheld the revocation of the Church of Scientology's tax-exempt status because the church's founder, the late L. Ron Hubbard, had "unfettered control" over millions of dollars in church assets.

The U.S. District Court for the District of Columbia has ruled unconstitutional the funding of religious institutions under the Adolescent Family Life Act.