



# VOICE OF REASON

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## What Koop Didn't Tell Reagan

In July 1987 President Reagan directed U.S. Surgeon General C. Everett Koop, an outspoken opponent of freedom of choice on abortion, to prepare a report on the physical and mental health effects of abortion on women. The project was the brainchild of Reagan aide Dinesh D'Souza, who figured the report would be useful in the campaign to overturn *Roe v. Wade*, the Supreme Court's 1973 ruling recognizing the constitutional right to freedom of conscience on abortion.

Dr. Koop and/or his staff met with 27 groups with "philosophical, social, medical, or other professional interests in the abortion issue." The groups included the National Right-to-Life Committee, Planned Parenthood, the American Psychological Association, the U.S. Conference of Catholic Bishops, the American College of Obstetricians and Gynecologists, and the Religious Coalition for Abortion Rights.

In January 1989 Koop met with Health and Human Services Secretary Otis Brown and a decision was made not to submit a report to Reagan. Instead, Koop sent Reagan a letter on January 9 which concluded that "the available scientific evidence about the psychological sequelae of abortion simply cannot support either the preconceived beliefs of those pro-life or of those pro-choice," and that "in spite of a diligent review on the part of many in the Public Health Service and in the private sector, the scientific studies do not provide conclusive data about the health effects of abortion on women."

Both pro-choice and anti-choice groups used the letter to promote their viewpoints. The U.S. Catholic Conference and other anti-choice groups used the letter to advantage in their *amicus curiae* briefs to the Supreme Court in the *Webster* case, in which the Court ruled on July 3, 1989, in favor of an anti-choice Missouri law.

Although Koop was praised by pro-choice groups, and criticized by the other side, for his apparent evenhandedness, he and the Reagan administration actually withheld vital information from the public and the President. Fortunately, the Human Resources and Intergovernmental Relations Subcommittee of the House Committee on Government Operations, chaired by Rep. Ted Weiss (D-NY), dug out and published the Surgeon General's findings which the Reagan administration wanted kept quiet. The committee's report, "The Federal Role in Determining the Medical and Psychological Impact of Abortion on Women" (Report 101-392, 101st Congress, 1st Session), provides the missing information. In March 1989 the Subcommittee conducted a public hearing to review the information gathered by the Surgeon General and his staff and to review the final draft of Public Health Service's suppressed report. The subcommittee heard testimony from Koop, PHS staff, and a number of scientists and physicians.

Among the Subcommittee's findings:

Half of all women obtaining abortions report that they used contraceptives during the month in which they got pregnant

(due apparently either to contraceptive failure or improper use). Abortions are more common among Catholic than among Protestant and Jewish women.

Carrying a pregnancy to term is 7 to 25 times more likely to result in the death of the woman than a first trimester abortion. Dr. Carl Hogue of the U.S. Centers for Disease Control (CDC) showed that abortion generally does not affect subsequent fertility. Drs. Willard Cates, Jr., and David Grimes, both of CDC, reported that the risk of death to the pregnant woman obtaining an abortion doubles for every two weeks' delay after eight weeks of gestation (a good argument against unnecessary delays).

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## The Governor and the Bishop

Bishop Austin Vaughan's embarrassing attack on Gov. Mario Cuomo's position on abortion is—from the perspective of Roman Catholic theology—wrong and unjust. In fact, the Governor's stance is just a little on the conservative side of mainstream Catholicism.

The damage from such attacks, which are growing increasingly common, should not be underestimated. If they continue, Catholic politicians may find the path to higher office blocked. And if that happens, it will not be because of anti-Catholic prejudice but because of the illiteracy of many Catholic bishops regarding Catholic theology and history.

Bishop Vaughan, of Newburgh, N.Y., makes three points—and is wrong on all counts. First, that the public position of Governor Cuomo on abortion is against the Catholic faith. Second, that the Governor should be deprived of the sacraments and might even be a candidate for "hell." Third, that a fetus has the status of a person in the Catholic tradition.

Centuries ago, Catholic theology recognized that public political figures and legislators should not impose their private moral views on a pluralistic society. For example, St. Augustine and St. Thomas Aquinas both found prostitution morally repugnant but thought that it should be legalized for the greater good of society. A privately held moral view should not be imposed, they argued, for imposing it would do more harm than good. If it cannot be enforced, they said, it creates chaos and undermines respect for the law.

The tradition recognized that successful law requires a consensual base. Thomas Aquinas wryly suggested that a good legislator should imitate God, who presumably could eliminate evil but does not do so for the sake of the greater common good.

In this tradition, Catholic politicians who decide that a ban on abortion would not be feasible or fair in a pluralistic society are well within Catholic parameters. Thus, they may freely support

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## What Koop Didn't Tell Reagan

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Vacuum aspiration abortions are safer than dilation and curettage (D & C) abortions (96% of first trimester abortions are by vacuum aspiration).

In early drafts of the report, Koop or his staff included references to the comparative safety of legal abortion, but they were eliminated from the final draft report.

In their presentation to Koop, the American Psychological Association concluded that, "despite the flaws in the research, there is so little evidence of psychiatric problems following abortion, and so much evidence of relief, that therefore abortion does not cause more psychiatric problems than unwanted pregnancy." The APA also pointed out that, given the large number of abortions, "any significant psychiatric problems would have become obvious to the mental health system in the last 15 years."

Although anti-choice groups have made exaggerated claims of psychological problems from abortion, transcripts of Koop's confidential meetings with anti-choice groups showed that he had told them that such problems were "miniscule," affecting very few women, and not a public health problem.

CDC's Dr. Henry David conducted research on 220 children born to Czech women twice denied permission to end a single pregnancy and found that, when compared with wanted children of similar backgrounds, they "experienced more problems in school and were more likely to drop out before graduation. As adults, they experienced more mental illness, and more problematic relationships at work and with friends and relatives."

The House Subcommittee also found that Dr. David Grimes, former head of CDC's Abortion Surveillance Branch, was demoted and moved out of abortion research at the insistence of the Reagan White House. Grimes testified that political pressure caused CDC to omit mention of abortion in other areas of health care, as for example in guidelines pertaining to pregnant women with AIDS. CDC during the Reagan years also stopped comparing the mortality and morbidity rates of women who had abortions with women carrying pregnancies to term. Research at CDC on the effects of restrictions on Medicaid funding for abortions for poor women was also stopped.

The Subcommittee concluded its report with recommendations that restrictions on research aimed at improved abortion safety be removed, and that the federal government reverse the trend of cutting back on the funding of contraceptive research and development.

Subcommittee chair Weiss concluded that "this is the first Congressional report since *Roe v. Wade* that provides scientific information regarding abortion that supports a woman's right to choose." Weiss also said that it is "unconscionable that political considerations in the United States have interfered with the scientific study and availability of RU-486," the French-developed drug that is used for early abortions and is being studied abroad for use both as a "morning after" contraceptive pill and for cancer treatment. ■

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# The Governor and the Bishop

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*Roe v. Wade*, a ruling that allows freedom of choice where good citizens—with good reasons and good authority—disagree.

The Governor cannot be deprived of the sacraments for following the Catholic tradition of political tolerance. Even if Governor Cuomo personally approves of some abortions, and it is not clear that he does, he is still within the realm of traditional Catholic freedom. In the words of an old Catholic saw, *ubi dubium, ibi libertas*—where there is doubt, there is freedom of moral choice.

The Catholic tradition has never tried to treat one position on abortion as infallibly correct. Within certain limits, the Catholic tradition has always been pro-choice.

The first systematic ethics on abortion in Catholic history was developed in the 15th century by a bishop and a Dominican priest. Both permitted early abortion to save a woman's life (a far broader category than now, given the primitive state of medical practice then).

This was expanded in the 16th century to include later abortions for lesser reasons than the fear of death. The woman was declared to have a *jur prius*, a prior right, in these conflict situations.

In the 17th century, a Jesuit theologian, Thomas Sanchez, could find no Catholic theologian who did not allow abortions to save a woman's life. He himself said that the fetus, at times, could be considered an "unjust aggressor," a term developed in Christian ethics to justify killing in war. In the 19th century, craniotomy (cutting an infant's head so that it could emerge from the birth canal—clearly, infanticide) was defended in a Vatican publication.

Unlike Bishop Vaughan, some modern Catholic bishops defend certain abortions. In 1975, Bishop Josef Stimpfle of Augsburg, West Germany, defended abortion "to save the life of the mother." The Belgian bishops made similar statements in 1973. The majority of Catholic theologians and laity defend abortion in at least some circumstances. Surely Bishop Vaughan is not about to send all of these to hell.

Finally, the status of a "person" was not conceded to early embryos or fetuses throughout most of Christian history. Even today, when miscarried or aborted, fetuses cannot be baptized or given Christian funerals as if they were persons.

As for Bishop Vaughan's analogies between abortion and the Holocaust, these are unworthy. First, the Catholic Church did not distinguish itself in protesting the actual Holocaust and should not now rush to use Holocaust language in another cause. Second, families of the Holocaust dead could not appreciate a comparison of their loved ones to fertilized eggs and embryos, nor would pro-choice Jews want to be compared to the Nazis.

In this encounter, it is the Governor, not the bishop, who stands on the side of Catholic wisdom. ■

— Daniel C. Maguire

*Daniel C. Maguire is professor of moral theology at Marquette University, a Jesuit institution. This article is reprinted with the author's permission from the New York Times of January 30.)*

## MOVING?

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



*Offred (Natasha Richardson, center) is forced to participate in a public execution in The Handmaid's Tale.*

## Fundamentalist Dystopia

Margaret Atwood, the eminent Canadian novelist-poet, gave us a chilling look at a possible American fundamentalist dystopia in her best-selling 1986 novel, *The Handmaid's Tale*. The novel depicted a near-future U.S., taken over by racist hyperconservative fundamentalists and renamed the Republic of Gilead, in which, following an environmental-ecological disaster which left most women sterile, women have no rights and those able to reproduce are assigned to government and military officials for breeding purposes.

*The Handmaid's Tale* has been expertly and faithfully translated onto film by screen writer Harold Pinter and director (*The Tin Drum*) Volker Schlöndorff (Cincom, March 1990). From opening credits to fadeout the film fully captures the horror of a "moral majoritarian" dictatorship lacking the most elemental civil liberties, a puritanical yet hypocritical dystopia based on the most brutal interpretations of Old Testament fundamentalism. Yet the film is no mere tract, but alive with very nuanced, believable characters and a credible plot.

Heading the excellent cast are Natasha Richardson (daughter of Vanessa Redgrave and director Tony Richardson), Robert Duvall, Faye Dunaway, Aidan Quinn, and Victoria Tennant, whose sensitive performances perfectly fit the tone of Atwood's novel.

Scenes depicting public executions ("particutions"), deportation of blacks, the roundup of fertile women, and the isolation and degradation of the "handmaids" are shocking, like the Holocaust or the hanging of Quakers in 17th century Boston, but realistic and not at all overdone.

Atwood's dystopia is more credible and possible than Orwell's. Both the print and film versions deserve the highest praise and largest audiences.

— Edd Doerr

*(ARL's Edd Doerr participated in presenting an award to Margaret Atwood at an American Humanist Association/Humanist Association of Canada conference in Montreal in 1987.)*

# Eastern Europe: Changes Coming

**R**ecent events in Eastern Europe have been remarkable. Long-entrenched Communist regimes have been toppled without bloodshed in Poland, Hungary, East Germany, Czechoslovakia, and Bulgaria. Only in Rumania was a bloody revolution necessary to overthrow a megalomaniacal dictator.

Furthermore, changes within the Soviet Union, initiated by reformist President Mikhail Gorbachev, are likely to affect nationalist stirrings in the restless republics of Lithuania, Latvia, Estonia, the Ukraine, and Muslim strongholds near Iran and Turkey. It seems unthinkable, but these areas could become independent sometime in the future. This is especially true in the Baltic countries, which were independent republics between the two wars.

While most of the world's press attention has been focused on the political and economic implications of these upheavals, there is a strong religious element present in the situation.

Here is what's happening in each area. A majority of the 74 million practicing Christians in Eastern Europe are Roman Catholics. Their church's present leader is a Pole who lived under

a communist regime. Pope John Paul II has played a major role in the events of the past decade, inspiring the Solidarity movement in 95% Catholic Poland. Poland became the first East-bloc country to remove the Communists from power in a free election, and its Prime Minister, Tadeusz Mazowiecki, is the first practicing Christian political leader in the East since World War II. Poland became the first state in the Soviet bloc to enact a law restoring civil rights to churches, and diplomatic relations were established with the Vatican. There is some indication that Polish church authorities want to restore some of their prewar power. Cardinal Glemp, for example, has urged the government to ban abortion, which is widespread in Poland. There is also a residue of anti-Semitism among Polish church people.

Vatican diplomacy is patient and far-seeing. It's *Ostpolitik* appears to have been successful. The Pope dreams of reunion with the Eastern Orthodox Churches, who have millions of followers in the Soviet Union, Bulgaria, Rumania, and Yugoslavia. He also believes that Christianity in general could fill the vacuum that exists when political regimes topple. The Pope's historic meeting with Gorbachev in December highlights his intense interest in the region. On the agenda was a discussion of events in the Ukraine and Lithuania, where there are many Catholics despite decades of repression.

In Lithuania probably 65% of the people are practicing Catholics. The cathedral in Vilnius has been restored for worship after being used as an art museum for decades. Bishops have been appointed. (In nearby Soviet Belorussia a Catholic bishop was appointed for the first time since 1926.) The majority of Lithuanians want independence from the USSR.

In the Ukraine a serious problem exists concerning four million Catholics of the Uniate Rite. They recognize the Vatican but their worship and customs resemble Russian Orthodoxy. Their priests are married, for example. In 1948 Stalin, with the connivance of the Russian Orthodox hierarchy, eliminated Uniate Catholicism by abolishing 4,100 churches and imprisoning all the clergy. The Uniate churches were taken over by the Orthodox. Now Gorbachev has promised Catholics freedom to organize and exist once again. Despite persecution a large underground church has existed for 40 years among Catholics who refused to become Orthodox. Catholic enthusiasm, however, has taken an ugly turn. Catholics have seized several churches that originally belonged to them, threatening to reawaken religious conflict between Orthodox and Catholics. Orthodox clergy recently appealed to British Prime Minister Thatcher to intervene on their behalf. (This potential for trouble also exists in Rumania and Slovakia, the eastern region of Czechoslovakia, where Eastern Catholic churches were seized by Communist authorities and given to the Orthodox in 1948.)

Gorbachev has openly proclaimed religious liberty for his people, and 3,000 new churches have opened in the USSR in the past year. Religious services are now broadcast on TV. For the first time since 1918 an Orthodox service was celebrated inside the Kremlin's Assumption Church.

Still, the Supreme Soviet has not given approval for greater religious liberty. Stalin-imposed statutes restricting churches and forbidding religious education have not been repealed. And the Orthodox Church may pressure Gorbachev to refuse freedom to Ukrainian Catholics. (Incidentally, Gorbachev was baptized into the Russian Orthodox Church and his mother is a devout believer.)

A final problem the USSR faces is hatred between the Shiite  
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## ARL in Action

ARL's 1989 book, *Abortion Rights and Fetal Personhood* has exhausted its first edition. The second edition, with a new preface, will be off the press in late March. It may be ordered from ARL, P.O. Box 6656, Silver Spring, MD 20916, for \$12.95 plus \$1.50 postage and handling.

Since our last report, ARL president John M. Swomley has spoken at Kansas State University and Baker University. He was recently named to the advisory boards of the Midwest Bioethics Center and Kansas State University Douglas Lecture Series, and as chair of a special ACLU committee studying the question of plural marriages. Articles by Dr. Swomley have appeared recently in the *St. Louis Journalism Review*, *The Churchman-Human Quest*, *Fellowship*, and *Christian Social Action*.

The Ethnic Minority Students of St. Paul School of Theology recently presented the annual Swomley Human Rights Award to the vice-mayor of Kansas City for his work in interracial harmony.

Executive director Edd Doerr has spoken to college, church and conference audiences in Washington, DC, Baltimore, MD, Dale City, VA, Teaneck, NJ, and Providence and Newport, RI. He was also a guest on radio talk shows in San Diego, Anaheim, Chicago, Washington, Denver, St. Louis, Atlanta, Chattanooga, and Hornell, NY. An interview with Doerr was published in February in the Newport, RI, *Daily News*.

Doerr's 1988 book *Religious Liberty in Crisis* has been adopted as a text for a church-state course at Flagler College in Florida. Doerr was reelected vice-president of the Religious Coalition for Abortion Rights in February.

ARL newsletter contributing editor Albert J. Menendez, representing ARL and the ACLU of Maryland, presented testimony to a Maryland General Assembly committee on February 6 in support of a bill to get the state out of the internal affairs of the Episcopal Church. The Episcopal Church was the established church in Maryland before independence from Britain, but the state retained control over certain church matters, such as deciding who could vote in internal church elections. ARL and the ACLU of Maryland supported the bill to completely disestablish the Episcopal Church.

ARL treasurer Ken Gjemre was hailed as "The Ray Kroc of Used Books" by *Business Week* in its "Movers & Shakers" column on January 15. Gjemre's Half-Price Books has 31 stores in seven states and expects to open eight more stores in 1990.

# Books

## Borkbusters

***The People Rising: The Campaign Against the Bork Nomination***, by Michael Pertschuk and Wendy Schaezel (Thunder's Mouth Press, \$13.95, 317 pp.). ***Battle for Justice: How the Bork Nomination Sbook America***, by Ethan Bronner (W.W. Norton & Co., \$22.50, 399 pp.). ***The Tempting of America: The Political Seduction of the Law***, by Robert H. Bork (The Free Press, \$22.50, 432 pp.).

The struggle over the nomination of Robert Bork to the Supreme Court in mid-1987 was an epic confrontation between supporters of fundamental rights and those, like the "moral majoritarians," who seem to prefer government power over individual liberties. Bork's nomination triggered the formation of the largest political coalition of citizens and groups in U.S. history, one which at first had no reason to believe it might succeed. These three books, neither singly nor in the aggregate, tell the whole story, but they do tell a large portion of it.

Pertschuk and Schaezel tell the story of the Block Bork coalition in fine detail. They show how the amazingly diverse coalition came together, made decisions and developed strategy, and finally brought about Senate defeat of the nomination by forcing the senators and the public to examine Bork's own record, writings, and utterances.

Bronner's picture of the campaign is painted with a broader brush, with less detail about the anti-Bork strategy and more about the nominee and the pro-Bork forces. Both Bronner and Pertschuk-Schaezel make it clear that the anti-Bork campaign was essentially fair and that the Senate rejection of the nomination was appropriate.

Bork's own book is the loser's attempt to portray himself as martyr, lynch mob victim, target of a conspiracy. His account is one-sided and selective, as might be expected. But in attempting to vindicate himself, he shows clearly why he should not be on the Supreme Court. Though claiming to support "original understanding" of the Constitution, he airily dismisses the "original understanding" of the Fourteenth Amendment and seems to think that the amendments skip from 8 to 10. He wants majorities to make moral choices for minorities and individuals, and obsessively attacks the Supreme Court's privacy rulings in *Griswold* (birth control) and *Roe* (abortion) over and over and over. He attacks the Court's "one man, one vote" ruling and betrays an appalling ignorance of why the ruling was correct and necessary, even under his own majority supremacy principle. He coolly dismisses reproductive freedom as "the right to choose whether or not to copulate," but not to terminate an unintended pregnancy.

Echoing the "Moral Majority," Bork insists that "Knowledge that an activity is taking place is a harm to those who find it profoundly immoral," and thus "moral majorities" may legislate away freedom of conscience. "Moral outrage is a sufficient ground for prohibitory legislation." He attacks the ACLU but has not a critical word for extremists who would restrict constitutional liberties. Bork says he has never addressed the issue of public school prayer; he seems to have forgotten that in 1982 he told a New York University Law School audience that the Supreme Court's 1962 *Engel* school prayer ruling was wrong.

Bork charges that the print media were generally hostile to him, yet Pertschuk and Schaezel report that "in the eight swing states, where 14 of 16 senators eventually voted against Bork, editorials ran heavily in favor of the nominee." Bork makes much of the size of the anti-confirmation coalition, yet neglects to mention that the "moral majoritarian" and administration campaigns for Bork spent a great deal more.

Bork's book and the other two make clear that Bork was not lynched. He was defeated by his own extreme views, which, fortunately, were abundantly available to senators, the media, and the groups and individuals who found, rightly, that Bork would have tipped the Supreme Court away from individual rights and toward "moral majoritarianism." Unfortunately, none of the three books contains a comprehensive summary and analysis of the nominee's published views, such as was available to the media during the campaign.

— Edd Doerr

***Privatization and Educational Choice***, by Myron Lieberman (St. Martin's Press, 386 pp., \$35 cloth, \$12.95 paper).

This book would merit little attention had it not been touted in the *New York Times Book Review* last summer by the Rev. Timothy Healy, the Catholic priests who had just been appointed to head the New York City library system. Lieberman's book is a bizarre tract seething with unalloyed hostility toward public education and brimming with proposals for wrecking it. Among his suggestions for undermining public education: vouchers for tax support of private, sectarian, and even "for profit" schools; "minivouchers" for specific courses in nonpublic schools; having public schools "contract out" for educational services; weakening of compulsory education and child labor laws to get rid of students and reduce school costs; "load shedding," i.e., having government move wholly or partially out of the business of operating schools.

In attacking public education, Lieberman plays fast and loose with facts and figures; betrays no hint that he knows what it is that schools and teachers do (to him education is just another commodity, like soap or hamburger); shows no comprehension of school economics or the politics of federal, state, and local school finance; opines that administrator and teacher pensions are a waste of money. He seems unaware that a growing multiplicity of "choice" public and private schools would greatly increase transportation costs, either at public expense or out of the pockets of those parents who can afford those costs, reduce economies of scale, create utter chaos in school planning and scheduling, and reduce teaching and school administration from professions to a level not far above migrant labor.

Lieberman contends that public opinion is moving toward acceptance of tax support of nonpublic schools, apparently oblivious to the fact that such aid was soundly defeated in 14 out of the 15 statewide referenda on the subject since 1967, the most recent being a 70-30 defeat for parochialism in Massachusetts in 1986. (He erroneously refers to "a 1986 voucher initiative" in the District of Columbia; it was in 1981 and dealt with tuition tax credits.)

Lieberman dismisses First Amendment arguments against tax aid for sectarian schools and fails to discuss the constitutional and public policy objectives to the various kinds of discrimination likely to be found in nonpublic schools publicly funded under his proposals.

Lieberman's book has nothing to offer educators and parents who live in the real world. It is curious that a reputable publisher would put out such nonsense.

— Edd Doerr

***Voices for Evolution***, edited by Betty McCollister (National Center for Science Education, 2107 Dwight Way #105, Berkeley, CA 94704, 1989, 141 pp., \$5, plus \$1.50 for postage and handling).

As efforts are still being made to get fundamentalist "creationism" into and/or water down evolution in public school science classes, this little book will prove to be a useful resource for defenders of public education and church-state separation. This compendium of statements and resolutions on "creationism," evolution, science, and school policy by 61 scientific, religious, and educational organizations will be helpful in local or state controversies over attempts to intrude sectarian tenets into public schools or the textbook selection process.

— Edd Doerr

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# Update

## Bush on Church-State

President Bush told the annual convention of the largely fundamentalist National Religious Broadcasters on January 29 just what they wanted to hear. He reiterated his strong opposition to freedom of conscience on abortion and support for a constitutional amendment to authorize government sponsored prayer in public schools. He also said he would "fight for" inclusion of sectarian day care in federally funded day care programs currently being debated in Congress. Bush had emphasized the same issues earlier in January at a meeting with Roman Catholic Church officials.

Bush also attributed the developments toward greater freedom in Eastern Europe in recent months to "divine intervention."

Televangelist Pat Robertson praised Bush for "saying the right thing" and said he sees no decline in the religious right's influence on administration policy.

Meanwhile, *U.S. News* reports that most senior and midlevel White House staff, especially women, disagree with Bush on abortion rights policy. Apparently the only strong supporters of Bush's position in the White House are Chief of Staff John Sununu and Doug Wead, liaison with the religious right.

## Sectarian School District Challenged

A special sectarian public school district, the Kiryas Joel Village School District, created by the New York State legislature in 1989 for the exclusive benefit of a Hasidic Jewish sect, has been challenged in a state court by the New York State School Boards Association. The suit, *Grumet v. New York State Education Department*, filed on January 19, charges that the special district, set up to provide special education solely to handicapped children of the Hasidic sect in a religiously, culturally, and ethnically segregated setting, violates the First Amendment Establishment Clause, the Fourteenth Amendment Equal Protection Clause, and state education law. Education and civil liberties groups had unsuccessfully urged Gov. Mario Cuomo to veto the law.

## Parochial and the White House

Supporters of tax aid for sectarian private schools are complaining that President Bush has done little to carry out his platform promises on that subject. However, they seem to be ignoring Mr. Bush's insistence that federal aid be used for sectarian child care programs. Bush, further, has privately assured Catholic school leaders that he remains committed to the tuition reimbursement tax credit plan for aiding sectarian schools, even though that plan has been held unconstitutional by the Supreme Court, defeated in Congress, and quashed in state referenda.

Bush Chief of Staff John Sununu, meanwhile, has told Catholic parochial activists that the administration's strategy is to con the teacher unions into supporting public school choice as a steppingstone toward getting them to support tax-paid choice of parochial schools.

In December Education Secretary Lauro Cavazos told Sister Catherine McNamee, president of the National Catholic Educational Association, that the Bush administration favors inclusion of sectarian private schools in school choice programs.

## Creationism Clobbered

Efforts to get Alabama to adopt a creationist textbook, *Of Pandas and People* (Houghton Publishing), failed in January. The publisher did not get copies of the book to the State Textbook Committee until one day before its September 12 meeting, apparently to avoid having it examined carefully. The Committee did look at it closely and rejected it. In December the State Board of Education, under heavy pressure from fundamentalists, asked the Textbook Committee to reconsider its rejection. On the day the Committee reconvened in January, the publisher, evidently realizing that a second negative vote was assured and that it would jeopardize chances of getting the book adopted, withdrew *Pandas* from consideration before the Committee could vote. (NCSE Reports)

In other action, Illinois federal district court judge C. Harold Dinger ruled in 1989, in *Webster v. New Lenox School District*, that junior high social studies teacher Ray Webster could not teach creationism in his classes. Webster had brought suit when the school district told him he could not teach "creationist science" in the classroom. Webster tried to convince the court that he was a victim of censorship in violation of his First and Fourteenth Amendment rights. (NCSE Reports)

## MA, NH Parochial Defeated

The Massachusetts legislature, meeting as a constitutional convention, has defeated a proposal to remove church-state separation language from the state constitution which bans tax aid for sectarian private schools. The state's voters have defeated similar proposed amendments in the past ten years.

The New Hampshire House education committee has voted down a proposal to allow towns to provide tax aid to parochial schools by means of property tax rebates. Similar state income tax rebates were ruled unconstitutional by the U.S. Supreme Court in the 1970s.

## Federal Parochial Further Diminished

Federal aid to sectarian private schools suffered another defeat on December 21 in a Missouri case, *Pulido v. Cavazos*. In the wake of the Supreme Court's 1985 *Aguilar v. Felton* ruling, which barred sending public school teachers into sectarian schools for federal Chapter I remedial education, many church schools insisted that the same services be provided in mobile classrooms located on or near the church school property.

In *Pulido* (in which ARL president John M. Swomley is one of the plaintiffs) the federal district court ruled that the mobile classrooms could not constitutionally be placed on parochial premises as this would "be seen as some form of annex to the mission of the church," thereby creating "an impermissible link between the church and the state." This "symbolic union" between church and state was earlier cited by the Supreme Court in *Aguilar*.

The Missouri court, however, allowed the mobile classrooms to be parked on public streets adjacent to church schools. But the court also ruled unconstitutional the Reagan administration rules which took the mobile classroom costs "off the top" of the state's federal education allowance, which reduced the amount of federal funds available for remedial education in public schools.

The Bush administration is appealing the *Pulido* ruling.

## Churches and Taxes

States may apply sales taxes to religious materials without infringing the free exercise of religion, the Supreme Court ruled unanimously on January 17. The ruling, in *Jimmy Swaggart Ministries v. California Board of Equalization*, was written by Justice Sandra Day O'Connor, who said that the sales tax is not "a tax on the right to disseminate religious information, ideas, or beliefs," but simply a neutral tax on retail purchases. Swaggart had sought to avoid paying a \$183,000 tax bill for sales at "crusades" in California and through mail order sales. California is the only state to tax mail order sales from out of the state, but the ruling allows other states to do so. In a similar case, the Court ruled 6-3 in 1989 that a Texas law exempting Bibles and other religious publications from sales taxes violated the Establishment Clause.

Meanwhile, California tax officials are considering changing property tax laws so that a church's tax exemption would be reduced in proportion to "non-religious" use of the property.

## Marine Corps Prayers (cont.)

In our last newsletter we reported that Marine drill instructors at the Parris Island, NC, Recruit Depot required recruits to pray, as shown on CBS-TV's "Sixty Minutes" on October 29. In response to ARL's protest a Marine Corps official has assured us that "the Drill Instructor shown on

the film was in violation of both the spirit and intent of [Marine Corps philosophy and] those regulations which are designed to offer the opportunity for individual religious observance on a voluntary basis. The incident has been appropriately addressed by the command to preclude any recurrence. In addition, the Commanding General of the Marine Corps Recruit Depot, Parris Island, has examined the conduct of religious activities during recruit training to ensure that no recruits are forced to participate involuntarily."

## Abortion Rights

A federal district court in Louisiana ruled in January (*Weeks v. Connick*) that the state's old anti-abortion law may not be enforced in the wake of the 1989 *Webster* ruling. The court held that a 1978 law regulating abortion impliedly repealed the old law.

ACLU Reproductive Freedom Project lawyers have asked a District of Columbia federal district court for a summary judgment in *Kendrick v. Sullivan*, a challenge of the Adolescent Family Life Act. Evidence was presented to the court that federal funds are going to religious organizations to support religious teaching and to steer pregnant teens to adoption agencies which place children only with Catholic or Christian families. In an earlier phase of this litigation, the Supreme Court said the AFLA was not unconstitutional on its face and remanded the case to the lower court to take more evidence.

A federally financed study of unmarried sexually active teenage girls, conducted by the Johns Hopkins School of Hygiene and Public Health, suggests that the experience of choosing abortion may have beneficial effects for some adolescent girls. Teenagers who obtained abortions did better economically and educationally and had fewer subsequent pregnancies than those who chose to bear children and better than those who were not pregnant at the start of the research project. The researchers found that 90% of the young women who had abortions had graduated from high school or were still in school. By contrast, 68% of those who bore children and 79% whose pregnancy tests were negative completed high school or had not dropped out. Those teenagers who had abortions were also more likely to find jobs and thus were less likely to be in a household receiving food stamps or Medicaid payments than their counterparts in the other two groups. Moreover, those who had abortions were more likely to use contraception during the two year follow up period than the women in the other two groups and were less likely to become pregnant again. The study found that 37% of those who had abortions became pregnant within 18 months. By comparison, 47% of the girls who had babies were again pregnant within 18 months and 58% of those who were not pregnant became pregnant within 18 months of their exams.

On February 24 Michigan Gov. James J. Blanchard vetoed a bill requiring minors to obtain permission for an abortion. On the day before, the Indiana Senate defeated a bill to ban abortions in public hospitals.

The American Bar Association's House of Delegates voted 238-106 on February 13 for a resolution opposing "governmental action that interferes with the confidential relationship between a pregnant woman and her physician, or with the decision to terminate the pregnancy at any time before the fetus is capable of independent life."

A survey of 216,382 college freshmen on 403 campuses shows that 64.7% support "legalized abortion," up from 57% in 1988.

On January 11 federal district judge Daniel Huyett blocked most of Pennsylvania's 1989 Abortion Control Act from taking effect (*Planned Parenthood v. Casey*). Among the provisions blocked are husband notification, mandatory delays, unnecessary doctor's visits, and anti-abortion lectures.

Washington State anti-choice forces have failed to gather enough signatures to force a referendum on a proposal to require doctors to give women information designed to discourage abortions.

The California Second District Court of Appeals has let stand a lower court order restoring \$24 million in family planning funds cut off by Gov. Deukmejian.

On January 24 a federal district court in Missouri ruled unconstitutional a state law restricting private insurance coverage for abortions.

## Supreme Court Looks at Prayer Clubs

On January 9 the U.S. Supreme Court heard oral argument in a case involving religious clubs in public schools. *Board of Education of the Westside Community Schools v. Mergens*. The Nebraska school district had barred a student religious club. A lower federal court agreed with the school district, but a federal appellate court reversed. Most federal courts have found school religious clubs to be unconstitutional. The case is also a test of the 1984 federal Equal Access Act, which requires public schools to allow religious clubs if they permit other non-curriculum related student groups to meet.

ARL joined with educational, civil liberties, and religious groups in an *amicus curiae* brief to the Court arguing that the Equal Access Act unconstitutionally puts public schools in the posture of promoting religion. The brief was prepared by Anti-Defamation League attorney Richard E. Shevitz and law professor and ARL Advisory Board member Ruti G. Teitel.

ARL executive director Edd Doerr testified in Congress in 1984 against the bill on the ground that it permitted proselytizing of students as young as 11 or 12 by professional missionaries without parental knowledge or consent.

The Bush administration argued in favor of the religious clubs before the Supreme Court.

## Bible Year

Following unanimous voice vote passage of a resolution in Congress, President Bush signed in December a proclamation declaring 1990 "The Year of Bible Reading," though the proclamation did not specify which version. The proclamation also omitted reference to the Quran, the Book of Mormon, the Upanishads, and other sacred books.

All of this reminds us that turn-of-the-century Senate chaplain Edward Everett Hale, a Unitarian minister, was once asked by a reporter if he "looked out over the country and prayed for the Senate." Hale replied, "No, I look out over the Senate and pray for the country."

## Tax Favors for Falwell?

Televangelist Jerry Falwell may have shut down his Moral Majority lobby, but he hasn't given up on trying to use government for his own ends. He is presently before a local court trying to get approval for the Lynchburg (VA) Industrial Development Authority to issue \$60 million in tax-free bonds so that his Liberty University, of which Falwell is chancellor, can buy itself from the Old Time Gospel Hour, another Falwell enterprise.

The financing is being challenged on the ground that Liberty's main purpose is religious indoctrination rather than liberty arts education. Liberty witnesses have tried to convince the court that the institution is not very religious. However, a former faculty member, philosophy professor Terry Miethe, testified that Falwell exerts overriding control of the school where beliefs grounded in fundamentalist theology are taught in all classes. Miethe said that Liberty faculty are required to subscribe to a doctrinal position, that religion courses are taught nearly everywhere on the campus, that Falwell maintains "doctrinal purity" by not granting tenure to faculty, and that people leaving campus before Wednesday morning chapel services, featuring Falwell, had to give names, license numbers, and reasons for leaving campus. Miethe also said that campus security guards often checked faculty offices and student dorm rooms to make sure no one was skipping chapel.

## Assets Seized

The federal government has seized the bank assets (\$7,500 in two accounts) of the national office of Operation Rescue in Binghamton, NY, after it refused to pay a \$50,000 appeal bond. In May 1988 OR leader Randall Terry violated an injunction against demonstrations outside New York City abortion clinics.

## Eastern Europe: Changes Coming

*continued from page 4*

Muslim majority and the Armenian Christian minority in Azerbaijan, which borders Iran. Reports of pogroms against Armenians have forced Gorbachev to deploy troops to prevent further massacres. (Religious fanatics in Iran may be fomenting the attacks on the Christians.)

In Czechoslovakia repression of the Catholic majority has ceased. Six new bishops are expected to be appointed, and diplomatic relations with the Vatican are probable. The new president, Vaclav Havel, is a playwright, intellectual, and practicing Catholic who was seen crossing himself at his inauguration, which included religious representatives for the first time since World War II. In his inaugural address Havel quoted the 17th century Czech Protestant hero Jan Comenius. Protestantism, especially Lutherans and Calvinists, is also strong in Czechoslovakia.

Hungary, 60% Catholic, plans to establish diplomatic relations with the Holy See. The Office for Church Affairs has been abolished, and laws restricting religious freedom are being abolished. There is a vigorous Protestant presence in Hungary.

East Germany is the most Protestant nation in the East. Evangelical Lutheran churches were centers of organizing mass marches and rallies which overthrew the regime. Lutheran bishops expect to increase their influence on public policy. Religious services are broadcast on radio and TV, and some clergy sit in Parliament.

In Bulgaria the Orthodox Church is coming alive again and will probably play a greater public role than before the Communist takeover. Bulgaria is still torn by antagonisms between Christians and Muslims, a potential threat to future harmony.

The situation in Rumania is uncertain. The least democratic country in the region historically, Rumania's last free election was in 1928. Its one-time monarchy was allied with the Orthodox Church and ruthlessly persecuted minorities, especially Baptists and Jews. When Communism came, all religions were persecuted more or less equally. The bloody overthrow of dictator Ceausescu was welcomed by all religious groups. The dominant Orthodox Church is expected to play a role in the life of the nation. In the western province of Transylvania, the Hungarian Reformed Church is important, and some of its pastors played a role in the revolution. (Many leaders of the church have been accused of collaboration with the Ceausescu regime.) The fate of Byzantine Catholics is also uncertain. Their church was abolished in 1948, though many believers maintained a clandestine existence. The vice-president, whose wife is an active Baptist, is said to be keenly interested in religious liberty.

The smaller Protestant churches—Baptists and Adventists in particular—and the Unitarians are concerned that the reemergence of the historically powerful and once-established churches could threaten their existence. Past persecution is a reason for their trepidation. Optimists hope, however, that the shared suffering of all religious groups under totalitarian regimes for 40 years will bring them together and create harmony and respect for pluralism in a part of the world which has rarely enjoyed either.

Initial enthusiasm for these changes should be tempered somewhat by the possibility that some of the interfaith antagonisms could be reawakened if certain prewar problems are allowed to recur. One needs to remember that every nation in this region at one time experienced established religions, persecution and discrimination against minority faiths.

In Poland, for example, Roman Catholic ties to the state created serious problems for Protestants, Orthodox, and Jews

during the interwar period. There was constant conflict between church authorities who wanted greater influence on and control of education and questions of public morality and those who opposed church political domination. This was true in Roman Catholic and Orthodox countries.

Throughout the region there were sporadic outbreaks of interfaith violence and persecution, some of the worst atrocities of the Reformation and Counter-Reformation were found here. The treatment of large Jewish minorities was atrocious. Pogroms regularly afflicted Jews, particularly in Orthodox-dominated Rumania and Russia. Orthodox persecuted Catholics in some areas, but Catholics in Croatia collaborated with a pro-Nazi regime that ruthlessly persecuted Serbian Orthodox believers. The smaller Protestant and Old Catholic churches still have memories of repression, and whatever new church-state arrangements are developed in Eastern Europe must take these fears into account. (There have been occasional reports, for example, that some Protestant churches have been converted into Catholic churches in Poland, allegedly because of the refusal of authorities to grant permission for building new ones.) Rumania at one time persecuted its non-Orthodox minorities so cruelly that an international commission of observers was sent there in 1925. One hopes that international human rights organizations will maintain vigilance today.

— Albert J. Menendez

### *Miscellaneous Update*

In January Rhode Island federal district judge Francis J. Boyle ruled that a public school graduation ceremony prayer violates the Establishment Clause. Boyle added, however, that the schools could have clergy give "a secular inspirational message at the opening and closing of the graduation ceremonies."

Fifth grade teacher Nancy Kennedy has been suspended from her post in Toccoa, GA, for refusing to stop her daily Bible readings, prayers, and other religious instruction to her classes. Several other teachers in the Toccoa schools reportedly have Bible readings in their classes, an unconstitutional practice still found in a number of rural southern communities.

### **Americans for Religious Liberty**

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