



VOICE OF REASON

The Newsletter of Americans for Religious Liberty

2004, No. 2 [87]

Nadine Strossen Receives ARL's Religious Liberty Award

ARL Board Chair Burton Caine, professor of constitutional law at Temple University, and ARL President Edd Doerr presented the annual Religious Liberty Award to Nadine Strossen in Las Vegas on May 4.

Remarks of Burton Caine at ARL Award Ceremony, Las Vegas

What does one say about Nadine Strossen when reading her illustrious biography would take the rest of the evening? So, I asked Nadine what she would like me to say about her. She replied that some of the honors which make her especially proud include: (1) In March, she received the National Council of Jewish Women's "Woman Who Dared Award" (in honor of Queen Esther), which was last awarded to Justice Ruth Bader Ginsburg. (2) Guest starring in *The Vagina Monologues* for a week-long, sold out run at the National Theatre in Washington in 2001; and (3) Being featured in the same month in both *Ladies' Home Journal* and *Penthouse!* (Her husband believes that no other woman in America can match this!)

This response from Nadine Strossen brought to mind Lord Chesterfield's Letters advising that the way to praise a person of distinction is not to recite professional honors, which are common knowledge anyway, but rather to add little known accomplishments which serve to enhance even the greatest of reputations. Thus, all know that Nadine Strossen is President of the American Civil Liberties Union. ACLU - it is important to note - is the most "conservative" of organizations because it believes in the founding charter of American democracy, the Constitution of the United States. (It is even more 'conservative' than that because the "Blessings of Liberty" guaranteed in that document go back to Leviticus 25:10, quoted on the Liberty Bell, "Proclaim liberty throughout the land unto all the inhabitants thereof.") And all know that Nadine Strossen is not only perhaps the most outstanding champion for civil liberties in the nation but is also professor of law teaching constitutional law at New York Law School, scholar and author. A graduate of Harvard Law School, which in the past refused to admit women - my class was the last all male class - Professor Strossen's distinguished career does Harvard honor and has paved the way for a woman to be appointed dean at that venerable Cambridge institution.

It is also important to remember that the first provision of the First Amendment mandates the separation of church and state, even before the free exercise of religion and freedom of speech! Thus, the continuing struggle for civil liberties in the United States begins with preventing the government from aiding, endorsing, or favoring religion. Americans for Religious Liberty and the American Civil Liberties Union fight on the same side and, to give a current example, ARL has joined the ACLU brief in the Supreme Court to exclude the words "under God" in the Pledge of Allegiance in public schools.

Faced with Nadine's preference not to dwell on her civil liberties career that prompted the ARL award, I wondered whether I should have protested by quoting Plato's Apology which attributed to Socrates the observation, "The unexamined life is not worth living!" But I re-



From left: ARL president Edd Doerr, ACLU president Nadine Strossen, and Professor Burton Caine.

sisted the temptation, for fear that that pearl of Socratic wisdom might be mistaken to approve Attorney General Ashcroft's subpoenas in his perverted campaign to destroy our constitutional right to privacy under the USA Patriot Act!

So, Nadine, I honor your wishes but interpret them not to preclude the reading of the citation in the award Americans for Religious Liberty confers upon you tonight.

Although I am Professor of Constitutional Law and teach it both at home and abroad, I sit at the feet of Edd Doerr, President of Americans for Religious Liberty, who is the Thomas Jefferson, James Madison, and Tom Paine when it comes to religious liberty under the Constitution of the United States. Edd and I first worked together when we were both on the Church-State Committee of the American Civil Liberties Union and we formed a close friendship in the pursuit of religious liberty. I ask

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him to stand up with me in presenting to Nadine Strossen the Americans for Religious Liberty Award for the year 2004.

The text reads:

2004
Religious Liberty Award
Presented by
Americans for Religious Liberty
to
Nadine Strossen

President of the American Civil Liberties Union, scholar, teacher, champion of civil liberties and religious freedom, and personality of international distinction on the forefront of the struggle for human dignity, in recognition of her and the ACLU's decades of work and leadership in defense of civil liberties, religious freedom, and church-state separation.

Excerpts from Address by Nadine Strossen

I can't think of an honor that would mean more to me than this award from this organization. The causes of religious liberty and freedom of conscience have always been at the center of my life, both personally and professionally.

On the personal level, both of my parents had all-too-typical backgrounds of emigrating to America to escape religious persecution abroad. My beloved father was born in Berlin in 1922, and under Hitler's infamous Nuremberg laws, he was classified as a so-called "Jew of the Second Degree" and deported to Buchenwald concentration camp, where he did grueling slave labor in underground salt mines and almost died of pneumonia.

As a remarkable coincidence, about a month ago, I got an extraordinary letter from a very special 93-year-old woman who lives right here in Vegas, Beverly Blackford. Thanks to your kind invitation, I had the opportunity to have lunch with her today. After my father was liberated from Buchenwald, he worked with Beverly's late husband, Bob, a U.S. Army intelligence officer, to track down Nazi leaders. Like many Holocaust survivors, my father hadn't wanted to talk to his children about his harrowing ordeals – or his personal heroism. And, alas, he died five years ago. So I'm eternally grateful to Beverly for having reached out to me. We'd never met each other or been in touch at all, yet she

took the trouble to send me old letters and newspaper clippings that documented this horrific chapter in human history, and in my dear father's life.

On my mother's side, my grandfather was an outspoken atheist, in reaction to the abuses of the Catholic priests in the small Italian village where he grew up before fleeing to the U.S. Half a century before sexual abuse by priests became common knowledge, my grandfather told me horrific tales about how the priests in his village preyed upon the women and children in his village. He also told me that, when his first child was born here in his adopted home country – my mother – he wanted to name her "liberty." Since my maternal grandmother was more traditionalist, though, that didn't happen. But certainly the spirit of liberty animated my wonderful mother, as well as my father, and I could never take for granted our Constitution's promises of liberty, especially in light of this family history on both sides.

Nor can any of us take these rights for granted, in light of what is happening all around all of us right now. Of course, we are far from the horrors of the Holocaust. But we are not so far from the anti-Semitism and intolerance that fueled it. All around the world, and right here at home, anti-Semitism and other forms of religious bigotry and even violence are, alas, alive and well. So our work to combat them is as essential as ever . . .

There is literally no threat to civil liberties that is not significantly grounded in efforts by some individuals to impose their own religiously based beliefs on everyone else. That's certainly true for the stepped-up censorship issue we continue to face — against anything that's considered "indecent" or "offensive" to majoritarian religious or moral beliefs. In reaction to the brief broadcast flash of Janet Jackson's breast, and the single adjectival epithet spontaneously uttered by music star Bono on TV, government regulators recently have been on an unprecedented, unjustified rampage. They are cracking down on and chilling any broadcast expression that might offend anyone's religious or moral sensibilities.

In addition to unjustly punishing the individuals involved in these two fleeting incidents, Congress and the FCC have also issued new laws that are so vague and new penalties that are so harsh that they are already causing self-censorship of valuable information and ideas. Let me read you just a couple examples from the ACLU brief that calls on the FCC to overturn its recent speech-suppressive rulings: "An episode of *ER* was edited to eliminate a brief shot of the exposed breast of an 80-year-old woman receiving emergency care. . . . Public broadcaster WGBH edited a hint of cleavage out of its *American Experience* documentary 'Emma Goldman.' Further, in [a documentary] on 'The Life and Work

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Supreme Court Upholds Pledge – For Now

On June 14, Flag Day, the U.S. Supreme Court unanimously held that the phrase “under God” may remain in the Pledge of Allegiance because its challenger, Michael A. Newdow, lacked legal standing to sue. While all eight justices who participated in the case voted to overturn the Ninth Circuit’s decision that held the practice unconstitutional, five did so on procedural grounds.

Justice John Paul Stevens wrote for the majority: “In our view, it is improper for the federal courts to entertain a claim by a plaintiff whose standing to sue is founded on family law rights that are in dispute when prosecution of the lawsuit may have an adverse effect on the person who is the source of the plaintiff’s claimed standing.”

Stevens was joined by Anthony Kennedy, David Souter, Ruth Bader Ginsburg and Stephen Breyer.

Three other justices, Sandra Day O’Connor, Clarence Thomas and Chief Justice William Rehnquist, wanted to rule on the merits of the case, and in their separate concurrences, supported the concept that including the phrase was constitutional. (Justice Antonin Scalia had recused himself from the case.)

While there was some disappointment that the Court had failed to address the constitutional issues, many observers saw the ruling in *Elk Grove Unified School District v. Newdow, No. 02-1624*, as a wise attempt to defuse a potentially explosive political issue in a presidential election year. The *Washington Post* editorialized that “passivity was a virtue,” and argued, “Resolving a case on grounds of the legal standing of a litigant always has the feel of a cop-out. But the doctrine actually serves a vital function in the U.S. judicial system, particularly in constitutional challenges to laws and government policies. It prevents the courts from considering complaints unnecessarily. The pledge case is an excellent example. The pledge, after all, has been around in its current form for a half-century, and it has existed with relatively little political or legal controversy. Even as public school prayers were banned, and people began suing over religious symbols such as the Ten Commandments in public buildings, people haven’t been flooding the courts with complaints that they or their children are unconstitutionally oppressed by the Pledge of Allegiance. Insisting that the courts refrain from considering such matters unless someone with a clear stake in them objects is one of the central checks against overly broad judicial power.”

Similar views were expressed by Americans for Religious Liberty: “Today’s Supreme court ruling dismissing a challenge to the inclusion of the phrase ‘under God’ in the Pledge of Allegiance is the optimal outcome of this controversial case,” according to Burton Caine, professor of constitutional law at Temple University School of Law and board chair of Americans for Religious Liberty. “A decision striking down the ‘under God’ phrase would have provoked a disruptive firestorm of protest and probably led to the unstoppable passage of a constitutional amendment that could seriously weaken the constitutional protections of religious freedom.”

ARL president Edd Doerr added: “This outcome was one included in the ‘friend of the court’ brief to the Supreme Court filed by Americans for Religious Liberty, the American Civil Liberties Union, and Americans United for Separation of Church and State. We believe that Congress’ inclusion of the phrase in the Pledge in 1954 violated the First Amendment, but that the matter is neither ripe for consideration by the Supreme Court nor of high priority compared to such other threats to religious freedom and church-state separation as coerced tax support for faith-based schools and charities or faith-based attacks on women’s rights.”

The case arrived at the nation’s highest court after a 2-1 ruling in June 2002 from the Ninth U.S. Circuit Court of Appeals saying that

the phrase was unconstitutional. The appeals court stayed its decision until the High Court ruled, thus allowing children in nine Western states to continue to recite the Pledge in its present, 1954 format. (The phrase was added by a unanimous vote of Congress in that year and signed by President Eisenhower.) Courts in several jurisdictions have held that students are not required to recite the Pledge, but as a practical matter it has become almost obligatory and coercive in many communities.

The plaintiff in the case, a California physician and outspoken atheist, Dr. Michael A. Newdow, argued his own case before the Court on March 24. By most accounts, Newdow, who also has a law degree, acquitted himself well and engaged in a spirited defense of his position. He argued, “Government needs to stay out of this business altogether,” because requiring a statement of religious belief violates the Constitution’s mandate for neutrality in religious matters by governmental authorities.

As an advocate, Newdow was impressive. Linda Greenhouse, the legal affairs reporter for *The New York Times*, called his performance “spellbinding,” even if it “bore a closer resemblance to dinner-table conversation than to formal court-room discourse.”

Newdow closed with a compelling argument: “There’s a principle here, and I’m hoping the court will uphold this principle so that we can
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Excerpts from Brief of 32 Clergy

The clergy joining in the . . . brief are leaders in the monotheistic religions that are the intended beneficiaries of the religious content in the Pledge of Allegiance. These *amici* don’t want government imposing their religious beliefs on children whose parents teach other beliefs.

More distinctively, these *amici* are profoundly alarmed by the many briefs arguing that the religious content of the pledge isn’t to be taken seriously, and that it should be interpreted as merely historical, or demographic, or secular or some other strained theory. Such arguments attempt to strip the religious meanings from one of the most fundamental of religious propositions. The . . . brief explains, from a religious perspective, why the government shouldn’t request a religious affirmation from school children each morning, regardless of whether the government does or does not take that affirmation seriously.

These *amici* are especially concerned about the many governmental briefs asserting that the pledge to one nation, “under God,” is not actually intended as a serious statement of faith. For government to lead the nation’s children in a religious affirmation that is empty or insincere is for government to interfere with true religious faith. . . .

If the religious portion of the Pledge is not intended as a serious affirmation of faith, then every day government asks millions of school children to take the name of the Lord in vain. Children are asked to recite what sounds like a serious affirmation, but it is not intended to have any religious meaning. This is just as bad from a perspective of religious liberty, and it is worse from a perspective of religious faith. . . . This attempt to reinterpret the Pledge is indefensible. . . . (A) false or insincere recitation. . . . is an apparent statement of religious faith redirected – misappropriated – to secular and political purposes.

Evangelical Voters Divided

While it is commonly assumed that evangelical Christians are a fairly or somewhat cohesive voting bloc George W. Bush can count on in November, a new poll shows that the guesstimated 32% of Americans who are evangelicals are far from unified. That conclusion is drawn from a poll conducted March 16 to April 4 by Greenberg Quinlan Rosner Research for the PBS program "Religion and Ethics Newsweekly" and *U.S. News & World Report* magazine.

The Greenberg Quinlan Rosner poll used a total of 151 questions and divided the respondents into three categories – white, African-American, and Hispanic.

Probably the biggest difference among these three demographic groups is shown by their preference for president in this year's election. While evangelicals prefer George W. Bush over John Kerry by 71% to 23%, while African American and Hispanics prefer Kerry 74% to 16% and 55% to 37%, respectively. (For the sake of simplicity this report will abbreviate White evangelicals "W," African-Americans to "A," and Hispanics to "H.") Political party preferences, Democratic and Republican, break down as follows: Ws, 19% to 56%; As, 68% to 9%; Hs, 48% to 23%.

Another pronounced difference has to do with locus of residence, whether urban or small town/rural. The breakdown: Ws, 26% to 57%; As, 62% to 17%; Hs, 62% to 22%.

One set of questions related to whether respondents felt "warm" or "cool" toward various individuals and groups. The results were as follows.

Bush: Ws, 69% to 17%; As, 18% to 67%; Hs, 40% to 42%. Kerry: Ws, 18% to 51%; As, 46% to 18%; Hs, 38% to 25%. Pat Robertson: Ws, 35% to 22%; As, 15% to 34%; Hs, 17% to 25%. Anti-abortion groups: Ws, 59% to 23%; As, 33% to 41%; Hs, 31% to 38%. National Rifle Association: Ws, 51% to 22%; As, 23% to 41%; Hs, 29% to 31%. Jerry Falwell: Ws, 25% to 32%; As, 11% to 36%; Hs, 9% to 31%. Pro-choice groups: Ws, 21% to 50%; As, 37% to 24%; Hs, 33% to 23%. Labor unions: Ws, 30% to 35%; As, 55% to 14%; Hs, 43% to 20%. American Civil Liberties Union: Ws, 15% to 52%; As, 44% to 18%; Hs, 37% to 17%.

Differences also showed up on specific issues. While all three respondent groups showed little support for Palestinian rights (Ws, 21% to 70%; As, 27% to 67%; Hs, 33% to 63%), "support for Israel" took a different slant (Ws, 56% to 42%; As, 31% to 62%; Hs, 33% to 63%). There were divergences also on sending troops into countries that pose a potential threat to the United States" (Ws, 61% to 36%; As, 50% to 46%; Hs, 48% to 49%).

On the question of gay civil unions and gay marriage, Ws tended to be significantly more opposed than either As or Hs, but all three groupings opposed a constitutional amendment to ban gay marriage (Ws, 42% to 52%; As, 36% to 59%; Hs, 34% to 57%).

Abortion rights also showed disparities between the two groupings. On the question of whether abortion should be legal in all or most cases, Ws were opposed 28% to 68% while As and Hs came down on the other side 53% to 42% and 52% to 46%.

Another significant difference was on the question of whether the Bible is to be taken literally or not. Ws registered 66% to 29% and As 51% to 38% for a literal interpretation, while Hs went the other way 38% to 48%. On the question of whether "only born-again Christians go to heaven" Ws agreeing 50% to 43%, with As and Hs coming down on the other side 41% to 51% and 43% to 55%.

Evangelical voters, then, are nowhere near as monolithic a population as some believe or would like to believe. -- *Edd Doerr*

Catholic Issue Back, But With a New Twist

In her autobiography, *This I Remember*, former First Lady Eleanor Roosevelt wrote about her campaign for Senator John F. Kennedy in 1960. But she also remembered the dark side of that exciting and eventful race: "One feature of the campaign that dismayed and shamed me was the injection of the religious issue."

Organized Protestant bigotry did everything it could to defeat Kennedy and elect its darling, Richard Nixon. Even "respectable" religious leaders like Billy Graham and Norman Vincent Peale entered the campaign surreptitiously, pleading for a Protestant bloc vote against the Massachusetts senator. They were very nearly successful.

Now, 44 years later, another Catholic Democratic U.S. senator from Massachusetts faces a new assault, but this time it comes from Catholic bigots. The objective, of course, is to reelect the most religiously narrow and sectarian president in U.S. history, George W. Bush. The players have changed, but the essential issues remain – whether the United States Constitution's Article VI, which unequivocally bans religious tests for public office, is to be honored or to be effectively abrogated by religious bloc voting.

It is not surprising that the intended beneficiary of these primitive, one would almost say atavistic or medieval, manipulations of religious sentiment for political gain is the Republican Party. The Grand Old

Party, which once actually nominated Abraham Lincoln and Theodore Roosevelt for president, has become the vehicle of religious authoritarianism and majoritarianism, subsuming these baneful attributes under such rhetorical phrases as faith-based initiatives, respect for family values and religion-as-patriotism.

While the GOP cannot stay in power without some support from Catholics, Jews, Muslims, Eastern Orthodox Christians, Hindus, Buddhists, and secular voters, its controlling power base remains Protestantism, especially its evangelical and fundamentalist wing.

That is why the Republicans have nominated 73 white Protestant males for president and vice president since 1856, and will do so again in August, when the Bush-Cheney team are coronated. Only once in its century-and-half history has the GOP nominated a Catholic, an obscure upstate New York congressman, William Miller, for vice president in 1964, running with the unconventional Barry Goldwater. The Democrats don't have a great record of diversity either, but they have been somewhat more inclusive. The party of Jefferson and Jackson has nominated two Catholics, New York Governor Alfred E. Smith in 1928 and Senator John F. Kennedy in 1960, for president, and is on the verge of selecting its third, John Forbes Kerry. The party nominated three Catholics for vice president (Edmund Muskie in 1968, Sargent Shriver in 1972, and Geraldine Ferraro in 1984), one Jewish candidate for vice president, Joseph Lieberman in 2000, and one Greek Orthodox Christian for president, Michael Dukakis, in 1988. As the Republicans come increasingly under Southern evangelical domination, its closed-door policy is likely to continue.

But now, a new and sinister ingredient has been added to the highly combustible mix of politics in the U.S. in 2004: right-wing Catholic fundamentalists, in the hierarchy and among the laity, are trying to discipline Senator Kerry or to punish him for his unspoken pro-choice position on abortion and women's reproductive health options. Some of the most vicious attacks, some apparently reaching to the Vatican, even aimed at the personal religious conscience of a public official, have been increasingly aimed at the putative Democratic nominee. Conser-



Private School Share of U.S. Education Remains at 10%

Private schools of all kinds educate only 9.8% of all elementary and secondary students, according to 2002 data compiled by researchers Bert Sperling and Peter Sander. Their compilation, which appears in the just-published *Cities Ranked & Rated* (Wiley Publishing, Inc.), was based on the most recent data available from the National Center for Education Statistics.

The percentage of private school enrollment has remained virtually unchanged for a decade, despite a barrage of pro-voucher propaganda, the passage of voucher programs in several states and favorable court decisions.

Of the 331 Metropolitan Statistical Areas (MSA) defined by the U.S. Office of Management and Budget (OMB), only 45 showed private school enrollments of 15% or higher.

The areas showing the highest private school enrollment reflect historic cultural and religious patterns. (See table accompanying this story.)

Dubuque, Iowa, an old industrial town on the Mississippi River reflecting a predominant German Catholic heritage, has the nation's

highest private school enrollment, at nearly 31%. Most of the nonpublic sector attends parochial schools. (Interestingly, Dubuque is a Democratic stronghold and has supported every Democratic presidential nominee since JFK, including George McGovern.)

The second highest percentage, nearly one quarter of all students, attend mostly Catholic schools in New Orleans. Two other Louisiana cities, Baton Rouge and Lafayette, are on the top twenty, reflecting the Pelican State's French Catholic (Cajun) heritage.

Catholic parochial schools are the dominant nonpublic school system in 17 of the top 20 metros. Many reflect the cohesive, European-flavored Catholic culture of such cities as Louisville, Cincinnati, Philadelphia, Erie, Milwaukee, St. Louis, Jersey City, Scranton and Toledo, while New York, San Francisco, and Wilmington (Delaware) have a variety of religious and secular private schools. Lancaster, Pennsylvania is noted for its Mennonite and Amish school systems, while Honolulu has many Protestant schools originating in the 19th century.

— *Al Menendez*

The Top Twenty Metros Ranked by Private School Enrollment

Rank	Metro Area	Percentage	Predominant Private Schools
1	Dubuque	30.8	Catholic
2	New Orleans	24.6	Catholic
3	San Francisco	22.8	Mixed
4	Wilmington, DE	21.5	Catholic, elite prep
5	Philadelphia	21.1	Catholic, prep
6	Erie	20.3	Catholic
7	Louisville	20.2	Catholic
8	Cincinnati	19.9	Catholic
9	New York City	19.7	Catholic, Jewish, prep
10	Milwaukee	19.3	Catholic, Lutheran
11	Lancaster	19.0	Amish, Mennonite
12	Lafayette, LA	18.9	Catholic
13	St. Louis	18.6	Catholic
14	Jersey City	18.2	Catholic
15	Scranton	18.0	Catholic
16	Honolulu	17.7	Protestant
17	Toledo	17.6	Catholic, Lutheran
18	Racine	17.5	Catholic, Lutheran
19	Baton Rouge	17.5	Catholic
20	Waterloo/Cedar Rapids	17.4	Catholic

vative Catholics, who almost to a man (or woman) support the reelection of George Bush, are demanding that church leaders deny the sacrament of Holy Communion to Kerry because he believes that public policy in the U.S. must remain independent of ecclesiastical control or influence. Such a sensible and deeply-rooted position seems so unsailable that those making these charges appear to be a throwback to another age.

Frankly, most Americans of all religious persuasions probably thought this issue of church-state intersection had long ago been settled, certainly by the admirable record of the Kennedy presidency on church-state matters. Now, unreconstructed church-state unionists have returned with a vengeance. They seek sanctions against a candidate who is upholding one of the central tenets of the American experience.

All the while, George W. Bush continues to trample on the hallowed principle of church-state separation, even while asserting that he believes in the First Amendment. -- *Al Menendez*

Safeguarding the Future

Religious liberty and church-state separation will never be completely secure. But you can help provide the means for their defense in the future in two ways.

Include a bequest to Americans for Religious Liberty in your Will, or include ARL as a beneficiary in a life insurance policy. Bequests and insurance proceeds to ARL are tax deductible.

Please contact us if you would like further information.

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Supreme Court Upholds State Ban on Funding Religious Education

By a resounding 7 to 2 margin, the U.S. Supreme Court ruled that states do not have to make taxpayer-funded scholarship programs available to students preparing for the ministry.

The February 25 decision in *Locke v. Davey*, No. 02-1315, held that Washington State was correct in refusing its Promise Scholarship aid to a student majoring in pastoral studies in preparation for a ministerial career.

Writing for the majority, Chief Justice Rehnquist said, “Washington’s program imposes neither criminal nor civil sanctions on any type of religious service or rite. . . . The State has merely chosen not to fund a distinct category of instruction.”

Rehnquist added, “Since this country’s founding, there have been popular uprisings against procuring taxpayer funds to support church leaders, which was one of the hallmarks of an ‘established’ religion. Most States that sought to avoid such an establishment around the time of the founding placed in their constitutions formal prohibitions against using tax funds to support the ministry. That early state constitutions saw no problem in explicitly excluding only the ministry from receiving state dollars reinforces the conclusion that religious instruction is of a different ilk from other professions. Moreover, the entirety of the Promise Scholarship Program goes a long way toward including religion in its benefits, since it permits students to attend pervasively religious schools so long as they are accredited, and students are still eligible to take devotional theology courses under the program’s current guidelines. Nothing in the Washington Constitution’s history or text or in the program’s operation suggests animus towards religion. Given the historic and substantial state interest at issue, it cannot be concluded that the denial of funding for vocational religious instruction alone is inherently constitutionally suspect. Without a presumption of unconstitutionality, Davey’s claim must fail. The State’s interest in not funding the pursuit of devotional degrees is substantial, and the exclusion of such funding places a relatively minor burden on Promise Scholars.”

The only dissenters, Antonin Scalia and Clarence Thomas, issued two separate dissents. Scalia engaged in a labored argument that the neutrality principle required the government to aid any kind of education, religious or secular. The acerbic Scalia said the case “is about discrimination against a religious minority” and represents “modern popular culture’s trendy disdain for deep religious conviction.” He warned that the court’s ruling could “deny priests and nuns their prescription drug benefits,” a comment so off the wall as to be embarrassing.

Justice Thomas rather meekly argued that “the study of theology does not necessarily implicate religious devotion or faith.” Some may wonder, what else is it?

Temple University constitutional law professor Burton Caine, who is also chair of the ARL board, called the ruling “a significant victory for the constitutional separation of church and state” and added, “In rejecting the government’s argument that the state’s choice discriminates against religion, the Court’s decision repudiates the entire basis for the Bush administration’s faith-based initiative program. The ruling is a welcome development in the battle to preserve the separation of religion and government.”

The Pew Forum on Religion and Public Life said the opinion “effectively upholds laws in 37 states that prohibit state funding of religious education in colleges and universities.” (For background, see *VOR* 86, pages 2, 4.)

When a Win May Not Mean Much

On February 25, 2004 the United States Supreme Court ruled seven to two in *Locke v. Davey* that Washington State has the right to exclude a divinity student from a state scholarship program. At first glance this would seem to be a victory for church-state separation. On closer examination, however, *Locke* was only a minor win that left the door open for all sorts of future mischief.

Locke was written by Chief Justice William Rehnquist, who has never been terribly fond of church-state separation. Had Rehnquist not voted with the majority and instead sided with the Antonin Scalia-Clarence Thomas minority, the ruling would probably have been much stronger and written by Justice John Paul Stevens.

Rehnquist wrote the ruling as narrowly as he could, citing the United States’ more than two-centuries-old constitutional ban on the use of public fund to train ministers. He specifically noted that the ruling didn’t hinge on the Washington State constitution’s so-called Blaine Amendment banning tax aid to all religious schools, a provision very similar to “Blaine Amendments” in 36 other state constitutions. Blaine Amendments are the main state constitutional barrier to school voucher plans and are slammed by opponents of church-state separation as remnants of nineteenth-century bigotry against Catholics. (The Blaine Amendment myths are examined and debunked by Al Menendez in a long article in *Voice of Reason*, no. 83, 2003.) The Blaine Amendment ploy was first used in New York State in 1967 in an effort to remove from the state constitution the ban on tax aid to faith-based schools; New York voters rejected the effort 72 percent to 28 percent. Similarly, voters in predominantly Catholic Massachusetts voted heavily in 1982 and 1986 – by 62 percent to 38 percent and 70 percent to 30 percent, respectively – to reject similar tampering with their state’s Blaine Amendment.

Curiously, there was no comment in the *Locke* ruling or by the media that Washington State voters upheld their state’s Blaine Amendment in 1975 and 1996 by margins of 60 percent to 39 percent and 64 percent to 36 percent, respectively. Just as curious is the fact that Rehnquist’s ruling didn’t mention the Court’s 1972 decision in *Brusca v. State of Missouri* to uphold Missouri’s right to ban tax aid to faith-based schools.

In any event, Rehnquist’s ruling in *Locke* leaves the door open to future challenges to state constitutional provisions separating church and state. And given the Supreme Court’s mistaken ruling in favor of an Ohio school voucher plan in 2002 in *Zelman v. Simmons-Harris*, the outlook for church-state separation isn’t rosy. Whoever is elected president this coming November will undoubtedly shape the future of church-state relations in this country.

— Edd Doerr

Nadine Strossen, *continued from page 2*

of Piri Thomas, . . . PBS felt it must edit [out] certain expletives (including nonsexual . . . epithets) even though they appear in the poetry of [the] subject Piri Thomas, a renowned poet, writer and educator.”

As if all of this isn't troubling enough, the FCC also has declared that henceforward, broadcasts may not contain "profanity," which it explicitly defines as including "blasphemy." Thus the government is expressly putting its stamp of approval on selected religious views. . . .

Another example of current anti-rights campaigns that are fueled by religious overreaching is the recently renewed effort to entrench discrimination against certain couples, and certain families, on the basis of gender or sexual orientation. No one has stated this more clearly or forcefully than – ironically – Justice Antonin Scalia. I say "ironically," since Scalia spelled out this connection in his dissenting opinion in *Lawrence v. Texas*. He wrote an angry tirade against the majority's historic ruling in that case, in favor of not only gay rights, but also human rights, far more broadly.

The majority stressed that it was only addressing the issues directly before it and, hence, expressly upholding only the rights of consenting adults to sexual intimacy in the privacy of their homes. But the majority's rationale for that specific holding actually has the potential for upholding literally the entire agenda of all our organizations. Justice Kennedy's opinion for the Court included sweeping, inspiring passages that are paeans to individual freedom of choice generally, and I find this especially exciting given who he is – a conservative, Republican, Catholic, appointed by a conservative, Republican President, Ronald Reagan. Surely that means that, on at least some key issues, we can reasonably hope for further positive rulings by the current Court.

At the outset of the opinion, Justice Kennedy wrote: "Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct."

Indeed, Justice Kennedy concludes by eloquently endorsing the concept of a living, evolving Constitution that is worthy of the most liberal judicial activists. He gives a completely open-ended reading to the constitutional guarantee that government will not deprive any person of liberty without due process of law: "Had those who drew and ratified the Due Process Clauses . . . known the components of liberty in its manifold possibilities, they might have been more specific. "[But] they did not presume to have this insight. They knew times can blind us to certain truths, and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom."

One aspect of the majority's decision is of special significance to our

ongoing struggle for religious liberty, and against the religiously-based repression of rights. The court expressly held that laws cannot constitutionally be based only on majoritarian views about morality. And it was that holding in particular that Justice Scalia rightly recognized as ultimately sounding the death-knell for a whole host of laws – far beyond the discriminatory anti-sodomy laws that were at issue in *Lawrence* itself.

While this sweeping potential was the cause of Justice Scalia's consternation, for us it is cause for celebration! You can't be an activist without being an optimist, so I always like to stress the positive. As we face increasingly strong assaults on all our freedoms, we must take heart from the fact that we also have increasingly strong tools to combat them.

The entire civil liberties agenda is endangered by religious intolerance, which is receiving unprecedented support from the current administration. In April, PBS ran a chilling documentary called "The Jesus Factor." It addressed this disturbing question: "Do most Americans realize just how fervent the president's evangelical faith really is?"

Actually, consistent with our staunch defense of individual religious liberty for everyone – including the President of the U.S. – it's not inherently problematic for him to be a fervent believer in his capacity as an individual citizen. To the contrary, that's his First Amendment right, which we fervently defend. But it is problematic that George W. Bush's religious zeal has had an overweening influence not only on his personal life, but also on his presidential policies. As the *New York Times* wrote in its review of the PBS documentary: "The program reminds viewers that this 'faith-based' president has blurred the line between religion and state more than any of his [recent] predecessors: a vision that affects the Iraq conflict as well as domestic policy."

Our opponents too easily get away with their false charges that separation of government and religion reflects only hostility toward religion, or the wish to completely remove religion from American life.

Our opponents have made so much headway because they have devoted so many resources to their cause and also because they have developed intellectual theories that have reframed the terms of the debate among the press, public, and policymakers.

They have seized our own rhetoric of civil liberties and civil rights by re-casting enforcement of the Establishment Clause as the denial of free speech rights for religious expression and as the denial of equal rights for religious individuals or groups.

Strongly as we disagree with these claims on the merits, we must recognize that they have been effective in persuading all-too-many policymakers and judges.

Now it's long past time for us to re-seize the initiative to reframe the debate ourselves.

Excerpts from "Catholic Hierarchy and Political Fundamentalism Harm Women, Families Worldwide," Statement of Frances Kissling, President, Catholics for a Free Choice, Global Abortion Politics Press Conference of International Nongovernmental Organizations, National Press Club, April 23, 2004, 9:30 a.m.

" . . . With the election of George W. Bush, the Vatican was able to lower its voice and have, in the U.S. government, a loud and active partner in its tyrannical campaign against women. George Bush has indeed declared war on the world's women. . . . The current U.S. administration cut off funds to the UNFPA. It has insisted upon an abstinence-only AIDS prevention education program. It imposed a 'Global Gag Rule' prohibiting groups that provide basic health care services from making women aware of all their options when facing an unplanned or unhealthy pregnancy.

"These are not moral acts; these are purely political decisions, designed to give those on the right – from the Catholic bishops to the Christian Coalition to Focus on the Family – temporary succor in their unceasing efforts to deny all women, both here and abroad, the right to make decisions which most intimately and critically affect their lives."



The Voucher Watch: Scandals and Setbacks

The well-financed voucher juggernaut did not have a good spring. Scandals hit the existing programs in Wisconsin and Florida and caused legislative action to tighten state regulations. In Maine the highest court refused to require inclusion of faith-based schools in a tuition program. Here is a review of these and other actions on the voucher front during the past few months.

Florida. Florida's legislature adjourned without passing new regulations on voucher-funded private schools despite five separate criminal investigations. Scandals have rocked the state-administered voucher program during the past few months. A private school in Miami, Heritage Schools of Florida, cashed checks worth \$38,000 for 18 students during the last academic year, even though the students had returned to public schools. The school never refunded the money, received more state funds for 44 students last fall, but shut down in December 2003. An Ocala voucher school operator was arrested in late January for stealing \$268,125 in state voucher money. "Not one dime was used for scholarships at all," said Marion County assistant state attorney Mark Simpson. At least four other voucher academies, including a faith-based one, Faith Academy in Bartow, are under investigation by Florida's Chief Financial Officer Tom Gallagher, according to the *Palm Beach Post*. The *Post* reported that the director of a Jacksonville Beach-based voucher group had forged parents' signatures on checks.

Even the state's Republican legislators are upset. Senate President Jim King predicted "disaster" due to loopholes left open by the House. House Speaker Johnnie Byrd of Plant City, who defended voucher schools and opposed substantial regulations, is running for the Republican nomination to the U.S. Senate. Byrd recently announced he had quit the Episcopal Church to become a Southern Baptist because of the Baptists' strong anti-gay rights and anti-abortion positions.

Maine. A federal court in Portland dismissed a lawsuit filed by two families who wanted public funds to pay for their children's tuition at a Roman Catholic school. The March ruling by U.S. District Judge John A. Woodcock, Jr., upheld a 2003 decision by a Magistrate Court that held that states are not required to pay tuition at religious schools despite the 2002 U.S. Supreme Court decision in *Zelman v. Simmons-Harris*.

Maine has a "tuitioning" program that pays tuition for students who live in rural districts that cannot provide public schools for their children. State law bans tuition for faith-based schools. Secular private schools or public schools out of district are eligible to participate in the program. Two families from the village of Minot had challenged the exclusion of religious schools in a suit filed two years ago.

The *Brownsville Herald* (Texas) reported on May 18:

"... [O]pposition to school vouchers is at its highest level since the Texas Poll began asking the question in 1998. Fifty-eight percent of Texans oppose allowing public school students to use vouchers to attend private schools using tax dollars for tuition. Thirty-six percent support vouchers.

The Texas Poll was conducted May 3-15 by the Scripps Research Center in Abilene. The Poll surveyed 1,000 adult Texans by telephone in a random sample of active telephone exchanges statewide. The margin of error is plus or minus 3 percentage points and slightly higher for subgroups."

Texas. Voucher legislation has not passed the Texas legislature. The only two pro-voucher Democrats in the Texas House of Representatives, Ron Wilson of Houston and Glenn Lewis of Ft. Worth, were defeated in the March primary.

Other proposed voucher schemes failed in Connecticut, Rhode Island, Arizona, Kansas, Iowa, Minnesota, Oklahoma, South Carolina, Mississippi, New Hampshire, New Mexico and Louisiana during state legislative sessions this spring.

Utah. Utah's Republican Governor Olene Walker vetoed on March 23 a voucher bill that would have provided vouchers for students with disabilities in private schools. She directed that the \$1.4 million appropriated for the program be sent to the state board of education to contract with schools helping students with disabilities (Walker is hardly a liberal, though. She signed bills halting state funding for abortions, outlawing late-term abortions and banning gay marriage.) Her Utah voucher veto dealt mainly with public accountability. Some aid is still likely to flow to nonpublic schools. (Walker lost the Republican nomination for governor and is now a lame-duck.)

A Price Waterhouse Coopers study of a proposed tuition tax credit (TTC) requested by the Utah School Boards Association, concluded that benefits of the plan would go primarily to high-income families who already send their children to private schools. Help for lower-income families would be minimal. The TTC voucher bill died in the Utah House on March 1.

Wisconsin. Governor Jim Doyle signed a law in March requiring voucher schools to report more financial information to the state and allowing chief state school officials to suspend voucher payments to private schools that fail to meet certain health, safety and academic performance standards. The legislature passed the law in response to reports of widespread scandals and abuse in the \$75 million voucher system that sends 13,000 students to private schools. One of the worst abuses occurred at the Mandella Academy of Science and Math in Milwaukee, where school officials admitted signing up more than 200 students who never attended classes and then cashing \$330,000 in state-issued tuition checks. The principal and assistant principal bought Mercedes-Benzes for themselves. Mandella principal David Seppel did not even have a teacher's license. Under existing state law he was not required to submit any information about the school's philosophy or curriculum before receiving more than \$1 million in voucher funding.

Unlike their counterparts in public schools, private school principals and teachers are not required to undergo criminal background checks. That loophole allowed James A. Mitchell, a convicted felon, to serve as principal and founder of Alix's Academy of Excellence, recipient of \$2.8 million in voucher money.

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Editorials

It's Time to Level the Faith-Based Playing Field

By Clarence Page

Constitutionally, we Americans are not supposed to have religious tests for public office holders. But, informally, we do.

That's why, for example, so many politicians who otherwise might not have stepped into a church since their baptisms somehow rediscover churches with great enthusiasm during campaign time.

A far more serious question arises when it looks like politicians might have a religious test for deciding whom should receive government services.

That question has arisen with new vigor lately, as the White House seeks additional funding for "faith-based initiatives," a jewel in President Bush's crown of "compassionate conservatism."

The change emerged during "The Jesus Factor," an hour-long exploration on PBS' "Frontline" last week of how George W. Bush became a born-again Christian and whether it affects his policies as president. At issue was the Compassionate Capital Fund, which is designed to help organizations successfully apply for federal grants.

Of the \$100 million that the Department of Health and Human Services has given to the agency, the documentary said, "no charities run by Jewish, Muslim or other non-Christian faiths" have received money from the fund, although some have applied.

After that genuinely hot-sounding news item arched my eyebrows, I reached the man in charge of children and family issues at HHS, Assistant Secretary Wade F. Horn. He denied both "Frontline's" dollar figure and the bias allegation. Yet he also acknowledged that "Frontline" was not entirely wrong.

The fund has distributed only \$65 million so far, he said, and he named several Jewish-affiliated service organizations that have received grants.

However, he explained that those were small \$50,000 "capacity-building" grants that were not given directly by the federal government but distributed indirectly through "intermediary organizations" to local community agencies.

There are 31 intermediary grant recipients nationwide. So far, Horn acknowledged, none of them has been affiliated with non-Christian religions. But he denied that there was bias, pointing out that the 31 were chosen from a much larger pool of 650 applications. Only the strongest survived, regardless of their religious affiliation or lack of one, he said.

Still, the widespread perception persists that it helps to be not only faith-based but based in the right faith too. For example, in a piece titled "Faith Healing," the online edition of *The American Prospect*, a leading policy journal of liberal opinion, describes a United Veterans of America shelter in Northampton, Mass. It was repeatedly turned down for funding, the article says, until its director complained to Massachusetts congressmen who declared the shelter to be a "faith-based" agency. Presto! UVA's federal funding tripled.

"I'm not getting out-Jesused for money ever again," the director says. "That's a horrible thing to do to people."

Last March, the White House Office of Faith-Based and Community Initiatives announced that it had awarded more than \$1.1 billion to religious charities from a group of 140 competitive grants. Horn described how the selection process takes geography into account in distributing money as wisely as possible, but not religious denomination.

"I think the fairest way to run a competition is to run a fair competition," said Horn. "We certainly reached out to the broad faith-based community to send applications to us to become intermediaries. Besides, I don't think the people receiving the services – alcohol treatment, drug treatment, refugee resettlement – care about which religion is helping to provide the services they need. They are just happy to receive the services."

That's a fair point. Nevertheless, the Bush administration is inviting further suspicions and perhaps legal or political action if the perception of bias persists.

Bush has stated repeatedly that, while his faith is central to his personal well-being, it does not affect his federal policy decisions. Yet I do not have space here to list the many decisions he has made during his three years in office that closely parallel the dominant political views of his Christian evangelical base. Coincidence? I don't think so.

Instead of trying to sort that out, I do what many other voters do: I try to judge politicians by what they do, since what they say doesn't always tell you what they really believe. The president made a valid point when he said government too often discriminated against perfectly good social services because they were religiously affiliated. Government should not tilt the playing field against religious groups unfairly when they are trying to help.

But government should not tilt the field unfairly in their favor either.

Reprinted by permission. This essay originally appeared in the Chicago Tribune on May 2, 2004.

Subtle Deception

Q: What organization with a respectable-sounding name and image includes in its mission the dismantling of church-state separation similar to that of televangelist Pat Robertson's American Center for Law and Justice?

A: The Becket Fund for Religious Liberty.

Little in this world, of course, is either all black or all white. The Becket Fund, a well-funded litigation operation based in Washington, has undoubtedly done some good for the free exercise of religion, but a more important part of its agenda is aimed at tearing down the constitutional wall of separation between church and state. To be specific: it has filed amicus briefs in the courts targeting constitutional and legal barriers to compulsory tax support for sectarian institutions at all levels, such as through school vouchers.

There is no better way to see what the Becket Fund's main thought is than to look at the list of sponsors of its May 20 black-tie fundraising dinner in New York. They include Robert Bork, William F. Buckley Jr., Charles Colson, Edwin Feulner, Jack Kemp, Jeanne Kirkpatrick, Michael Novak, Frank Shakespeare (former U.S. ambassador to the Holy See), Abigail and Stephen Thernstrom, George Weigel, George Will, and Ted Forstmann (a major promoter of school vouchers). Also on the list of sponsors are the Ave Maria School of Law and Christendom College, ultraconservative Catholic institutions well out of the mainstream.

Surprisingly, the sponsors also include Sargent Shriver and Eunice Kennedy Shriver, who are apparently out of step with Eunice's brother, Senator Ted Kennedy, and Nobel laureate Elie Wiesel.

Financial backers of Becket have included the ultraconservative Olin and Bradley Foundations.

The Becket Fund, then, is only a partial and selective friend of religious liberty, one that in the long run promises to do more harm than good.

— Edd Doerr

Pledge, *continued from page 3*

finally go back and have every American want to stand up, face the flag, place their hand over their heart and pledge to one nation, indivisible, not divided by religion, with liberty and justice for all.”

Attorneys for the U.S. Government and the Elk Grove Unified School District near Sacramento, California, where Newdow's daughter attends school, urged the Court to overrule the appellate decision and allow the Pledge to remain as it was amended. The California school district attorney, Terence Cassidy, emphasized that Newdow's daughter remains in the primary custody of her mother, Sandra Banning, who never married Newdow. Both Banning and daughter are Christians who favor the retention of “under God” in the Pledge, and the girl's mother makes the educational decisions for the child.

Several justices noted that students can opt out of saying some or all of the Pledge, and schools have an obligation to permit those options under a 1943 decision involving the Jehovah's Witnesses. Justice O'Connor asked Newdow if his daughter did not have the “right not to participate,” and he replied that any participation is coercive. When O'Connor and Rehnquist suggested that the Pledge is not a prayer, Newdow argued that it is “an affirmation of belief.”

The Bush administration's Solicitor General, Theodore B. Olson, claimed that the Pledge is not really religious but is a patriotic and historical statement. He said the Pledge “is not a religious exercise” but was merely a “civic and ceremonial acknowledgment of indisputable historical facts.” Justice David H. Souter chided Olson, responding that “the reference to ‘under God’ means something more than a mere description of how somebody else once thought.” But Souter also suggested that the phrase had become so “tepid and diluted” that “whatever is distinctively religious as an affirmation is simply lost.”

Dozens of briefs were filed in the case by supporters and opponents of the Pledge. Some normally liberal groups, including the National Education Association, the National School Boards Association, and the American Jewish Congress, filed briefs in support of the Pledge (and thus in favor of overturning the Ninth Circuit ruling). They joined conservative religious groups and the American Legion.

Americans for Religious Liberty joined Americans United for Separation of Church and State and the American Civil Liberties Union in a brief affirming the Ninth Circuit decision. This brief argued that “children are uniquely susceptible to coercive pressure in school settings” and that “ritual classroom recitation of the Pledge coerces children to affirm religious beliefs, including monotheism.” The brief cited the historical record of the 1952-1954 congressional debates, which showed that Congress added “under God” so that schoolchildren would daily declare religious belief and affirm religion.” In signing the bill, which became Public Law No. 83-396, 68 Stat. 249, President Dwight D. Eisenhower proclaimed that students would “daily proclaim the dedication of our nation and our people to the Almighty.” Senator Alexander Wiley of Wisconsin said that students “would reassert their belief in the all-present, all-knowing, all-seeing, all-powerful Creator.” President Eisenhower also admitted the political aspects of the new legislation when he said the new phrase would “strengthen those spiritual weapons which forever will be our country's most powerful resource in peace or in war.” Of course, the U.S. was victorious in two world wars without these words being a part of the Pledge of Allegiance.

One interesting brief came from 32 Christian and Jewish clergy who said that including “under God” in the Pledge “invites a troubling kind of civic blasphemy. If children are supposed to utter the phrase without meaning it as an affirmation of personal faith, then every day government asks millions of schoolchildren to take the name of the Lord in vain,” the brief observed.

Many observers thought the justices were trying desperately to find some way to keep the Pledge as it is, if only to restrain the political consequences in an election year when ties between Christian Right activists and the Republican-dominated national government have reached new levels. This brings to mind Finley Peter Dunne's lovable Irish bartender character Mr. Dooley, who observed that the Supreme Court follows election returns. This is in fact what happened.

Update

Abortion Issue Remains Hot

The huge crowd attending an abortion rights march in Washington, DC on April 25 indicated that the issue still has saliency to millions of voters. It was the first large-scale women's rights demonstration in the nation's capital since 1992. And, as New York Senator Hillary Rodman Clinton noted, “Six months after that rally, we elected Bill Clinton president.” She added “We didn't have to march for 12 long years because we had a government that respected the rights of women. The only way we're going to be able to avoid having to march again and again and again is to elect John Kerry president.”

President Bush's policies on abortion represent a victory for the ideological hard right. Bush signed the law banning certain late-term abortion procedures, but challenges were filed on March 29 in three federal courts challenging its constitutionality. On March 25 the Senate passed the so-called Fetal Homicide Bill, called officially the Unborn Victims of Violence Act, by a 61-38 margin. Thirteen Democrats, mostly Protestants from the South and Midwest, joined 48 Republicans to pass a law making the courts recognize two victims when a pregnant woman is injured or killed as a result of a federal crime. Two Republicans, John Chafee of Rhode Island and Olympia Snowe of Maine, joined 35 Democrats and one independent in voting no. Senator John Kerry of Massachusetts opposed the bill.

President Bush signed the bill on April 1. Opponents of the bill had sought to increase penalties for the murder of a pregnant woman but without defining “fetal personhood,” but their alternative failed on a 50-49 vote.

Twenty-nine states currently have fetal rights laws. The California Supreme Court held on April 5 that killing a pregnant woman is a double homicide. The New York Court of Appeals ruled in April that a woman whose fetus dies because of a doctor's negligence can sue for emotional distress.

A federal judge in Richmond struck down on February 2 Virginia's law barring late-term abortions. U.S. District Judge Richard L. Williams said the ban “is unconstitutional on its face” and “impermissibly impinges on the fundamental right to choose an abortion.”

The “late-term” abortion issue has shifted to a courtroom struggle over the confidentiality of medical records. The Bush Justice Department said in federal court papers filed in February that “federal law does not recognize a physician-patient privilege.” The government has tried to force hospitals and clinics in California, Kansas, Missouri, Pennsylvania, New York and Washington to turn over thousands of records of late-term abortions, ostensibly to see if they were “medically necessary.” After two federal courts denied the requests to turn over medical records, the government reversed course in April in Manhattan to let a federal case proceed.

Moving?

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Abortion Ban Reversed

On June 1 a federal judge in San Francisco ruled the Partial Birth Abortion Ban unconstitutional. U.S. District Judge Phyllis Hamilton concluded that the act, passed by Congress and signed by President Bush, threatened the health of women and misrepresented the scientific and medical facts of the procedure. Hamilton's 117-page ruling found the measure insufficiently protective of women's health, echoing the U.S. Supreme Court's 5-4 decision in 2000 that overturned a similar Nebraska law. Hamilton said the law placed unfair burdens on women and was too vague. Hamilton's decision prohibits the Justice Department from enforcing the law at any of Planned Parenthood's 900 clinics. Planned Parenthood President Gloria Feldt said the ruling "reaffirmed a woman's right to choose and a doctor's right to practice medicine."

Similar challenges to the ban will soon be heard in New York and Nebraska. A likely final ruling will come from the U.S. Supreme Court.

A Justice Department spokesperson, Monica Goodling, said, "The Department will continue to devote all resources necessary to defend this act of Congress."

Anti-choice zealot Rick Santorum, a Republican senator from Pennsylvania, denounced Judge Hamilton, an appointee of President Bill Clinton, claiming she had "prejudged the case." The far-right *Washington Times* called for her impeachment.

Evolution Battles Centered in Alabama, Ohio and Montana

The Alabama House of Representatives adjourned on May 17 without taking action on a so-called Academic Freedom Act, which would allow Alabama teachers to present "alternative theories of biological or physical origins," i.e. to bypass evolution. The House had tried to modify the Senate-passed bill by requiring that only "scientific information" could be presented in classrooms.

In Darby, Montana, the school board, acting on the appeal of a Baptist minister, passed an "objective origins" policy that "encourages teachers to help their students analyze scientific strength and weaknesses of existing scientific theories, including the theory of evolution." This victory by the Religious Right, which made the *New York Times* and National Public Radio, may be short-lived. A May 4 school board election gave a huge victory to opponents of the policy. It is unlikely that the new board will seek to implement creationism in the local schools.

The Ohio Department of Education's approval of a watered-down lesson plan called "A Critical Analysis of Evolution" may lead to legal challenges from civil liberties groups.

In Oklahoma the House of Representatives has approved a bill issuing "disclaimers" about evolution. The proposed disclaimer describes evolution as "a controversial theory which some scientists present as scientific explanation for the origin of living things" and "the unproven belief that random, undirected forces produced a world of living things." It also states that "No one was present when life first appeared on earth. Therefore, any statement about life's origins should be reconsidered as theory, not fact."

The bill's sponsor, Bill Graves, a Republican from Oklahoma City said, "I think it's very important for children to know . . . If they just believe that they came from slime in a swamp, that's a whole lot different from being created in the image of God."

In a related activity, a federal judge in Atlanta kept alive a lawsuit that seeks to have Cobb County, Georgia schools remove disclaimers about evolution from textbooks. Jeffrey Selman and five other parents sued the Cobb County school system in August 2002 after disclaimers

ridiculing evolution were placed in all science books. Their lawsuit contends that the placement of these disclaimers promotes the teaching of creationism and discriminates against other viewpoints. All science books in Cobb County public schools now include this disclaimer: "This textbook contains material on evolution. Evolution is a theory, not a fact, regarding the origin of living things. This material should be approached with an open mind, studied carefully and critically considered."

U.S. District Judge Clarence Cooper ruled on April 6 that the case should go to trial, rejecting school board appeals for dismissal.

On May 16 the Minnesota legislature voted to adopt new state science standards without weakening by creationist forces.

The Missouri House of Representatives let an "equal treatment of science bill" die on the last day of the legislative session, May 14. Creationists and "intelligent design" advocates sought the legislation and included punitive damages such as termination if teachers refused to teach these theories.

Faith-Based Groups Prosper Under Bush

Faith-based organizations received more than \$1.17 billion in federal grants in fiscal 2003, more than at any time in history, according to data released by the White House in March. While these figures are only partial, they indicate a dramatic increase over previous years.

Grants at the Health and Human Services Department were up 41% to \$567.9 million. First-time recipients numbered 129 compared to 86 in 2002. At the Department of Housing and Urban Development (HUD), first-time grants to religious groups jumped from 37 to 52 and totaled \$532.1 million. The HUD grants to faith-based groups represented 24% of all HUD money. (Religious groups also received funds from the Departments of Justice, Labor and Education.)

A. James Towey, director of the White House Office of Faith-Based and Community Initiatives, said this development was "most welcome news" because "the playing field is now leveled." Critics, however, cite growing concerns that faith-based groups are receiving preferential treatment by the federal executive branch.

Specialists at the Urban Institute and the Brookings Institution have questioned whether new grants to faith-based groups will be as effective in delivering services to needy clientele as existing public or nonsectarian private programs.

Moore Forces Lose in Alabama

Three of the four statewide candidates linked to Alabama's deposed Supreme Court Justice Roy Moore lost in races for Republican nominations for various posts in Alabama's June 1 primary. Moore's allies, who support Ten Commandment plaques in public places, lost in two of three seats for the state supreme court and in one U.S. congressional race.

Unitarians Won't Be Taxed in Texas

The Texas Comptroller, Carole Keeton Strayhorn, reversed a decision in late May that denied tax-exempt status to a Unitarian Universalist (UU) church on the grounds that it "does not have one system of belief." The Red River UU Church in Denison, Texas, was one of 17 groups denied tax exemption by the comptroller since 1999, according to an investigation by the *Fort Worth Star-Telegram*. Strayhorn had rejected New Age, atheist and Wiccan groups from qualifying for tax

continued on page 12

exemption because they did not affirm a belief in "God, or gods, or a higher power."

Pharmacists and Religion Clash

Three cases from Wisconsin and Texas pose a dilemma: Can pharmacists refuse to fill a prescription because of their religious-based objections to the medicine or its purposes? In Menomonie, Wisconsin, a pharmacist, Neil Noesea, refused to refill a woman's contraceptive in 2002 because he does not believe in birth control. He also declined to transfer the prescription to a nearby pharmacy. The woman finally received her medicine when a managing pharmacist for K-Mart intervened several days later. Noesen was charged with unprofessional conduct and will face an administrative law judge on June 22. Anti-abortion groups in Wisconsin are urging Wisconsin officials to acquit the pharmacist. Two similar cases are pending in Texas.

The American Pharmacists Association says pharmacists should be allowed to refuse to fill a prescription for reasons of conscience but must transfer the prescription to another pharmacist or another pharmacy. Laws in most states are silent on the issue, but Arkansas and South Dakota have passed laws that explicitly protect pharmacists who refuse to fill birth control prescriptions on moral or religious grounds. Religious Right groups are promoting similar laws in 13 other states, led by Pharmacists for Life.

Planned Parenthood President Gloria Feldt commented, "The question here is whose conscience counts. This is about a woman's most fundamental right of choosing when to have a child."

Religious Land Use Law Upheld

For the first time since Congress passed the Religious Land Use Act in 2000, a federal appeals court has upheld its constitutionality. The Eleventh U.S. Circuit Court of Appeals ruled April 21 that Surfside, Florida, a town in Miami-Dade County, had violated the law when it excluded churches and synagogues from building permits while approving private clubs. The decision overturned a lower court ruling in a case involving two Orthodox synagogues. The ruling held that Congress required "equal but not special" treatment of religious institutions. States must "avoid discrimination against or among religious institutions," the three-judge panel determined. Another case involving a rabbi in Orange County, Florida, who wants to hold worship services in his home, is making its way to the same appeals court.

Court Upholds Assisted Suicide

The Ninth U.S. Circuit Court of Appeals ruled 2-1 on May 26 that U.S. Attorney General John Ashcroft's attempt to alter Oregon's assisted suicide law "far exceeds the scope of his authority under federal law." Ashcroft had tried to block enforcement of Oregon's Death with Dignity Act, twice approved by the state's voters.

The author of the majority ruling was Judge Richard C. Tallman, an appointee of President Bill Clinton and a jurist who often sided with conservatives. Judge Tallman said the decision was one about state's rights. "This case is simply about who gets to decide. Our concept of federalism requires that state lawmakers, not the federal government, are the primary regulators of professional medical conduct."

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You can now visit Americans for Religious Liberty's internet website: arlinec.org. The site contains information about the organization, books available on church-state issues, and reprints of important articles. New material will be added as available.

About 30 people a year have used the law to end their lives after experiencing great pain and suffering in facing a terminal illness.

Prayer Out at Florida School Board

In May the Manatee County, Florida, school board agreed to stop opening board meetings with the Lord's Prayer. A lawsuit had been filed in January before the U.S. District Court in Orlando challenging the practice. A local couple, Steven and Carol Rosenauer, accused the board of violating the First Amendment by invoking a traditional Christian prayer at the beginning of public school board meetings. The board decided to settle the case before it reached trial.

Bush Expands Faith-Based Programs

At the first-ever White House National Conference on Faith-Based and Community Initiatives, President Bush announced a new federal order creating faith-based centers at the Commerce Department, the Veterans Affairs Department and the Small Business Administration. This brings to ten the number of federal agencies that have offices serving as advocates for religious groups seeking government funding for a range of social services. At the June 1 conference the Department of Labor issued a guidebook aimed solely at religious providers, including a cover reference to the story of Moses and the Burning Bush. The Environmental Protection Agency established a "congregations network" that encourages churches to become more energy efficient.

President Bush, sounding like a revivalist preacher, regaled the throng of 1,600 religious leaders and social workers with tales of life-changing events related to his emphasis on faith-based programs. "We're changing the culture here in America," he told the audience, which gave him numerous standing ovations. "It's a powerful change agent when you start reading the Bible in prison," Bush told his friendly audience.

Bush's remarks were seen as political by many observers. The President is stepping up appearances among friendly religious allies. In a recent speech to the pro-Israel lobby, AIPAC, Bush was interrupted 37 times by applause for promising to "stand with Israel."

National Prayer Day Dominated by Evangelical Republicans

America's 53rd annual National Day of Prayer, held on the first Thursday in May, has become a rallying point for Republicans and for evangelical Protestants. For the first time, President Bush's participation in the prayer ceremony at the White House was broadcast over Christian cable and satellite television outlets. This decision to broadcast a White House prayer event during a heated national election campaign was criticized by many civil liberties groups.

The partisanship was clear, as was the domination of the event by evangelical Protestants. Oliver L. North, the arch-conservative Iran-contra figure, was honorary chairman for the event. A national orga-

nizer, Mark Fried, prayed that “God’s hand will be on the election” and described this year’s event as an evangelical desire to keep “under God” in the Pledge of Allegiance and to allow the posting of the Ten Commandments on public buildings. He denounced “a small group of activists unleashing an all-out assault on our religious freedoms and targeting the Christian faith.”

Vonette Bright, widow of Campus Crusade for Christ founder Bill Bright, praised President Bush, “I think he’s really trying to do what would please God.” She also said that the National Day of Prayer Task Force was “a Christian task force,” and expressed no remorse that Muslims and others are excluded from events. (In Salt Lake City, Mormons, the religion of 70% of Utahans, are not allowed to lead prayers.)

Muslim Nations and Vatican Join Hands on Gag Issue

A coalition of 50 Muslim nations and the Vatican have tried, since March 15, to halt UN efforts to extend spousal benefits to partners of some gay employees at UN headquarters in New York. UN Secretary General Kofi Annan has announced plans to award benefits to partners of gay employees who come from such countries as Belgium and the Netherlands, where such programs are in effect.

A UN bulletin outlining Annan’s new policy says, “A marriage recognized as valid under the law of the country of nationality of a staff member will qualify that staff member to receive the entitlements provided for eligible family members.” It also asserts that “a legally recognized domestic partnership” will qualify UN staffers for similar benefits.

The Vatican and its Islamic allies also plan to oppose a resolution sponsored by Brazil (ironically the world’s most populous Catholic nation) that calls for nondiscrimination on the basis of sexual orientation. The Brazilian resolution is supported by the European Union (EU) and will be considered at the UN Commission on Human Rights in Geneva.

The EU, Canada, Australia and New Zealand vigorously endorsed Secretary General Annan’s initiative. EU spokesperson Margaret Stanley of Ireland said there was no legitimate reason to contest Annan’s decision.

Muslim Head Covering at Issue in Oklahoma

The U.S. Justice Department filed a complaint on March 30 against the Muscogee (Oklahoma) Public School District because school officials twice suspended a sixth-grade Muslim girl for refusing to remove her head scarf. Assistant attorney general for civil rights Alexander Acosta

said the school district had engaged in “discrimination on the basis of religion.” A settlement was reached on May 19 when the school district agreed to amend its dress code and to pay an undisclosed sum to the family of Nashala Hearn. Clothing worn for religious reasons will now be allowed.

Government Funds for Religious Schools Blocked

On March 3 the state of New Jersey decided not to release \$250,000 in taxpayer funds to the Seton Hall Preparatory Academy, a private Catholic school in West Orange. The American Civil Liberties Union (ACLU) of New Jersey and the American Jewish Congress had filed suit in the New Jersey Supreme court for Mercer County in *ACLU et al. v. Librera*. Deborah Jacobs, ACLU executive director for New Jersey, was pleased. She said, “Providing financial support to a private religious school through taxpayers’ funds is not only unconstitutional but, with so many of our public schools in desperate conditions, is wholly unjustifiable. . . . We are pleased that the State has agreed not to release the funds and can now put that money to a more appropriate use.”

Catholic Charities Must Provide Contraceptive Coverage

The California Supreme Court ruled 6-1 on March 1 that Catholic Charities must include birth control coverage in its health care plan for workers. The organization had claimed that it was a “religious employer” and should be exempt from the requirement under state law which exempts churches. California is one of 20 states that require company-provided health care plans to include contraception coverage if the plans have prescription drug benefits.

The state’s high court held that Catholic Charities is no different from other businesses because it offers secular services, such as counseling, low-income housing and immigration services to the public. Justice Joyce Werdegan wrote for the majority, “Catholic Charities serves people of all faith backgrounds, a significant majority of whom do not share its Roman Catholic faith.”

The only dissenter was Janice Rogers Brown, who was nominated by President Bush last October to fill a vacancy on the U.S. Court of Appeals for the District of Columbia. Her nomination has been held up by Democrats because of her avowed anti-abortion, anti-affirmative action and pro-corporate decisions in the past. Brown accused her colleagues of “willfully interfering with religious practice by making a judgment about what is or is not a religion.”

International

Brussels: Religious disagreements continue to plague the drafting of a new constitution for the 25-member European Union (EU). A final draft should be completed on June 17-18 at a summit of government leaders. The present preamble says the EU draws “inspiration from the cultural, religious and humanist inheritance of Europe.” But seven nations – Poland, Italy, Portugal, Lithuania, Malta, Slovakia and the Czech Republic – are insisting on “further attention to a reference to the Christian roots of Europe.” The Vatican has endorsed the proposal, and Catholicism is the dominant religion in the seven states pushing for additional references to Christianity.

But Catholic Spain has changed its mind. Its foreign minister, Miguel Angel Moratinos, said, “Spain is a Catholic country, but in the Euro-

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The Case Against Charitable Choice:

Why President Bush’s Faith-Based Initiative is Bad Public Policy

Albert J. Menendez and Edd Doerr

A 51-page study of the flaws in this proposal and its implications for religion, government, and society.

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pean constitution our government is rather secular, and in this sense we want to respect the text as it currently stands.”

Historically Catholic France and Belgium adamantly oppose any additional religious language, and the European parliament rejected a proposal to mention the continent’s “Judeo-Christian roots.” Sweden and Denmark are also opposed. Britain’s foreign secretary, Jack Straw, preferred the present text, noting, “We would have to make reference to other religions as well.”

Jerusalem: More than 3,000 rabbis went on strike on March 10 protesting salary delays. The protesters said the government – a right-wing pro-religion Likud regime, no less – had failed to pay their salaries for months, and in some cases for a year. The chief rabbis claimed that the government’s tardiness was an effort to undermine the authority of the Orthodox rabbinate over central areas of Israeli life. The strike involved more than 3,000 clerics, including many who work for municipal governments. The strike could disrupt marriage and funeral services if the dispute is not amicably resolved.

Moscow: Yuri Samodurov, director of the Andrei Sakharov Museum and Public Center in Moscow, has been indicted for “inciting religious hatred.” Samodurov and others associated with an exhibit on religion at the Sakharov Museum, named for a leading Russian dissident and humanist during the Soviet days, are victims of a new Russian law promoted by the powerful Orthodox Church, which seems to long for the days when it was the established and unchallenged religion of the state.

Russian Orthodox activists vandalized an exhibition called “Caution! Religion” in January 2003. Russia’s parliament then overwhelmingly passed a decree ordering the state prosecutor to arrest the museum’s officials, but a commission of art historians said the exhibit did not incite religious hatred. The charges were dropped. But another commission was appointed, and it rendered an accusatory judgment.

Walter Reich, former director of the U.S. Holocaust Memorial Museum, wrote in the *Washington Post* on May 30, “Russia is showing worrisome anti-democratic signs. Increasing nationalism, favoring the Russian Orthodox Church at the expense of other churches and religions, is no less troubling.” He added, “Samodurov is a canary in the mine shaft of Russian history.”

New Delhi: India’s new prime minister, Manmohan Singh, is the first leader of India to profess the Sikh faith. India is a heavily Hindu nation, with Muslims a strong second in membership. Violence between the two largest religions have left thousands dead in the past decade, including 1,000 Muslims killed in Gujarat State in 2002. On May 20, Singh vowed that his new Congress Party coalition government would never allow a repetition of the sectarian riots in Gujarat, which resulted in the appalling death toll. “We as a nation must have a firm determination that these things should never happen,” he said in his first news conference as prime minister. The former Hindu National Party (BJP) government, which was ousted in recent elections, failed to intervene in the communal violence or to bring to justice the perpetrators of the slaughter. The local Hindu-led government also did little or nothing to quell the violence. Voters in Gujarat joined the rest of the nation in rejecting the BJP government, which lost 12 of its 26 parliamentary seats in Gujarat. Christian leaders also hailed the election returns.

Books and Culture

The War on Choice: The Right-Wing Attack on Women’s Rights and How to Fight Back, by Gloria Feldt, Bantam Books, 326 pp., \$12.00.

Clearly, new focus and attention need to be concentrated on the continuing and increasing threats to women’s lives and liberties, and that is precisely what Planned Parenthood of American president Gloria Feldt does in her important new book, *The War on Choice: The Right-Wing Attack on Women’s Rights and How to Fight Back*. I can state unequivocally that she has provided us with the most comprehensive and detailed survey of the growing but all-too-often scarcely visible attacks on women’s and reproductive rights available today. It is must reading – and at a bargain price.

One such attack that did get some media attention was Congress’ passage and court-selected President George W. Bush’s signing of a bill (twice vetoed by former President Bill Clinton) to outlaw so-called “partial-birth” abortions, a non-medical propaganda buzzword invented by anti-choicers.

Gloria Feldt details not only the persistent federal and state legislative and judicial attacks on abortion rights, which began soon after the ink was dry on *Roe v. Wade*, but also the increasing tempo of attacks on contraception, emergency contraception, and comprehensive sexuality education, both domestically and internationally. The attacks began in the early 1970s with the Hyde amendment, continued under the Reagan administration and that of erstwhile family planning supporter George H.W. Bush, fell back during the Clinton years, and then accelerated under Bush II. The courts themselves began backing away from *Roe v. Wade*, allowing Congress and states to curtail reproductive health services for poor women, to render reproductive health care increasingly inaccessible through state-mandated misinformation, unnecessary waiting periods, parental notification, and promotion of abstinence-only “education.”

Not content with attacking the reproductive rights of women and promoting blastocyst “rights” over those of women here, the Religious Right and their myrmidons in Congress have pulled out all the stops to curtail reproductive choice in poor countries, even to the extent of hampering AIDS/HIV programs. In 2002, disregarding the views of his own advisers, Bush withheld \$34 million that Congress had appropriated for the UN Population Fund.

Especially tragic is that both here and abroad U.S. cutoffs of family planning and AIDS/HIV programs, coupled with a foolish insistence on abstinence education, is contributing directly to the deaths and medical problems of many thousands of women, to the orphaning of uncounted thousands of children, the spread of AIDS, and serious aggravation of population/resource problems.

And all this in the name of fundamentalist dogmatism, behind which lurks the age-old patriarchal drive to dominate, subjugate, oppress, downgrade, and silence women.

Gloria Feldt spells it all out in this indispensable new book.

Edd Doerr

A book just published in England, *Anglican Difficulties* by Edward Norman, predicts that the Church of England’s days are numbered. The venerable old Church of England will not vanish completely, but its influence will continue to decline, says the author, the Chancellor of York Minister. Norman writes, “Something called the Church of England is likely to continue even though its infrastructure will surely collapse and its stature is diminished with each internal crisis. . . . [I]ts fancy-dress presence at national events disguises its absence in the affections of the people.”

Norman forecasts “an acceleration in the dissolution of its vitality,” even though “actual death is unlikely.” He writes, “It can probably look

to a future comparable to the condition of Orthodox Christianity in modern Turkey, where the Patriarch of Constantinople survives, living modestly in a suburb of Istanbul, his former cathedral a state museum.”

The book will soon be available in the U.S. from Morehouse/Continuum at 15 East 26th Street, New York, NY 10010 at \$23.95.

The Clergy Sexual Abuse Crisis, by Paul R. Docecki, Georgetown University Press, 278 pp., \$26.95.

The author, a psychologist and educator at Vanderbilt University, tackles the bitter topic of “the clergy sexual abuse system through the lenses of professional ethics, the human sciences, and ecclesiology, the theology of the church.” He succeeds admirably well in weaving the various strands of the story into a usable analysis.

Docecki’s analysis has a strong scientific orientation, making it much superior to many other books dealing with the same topic. He also uses a case from Nashville as a paradigm to explore the entire phenomenon from the various psychological, legal and social dimensions.

He also lays out a program for reform and prevention of similar crimes, noting, “The Catholic Church’s use of power and secrecy over the years had set the stage for a crisis in confidence and widespread calls for reform from the media and the general public, and especially from the Catholic laity, conservative and progressive alike.”

Docecki’s proposals for reform are modest. More participatory democracy at all levels is essential because “the institutional/hierarchical church’s unhallowed clericalism, juridicism, and triumphalism have served to create an organizational context that gave rise to the abuses of power that have characterized the secret actions of clergy sexual abusers and church officials who have covered up for them.” These tragedies could have been prevented by “less secrecy, more transparency, more accountability, and more democracy.” The reason for the scandal was “the uses and abuses of power,” and the solution is “to reform the church by mitigating the use of directive or coercive power with caring and growth-enhancing power, its authoritarianism with natural authority, and its masculine agency orientation with a more feminine communion orientation.”

The problem is how to realize these goals when there is at present no mechanism for implementation in a church structure dominated by bishops appointed by a conservative, restorationist regime at the Vatican. The author’s sensible proposals could take decades to achieve. By then, many church members may have left the community. Without fundamental reform – and soon — institutional decline will almost certainly accelerate.

Al Menendez

Keep the Faith, Change the Church, by James E. Muller and Charles Kenney, Rodale, 310 pp., \$24.95.

Dr. Muller is the founding president of Voice of the Faithful (VOTF), a grassroots organization of Roman Catholic laity who insist that their church abandon “the dark underside of the autocratic practices of Catholicism” and become a progressive force for positive renewal and enlightenment in the world. Challenging the hierarchical establishment, VOTF is the newest and most vigorous critic of institutional inertia, complacency and duplicity in the nation’s largest religious community. This is a passionate, insider’s view of the feisty group that brought down Cardinal Bernard Law. One wishes them well, but history is not on their side, given the historic tendency of the Vatican to dig in its heels and prevent meaningful, substantive change.

Muller is a physician and founder of International Physicians for the Prevention of Nuclear War. Kenney is a novelist, reporter and editor who spent 16 years at the *Boston Globe*.

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Vows of Silence: The Abuse of Power in the Papacy of John Paul II, by Jason Berry and Gerald Renner, Free Press, 353 pp., \$26.00.

Two of America’s most distinguished religion journalists have collaborated on an insightful, hard-hitting and dramatic examination of the sexual abuse crisis in the Catholic Church, documenting its scope and claiming that the Vatican is ultimately responsible for the tragedy.

Berry, who broke this scandal originally with his expose of a Louisiana priest, and Renner, long-time *Hartford Courant* reporter, detail the sinister activities of the Mexican-founded Legion of Christ, whose founder, Father Marcial Maciel, has been accused of sex crimes for nearly six decades but has been protected by Vatican officialdom. “The Legion of Christ is one of the new evangelical movements in the Catholic Church whose fundamentalism and organizational dynamics clash with the collegial spirit of Vatican II,” they write. Like its counterpart, Opus Dei, the Legion is secretive and defensive, and tolerates if it does not openly prefer totalitarian governments. It is riddled with sexual abuse. But the Vatican stonewalls. The authors say, “The paradox is awesome. The pope who championed freedom from political dictatorships turned a cold shoulder to human rights within the church,” and add, “The abuse of power in this papacy has done incalculable damage.”

Al Menendez

The Invisible Empire in the West, edited by Shawn Lay, University of Illinois Press, 230 pp., \$20.00.

A number of scholars focus the light of research on the activities of the Ku Klux Klan in Denver, El Paso, Anaheim, Salt Lake City, Eugene (Oregon) and La Grande, Oregon during the 1920s. They all agree that the Klan was primarily a gang of anti-Catholic agitators who tried to preserve “white Protestant culture” and “American Victorianism” in a changing era.

The editor portrays “the Klan’s adverse impact on community relations,” and argues that it was an “inherently mean-spirited movement that conspired, spied, lied and deliberately provoked fear among innocent people.”

This excellent study joins about a dozen others published in the last two decades that reveal that the Klan was the Religious Right of its day,

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Books and Culture, *continued from page 15*

centered mainly in “respectable” Protestant society and determined to crush the Catholic, Jewish and foreign-born “enemies” of their tidy little society. Even in Utah the Klan aimed its venom at Greek and Italian immigrants working in the state’s mining and railroad businesses. Writes Leonard J. Moore in one essay, “The Klan appears to have acted as a kind of interest group for the average white Protestant who believed that his values should be dominant in American society.”

Al Menendez

Between Memory and Vision: The Case for Faith-Based Schooling, by Steven C. Vryhof, Eerdmans, 181 pp., \$22.00.

Vryhof, a professor of education at Calvin College in Grand Rapids, is an ideal interpreter of the Dutch Reformed Protestant educational tradition, teaching as he does in the church’s flagship university.

In this book he looks at three different examples of “faith-based” schools in Holland, Michigan, Hoboken, New Jersey, and Bellevue, Washington. All are clearly sectarian and imbued with religious values that reflect the Christian Reformed tradition. None would be acceptable to a broad-based or pluralistic community, nor would the schools’ founders, operators and clientele want them to be.

The schools are not even tolerant toward other Christian traditions. Several Catholic parents were told that their children would not be welcome. “You’re not a Christian. Why would you want to go here?” one was asked. Another was told that “The Christian school was not for them, they shouldn’t even consider it.” Another Catholic, who did send her children to the Holland Christian Middle School, was told, “Don’t contradict what we’re teaching here religiously.” So much for freedom of thought and respect for differences, even among Christians in the 21st century. (Another parent at the Mustard Seed School was convinced to quit the Episcopal Church.)

The author makes it crystal clear, though he probably did not intend it that way, that the schools should not receive taxpayer funds or support from voucher programs.

The author dislikes public education and claims that “the removal of theistic beliefs and religious practice from schools” led to “naturalistic humanism.”

Vryhof shows little or no familiarity with the substantial literature on the voucher controversy. He writes, “The argument against vouchers . . . consists mostly of dire warnings.” Actually, it doesn’t. There are numerous studies showing that the existing voucher programs have

failed to produce their desired results in terms of educational improvement. Even leaving the constitutional question aside, voucher advocates have exaggerated their potential for success.

To his credit the author does admit that “faith-based schools need to be more culturally open and generous.”

He includes a valuable “Statement of Faith” from Christian Schools International, a nationwide network of Christian Reformed academies. Their schools’ “mission” is predicated upon “The foundation of God’s Infallible Word, the Scriptures of the Old and New Testaments, as explicated by the ecumenical creeds and the confessions of the Reformed tradition.” The CSI Educational Creed expands on this theological base, emphasizing such concepts as “godly wisdom,” “the brokenness of sin” and “a fallen world.”

The book is a welcome addition to the dialogue and debate about the role of faith-based schools in our society.

Al Menendez

Hitler and the Vatican, by Peter Godman, Free Press, 282 pp., \$27.00.

Godman, a Vatican scholar who is not a Catholic, bases his findings on newly-released Vatican archival material. While thorough and meticulous, it does not reveal much that is new. He says, “The notorious silences of Pius XII were a consistent development from Pius XI’s no less notable reticence.” Both popes “decided against declaring war on the Nazis and Fascists” for a variety of tactical, diplomatic and historical reasons, though both opposed the underlying principles of fascism, especially its racism.

Godman does present a penetrating portrait of the one pro-Nazi figure in the Vatican, Cardinal Alois Hudal, who was increasingly marginalized. “The Vatican intervened to prevent an Italian translation of Hudal’s book, *The Foundations of National Socialism*,” a pro-Nazi apologia that embarrassed Pope Pius XI.

Godman also reveals, perhaps unintentionally, that the Vatican then, as now, really has little control over the universal church and frequently exaggerates its influence on world events. “The heroic and authoritarian rhetoric favored by the papacy asserted an ideal at variance with the real conditions of its existence. Vacillating in its own policy toward the Third Reich and rather hindered than helped by its feeble representative at Berlin, Rome consulted with a German hierarchy that often seemed unsure of its own mind. Inside and outside the curial establishment, its apparent masters exercised imperfect control.”

Al Menendez