NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL
443 PARK AVENUE SOUTH, NEW YORK, NEW YORK 10016 • 684-6950

# Memo

June 3, 1985

TO: Members of the Commission on Church-State and Interreligious Relationships

FROM: Barry Ungar, Chairman, and Helen Hoffman, Vice Chair

RE: Agenda for Commission Meeting, June 23, 1985

As you know from the mailing from Jackie Levine, the next meeting of the Commission on Church-State and Interreligious Relationships will take place on Sunday, June 23, 1:30 - 4:30 pm, in the Conference Center of the UJA-Federation of Greater New York, 130 East 59th Street (corner East 59th Street and Lexington Avenue), New York City. If you haven't already returned the form indicating whether you will attend, please do so as soon as possible. Attached, for your convenience, is an additional response form.

The agenda for our meeting consists of the following items:

I. Public Support of Religious Symbols

In the aftermath of recent Supreme Court decisions in the Pawtucket, R. I., and Scarsdale, New York, creche cases, the NJCRAC Plenum reiterated our policy of clearly asserting our opposition to menorahs, as well as to Christian religious symbols, on public property. The Commission will receive a report on community situations that are active at present with regard to this issue, particularly one from the Southern New Jersey CRC, and will consider strategic approaches to the question.

II. Assessment of Recent and Upcoming Developments on Church-State Issues

We will receive a report of the March 25 meeting of a subcommittee of the Commission and of the subsequent Domestic Task Force discussion on the question of filing a single brief in the Bender v. Williamsport Pennsylvania "equal-access" case, now before the U.S. Supreme Court. Additionally, the Commission will examine the possible consequences and implications of a decision in the Alabama silent-prayer case, Jaffree v. Wallace, which may be handed down by the time of our meeting.

III. Strategic Approaches on "Equal Access"

A result of the deliberations on the draft 1985-86 NJCRAC Joint Program Plan was the recommendation that the Commission review and examine strategies on "equal-access," particularly with regard to the Equal Access Act that has been Federal law for ten months, and focus on questions surrounding approaches on the issue of non-curriculum-related activities. Marilyn Braveman, Director of Education for the American Jewish Committee, will introduce the issue to the Commission.

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IV. Question on Religious Affiliation in the 1990 Federal Census

We have been advised by the Council of Jewish Federations that this issue has emerged again as result of contemplation on the part of the Census Bureau to include a question on religious affiliation in a sample questionnaire to be used in the 1990 Federal census. CJF is seeking the guidance of the NJCRAC on this issue, on which the Jewish community-relations field has a policy dating back to 1957, and reaffirmed in 1966, in opposition to the inclusion of such a question.

V. Women's American ORT Proposal on Major NJCRAC Initiative on Church-State

As part of its commentary on the proposed Joint Program Plan proposition on church-state, Women's American ORT has recommended that a National Emergency Community Conference, under the auspices of the NJCRAC, be convened. The Commission will receive the report of a subcommittee appointed by NJCRAC Chair Jacqueline K. Levine at the recommendation of the Task Force on Domestic Concerns, and will explore approaches toward implementing the ORT proposal.

Enclosure

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NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL
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*Memo*

12 June 1985

TO: Members of the Commission on Individual Freedom and Jewish Security

FROM: David Lebenbom, Chairman, and Gloria Haffer, Vice Chair

RE: Background Materials for June 23 Commission Meeting

As you are aware from our previous mailing, the Commission on Individual Freedom and Jewish Security will be meeting on Sunday, June 23, 10:00 am - 1:00 pm, at the new Conference Center of the UJA Federation of Greater New York, 130 East 59th Street (corner East 59th Street and Lexington Avenue), New York City.

Enclosed for your review are the following background materials:

I. Constitutional Convention

A background memorandum and update by Jerome Chanes on ConCon measures and balanced-budget amendment legislation, dated February 24, 1985, with an attached legislative update.

II. Death Penalty

An article by Samuel Rabinove, Legal Director of the American Jewish Committee, "Should Jews Support the Death Penalty," reprinted from Reform Judaism, Spring/Summer, 1983.

III. Hatch Amendment/Secular Humanism

1. A report on the Hatch Amendment prepared by Ronald A. Krauss, staff attorney of the Commission on Law and Social Action of the American Jewish Congress.

2. A memorandum on Secular Humanism prepared by Lois C. Waldman, Acting Director, Commission on Law and Social Action, American Jewish Congress.

3. Editorial comment on the Secular Humanism issue, reprinted from The New York Times.

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IV. Evaluation of Anti-Semitism Forum at 1985 NJCRAC Plenary Session

Presentation, "Measuring Anti-Semitism: Assessing the Criteria," by Robert F. Tropp, Director of Community Relations, Jewish Community Federation of Cleveland, and excerpts from remarks of Dr. Seymour Martin Lipset, of Stanford University, delivered at the Forum on "Measuring Anti-Semitism" at the 1985 NJCRAC Plenary Session in San Francisco. Enclosed also is the listing of the criteria for measuring anti-Semitism, reproduced from the 1982-83 Joint Program Plan.

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enclosures

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SEE ATTACHED LEGISLATIVE UPDATE

NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL
443 PARK AVENUE SOUTH, NEW YORK, NEW YORK 10016

February 4, 1985

*Memo*

TO: NJCRAC Member Agencies

FROM: Jerome A. Chanes

RE: Recent Developments and Anticipated Action on Constitutional-Convention Measures and Balanced-Budget-Amendment Legislation/ Recommendations on Withdrawal Petitions and other Counteraction

As you are aware from our previous memoranda on this issue, 32 states have passed Calls for a constitutional convention for the purpose of drafting a constitutional amendment requiring a balanced federal budget. Passage of Calls by two or more states would mandate action by the Congress to convene a convention. The NJCRAC opposes all efforts to enact a balanced-budget amendment, especially efforts involving a constitutional convention, both on the merits of the issue and based on our concerns about an open-ended convention that would render other constitutional safeguards vulnerable to amendment.

With the beginning of the legislative year for most state legislatures, the issue is expected to be an active one in Montana, Ohio, Kentucky, West Virginia, and Vermont, and possibly critical in Michigan, Washington, and Connecticut.

--Michigan: A ConCon measure passed the Michigan Senate last year, failing in House committee by one vote. A discharge petition that would have brought the measure directly to the House floor failed by six votes. In the November 1984 elections, the "one vote" in the committee (who is reportedly the leading ConCon opponent in the Michigan House) was defeated, as were the six who voted on the House floor against the discharge petition.

A measure, S.J.R. A, sponsored by Senator Ed Fredricks (R), has been introduced in the Michigan Senate and was passed by the Rules Committee on January 15. Passage by the Senate seems likely. In the House, S.J.R. A will be referred either to Appropriations Committee where it will most likely die, or to Constitution and Women's Rights Committee, where a similar measure failed last year by one vote, and where the present lineup augurs danger.

--Washington: A ConCon petition was defeated by one vote in the Washington Senate last session. The strongest anti-ConCon advocates in the Senate were defeated in the November elections, and it is most likely that a measure will be introduced sometime during the current session. Passage in the House appears certain.

--Connecticut: The Democratic leadership in both houses of the Connecticut legislature has prevented ConCon measures from seeing the light of legislative day over the past few years. However, in the November elections the Democrats lost eleven seats and the leadership in the Senate, and 22 seats and the leadership in the House. There is every likelihood that a ConCon measure will be introduced during the current session.

(over)

Please note that in regard to state-legislature action on federal constitutional issues, such as ConCon or amendment ratification, the signature of the governor of the state is not required.

RECOMMENDATIONS

Our primary and immediate goal is the defeat of any ConCon measure that may be introduced in a state legislature. To that end, we recommend the following:

1. Meetings of key leadership with state legislators to express the concerns of the Jewish community on this issue, and to urge them to oppose any ConCon measure.

2. Letters and calls should be sent from the "grass roots" in individual communities to legislators deploring a measure that could lead to a reversal of constitutional safeguards.

3. An educational campaign in our communities on this issue, which may at first blush appear to some as an innocuous one, but which in fact has the most serious consequences. Efforts should be made to place letters to the editor and op-ed pieces in both the Anglo-Jewish and general press, in an effort to sensitize the community to an issue that to date has not received much press coverage, either national or local.

Withdrawal Drives: The most recent effort aimed at rescinding a Call passed by a state legislature passed one house of the Maryland legislature but failed in the other. The National Taxpayers Union lobbied very heavily and intensively against the withdrawal drive, and exerted significant political and public leverage, which reportedly included such statements as "people who oppose a balanced-budget provision are the same people who advocate increased aid for Israel."

There has been exploratory work toward preparing withdrawal drives in Iowa and Florida. Two recall bills will have to pass in Florida, since the state legislature passed and sent to Congress two different Constitutional convention petitions.

We recommend that you keep in mind, when planning to work on a withdrawal drive, that a withdrawal measure should be approached like any other piece of legislation. It requires legislative sponsorship, public support, and articulate advocacy. The enclosed sample text can be furnished to the prospective sponsor in your state legislature. This text need not be followed to the letter, but it must contain the operative statement that it is a recall of the constitutional convention petition that the legislature adopted on such-and-such a date.

One important caveat on withdrawal and recall drives. It is important to coordinate with national and local coalition efforts that are underway. Therefore, before one initiates a withdrawal move in a state, please contact Linda Rogers-Kinsbury of "Citizens to Protect the Constitution" (the watchdog organization on ConCon) to clarify the strategy for your state, and please touch base with either Marlene Provizer or with me.

Balanced-Budget Amendment: At the Congressional level, bills that called for a constitutional amendment requiring a balanced budget remained bottled up in committee in both houses during the 98th Congress. There is every likelihood that such measures will be introduced anew in the recently-convened 99th Congress.

Balanced-budget amendments introduced since 1982 have followed the following similar format:

--requirement that the annual federal budget be balanced
--no tax increase for the express purpose of balancing the budget
--a phase-in period of two years (after ratification by the states).

Should such a measure be passed by both houses in 1985 and ratified by the states within one year (as has been historically the case with almost all constitutional amendments) the Administration will be in a most awkward position indeed, bearing the burden of huge deficits and at the same time having strongly advocated the passage of this measure.

Two possible scenarios regarding a balanced-budget amendment ought be kept in mind:

1. there are those in Congress who might support a constitutional balanced-budget amendment in order to avoid a constitutional convention on this issue;

2. there are those in Congress who would work against a constitutional budget amendment because they would feel that real goal, namely an (omnibus) constitutional convention, is attainable.

This last view represents what to the Jewish community-relations field is the basic and central danger of a constitutional convention; an open-ended convention would most certainly be sued by the fundamentalist right as an instrument to achieve their entire social and economic agenda, as part of the "Christianization" of America. Groups such as the Moral Majority have now placed ConCon at or near the top of their priority lists for the coming year.

In the context of the second scenario, it is important to recall that legislation was introduced in the 98th Congress by Senator Orrin Hatch (R-UT) that would have established procedures for holding a convention. The Senate bill called for the president pro tempore of the Senate and House Speaker to convene a convention once two-thirds of the states passed Calls, and provided for rule-setting procedures. A particularly disturbing provision of the Senate legislation would have extended the active period for consideration of amendments from the present seven-year standard to ten-to-fourteen years. The Hatch bill was approved, by a unanimous vote, by the Senate Judiciary Committee, but died on the Senate floor in the closing weeks of the session. While there was no companion House measure, the issue was under discussion in a House subcommittee. It is expected that legislation of this nature will be introduced during the current Congressional session.

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Resolution offered by (Legislator's name)

STATE OF _____

A RESOLUTION

of repeal and withdrawal by the legislature of the State of _____ of (old resolution number) a resolution petitioning Congress to call a constitutional convention to amend the U.S. Constitution to require a balanced federal budget.

WHEREAS, The ____ Session of the (state) Legislature adopted (old resolution number), realizes that the Nation is perilously close to a situation in which the requisite number of states may appear to have called upon Congress to convene a constitutional convention; and

WHEREAS, There exists no adequate mechanism for determining which, if any, of these convention calls are legally effective and how such convention calls are to be combined; and

WHEREAS, The power of, and limits upon, any constitutional convention are matters of great controversy; and

WHEREAS, We believe that the President and the Congress, using rigorous fiscal discipline can produce a balanced federal budget; and

WHEREAS, Upon reflection, it is clear that this should not be the occasion on which the first constitutional convention since 1787 is convened;

NOW THEREFORE, BE IT RESOLVED, by the Senate, the House of Representatives concurring:

(over)

THAT (State) hereby repeals (old resolution no.) and the request for a constitutional convention is hereby withdrawn; and

THAT (State) be recorded as favoring the adoption by the Congress of the United States of a responsible, balanced budget, and

THAT the Secretary of the State of (State) is directed to send a copy of this Resolution to the Clerk of the United States House of Representatives and the Secretary of the United States Senate.

Update on Legislative Activity Regarding Constitutional Convention Measures,

1985 Session

In 1985, resolutions calling for the Congress to convene a Constitutional Convention have failed in the following states:

Hawaii
Illinois
Washington State
Montana
Maine
Minnesota
Connecticut

Additionally, we can note a victory in California, where authors of ConCon measures were unable to bring their resolutions to the floor of either house.

A withdrawal measure, calling for the recall of a previously passed resolution, has failed in the Florida legislature.

(This information updates our February 4 memo on ConCon.)

June 1985

SHOULD JEWS SUPPORT THE DEATH PENALTY?

by

Samuel Rabinove

**"The cry of the citizenry is for vengeance, though it is deeply felt to be an appeal for simple justice."**

Although the law as set forth in the Torah prescribed capital punishment for a number of offenses in addition to murder—including witchcraft, adultery, homosexuality, and desecration of the Sabbath—through the centuries, Jewish law has evolved toward the predominant view that the sanctity of life is incompatible with death as a form of punishment. Jewish organizations today that have addressed the issue oppose capital punishment. A resolution overwhelmingly adopted in 1959 by the UAHC characterized the death penalty as "a stain upon civilization and our religious conscience." And, in 1972, the American Jewish Committee declared that "capital punishment degrades and brutalizes the society which practices it." Overwhelmingly, both Protestant and Roman Catholic leaders also have called for the abolition of the death penalty. In 1980, for example, the American Catholic Bishops supported abolition by a vote of 145 to 31, with 41 abstentions. On January 15, 1983, Pope John Paul II spoke out publicly against capital punishment, the first Pope ever to do so.

Virtually every Western democratic nation has abolished the death penalty. Israel retains it only for the crimes of genocide or treason in time of actual warfare.

Yet every recent public opinion poll reports that a substantial majority of the American people favors restoration of the death penalty for murder. A February 1981 Gallup poll, for instance, found that two-thirds of those questioned endorsed capital punishment, a sharp increase over a similar poll a decade earlier which showed the public to be evenly divided. And most American Jews are part of this broad consensus.

In a national survey of American Jews conducted in 1981 by Prof. Steven M. Cohen of Queens College, for example, the results showed a heavy preponderance against abolition of the death penalty, 72% to 19%, with 9% not sure. This was slightly higher than the 68% of Jews found to be opposed to abolition in 1980 by the National Opinion Research Center.

In the gubernatorial race in New York last November, the death penalty was a major campaign issue. Although Democrat-Liberal Mario Cuomo prevailed over Republican-Conservative Lewis Lehrman (who is Jewish), his victory was a comparatively narrow one, and it was widely believed that Cuomo's stand against the death penalty (which Lehrman strongly supported) cost him votes among Jews and others who normally vote Democratic. A survey in June 1982 of New York Jews who are registered Democrats revealed that they favored the death penalty by 67% to 25%. Among all Democrats surveyed in that poll, jobs were listed as their number one concern, but the second most important concern was crime.

### The Arguments Pro

How can we account for this dramatic shift in sentiment among Jews, as well as among other Americans, in favor of restoring capital punishment? The most simple—and most accurate—answer is that there is deep outrage throughout our land, a "gut" reaction to the tremendous upsurge in recent years of unspeakably atrocious homicides. The cry of the citizenry is for vengeance, though it is deeply felt to be an appeal for simple justice. The rationale is that those who deprive other human beings of the most precious gift of all, the gift of life, themselves do not deserve to continue living.

Proponents of the death penalty, many of whom are quite sophisticated and, in other respects, even liberal, find no shortage of arguments to buttress their position. They note, for example, that the Fifth Amendment to the U.S. Constitution states that no one shall be deprived of life without due process of law, the clear implication being that deprivation of life by the state is legitimate, provided that due process of law is observed. In fact, in Gregg v. Georgia in 1976, the U.S. Supreme Court held that "the punishment of death does not invariably violate the Constitution."

Moving from Constitutional principle to social pragmatism, death penalty advocates insist that its proper application would serve to deter others from committing murder and thus would save innocent lives. They cite studies which, they maintain, substantiate this conclusion; for example, a 1975 analysis which estimated that each execution may have saved as many as eight innocent lives. Further, death penalty supporters assert, even if there were absolutely incontrovertible evidence that imposition of the death penalty did in fact deter at least some potential murderers, most of its leading critics still would not alter their opposition to it, so what difference does it make?

A similar argument is made by death penalty advocates in response to the often repeated (and wholly accurate) claim of its opponents that, overwhelmingly, it is the poor and the racial minority criminals who have

*Samuel Rabinove is legal director of the American Jewish Committee*

(over)

been executed, very rarely middle class whites. But consider the question put to death penalty opponents by Ernest van den Haag, author of *Punishing Criminals*: "If there were no discrimination whatever, based on race or class, in application of the death penalty, would you then favor restoring it?" The likely answer, of course, is "no." Hence the discrimination argument, too, is often dismissed as irrelevant.

Death penalty supporters challenge their opponents with other difficult questions: When political terrorists plant bombs that slaughter innocent people at random, what penalty other than death can possibly suffice to express our revulsion? When a prison inmate already serving a life sentence for murder kills a guard or another inmate, how can he be appropriately punished except by sentence of death? If the sentence for murder actually is not much more severe than for armed robbery or forcible rape, why should not robbers or rapists be sorely tempted to kill their victims to eliminate witnesses? If Adolf Hitler had been captured, could any Jewish person conceivably have maintained that he should not have been executed? Our prisons being so terrible, are you really willing to inflict on murderers the "cruel" punishment of life in prison with no hope of parole? And what about those murderers who insist that they would rather be executed than languish in prison for the rest of their lives?

**The Arguments Con**

Henry Wadsworth Longfellow once wrote: "If we could read the secret history of our enemies, we should find in each man's life sorrow and suffering enough to disarm all hostility." All human behavior is explainable, if only we are able to probe it deeply enough. This does not mean, of course, that all human behavior should be excusable, or that no one should ever be held accountable or be punished for anything. That would bring moral anarchy. What it does mean, however, is that before we consider taking a murderer's *life*, we owe it to ourselves to inquire what that life was like at age 4 or 8 or 12. When efforts have been made to trace the early childhood experiences of vicious, cold-blooded murderers, in case after case what emerged were patterns of severe brutality, alcoholism, parental desertion, and gross neglect. Many, if not most of them, turned out to be psychologically crippled, even mentally ill. From that perspective, when the safety of the community can be adequately served by a penalty of life imprisonment with no parole, the case for the penalty of death may be seen as gravely flawed.

The evidence that the death penalty deters potential murderers is flimsy. Not only do most death penalty states not show substantially lower homicide rates than states without it, but often their homicide rates actually surpass those of non-death penalty states. In fact, one study found that there were significantly *more* homicides in periods after several well-publicized executions than before, the very opposite of what the deterrence theory would suggest.

The argument for deterrence conceivably would be stronger if, in fact, executions were the rule rather than the exception. The societal message might then get through, at least to some, that if you kill an innocent person and get caught, your own life is forfeit. With all of the procedural safeguards, however, coupled with a strong disinclination on the part of many judges and jurors to impose the death penalty except in the most egregious of circumstances, only a tiny fraction of murderers actually are executed.

On the other hand, if capital punishment were commonplace, the risk of executing innocent persons would surely rise. There is no question whatever that men have been executed who were later found to have been completely innocent. Because the taking of a life is irrevocable, capital punishment stands apart from all other sentences—and that should make it an anathema to people with a passion for justice. There are too many documented cases of erroneous conviction, not to mention those in which the errors were never discovered, for anyone to maintain that there is no substantial risk that an innocent life may be taken.

Racial discrimination has been a powerful factor in the imposition of the death penalty. For instance, while many hundreds of blacks have been executed for the crime of rape against white women, there is not a single recorded instance of a white man having been executed for raping a black woman. This pattern repeats itself, though not totally, in cases of homicide; the race of the victim, as well as of the offender, has been a major determinant in death sentences. In a study reported in *Temple Law Monthly* in 1976, it was found that while blacks constituted 54% of murder victims, only 13% of those on "Death Row" had black victims. In fact, pervasive racial discrimination was one of the grounds on which the Supreme Court ruled in the 1972 case of *Furman* v. *Georgia* that the system under which the death penalty was imposed was so arbitrary as to be "cruel and unusual punishment," in violation of the Eighth Amendment.

In response to the *Furman* decision, many states revised their laws, some of which were later upheld by the Supreme Court. At present, although 38 states allow the death penalty for murder, executions have become a rarity. Still, there are now some 1,150 inmates on "Death Row," half of whom are located in Florida, Texas, and Georgia. Thus, the state in which the crime happens to take place may well determine whether the criminal lives or dies.

Class is another key determinant. Michael Disalle, a former governor of Ohio, once described his personal experience with capital punishment in the following terms: "I found the men in death row had one thing in common; they were penniless. There were other common denominators—low mental capacity, little or no education, few friends, broken homes—but the fact that they had no money was a principal factor in their being condemned to death." The Leopolds and Loebs, those rich enough to afford expert defense counsel, almost invariably are spared.

Even though the polls reveal that most Americans support the death penalty, it is evident, too, that there is an undercurrent of shame, or at least ambivalence, over the use of this ultimate sanction. This is reflected in the concern for making executions more "humane" through a supposedly less painful method, lethal injection. But in the words of Henry Schwarzchild, director of the capital punishment project of the American Civil Liberties Union: "Lethal injection may be more obscene because it provides the illusion of humaneness in the killing."

An exceptionally eloquent plea for abolition of the death penalty was made by the late former U.S. Supreme Court Justice Abe Fortas: "In the name of all that we believe in and hope for, why must we reserve to ourselves the right to kill 100 or 200 people? Why, when we can point to no tangible benefit; why, when in all honesty we must admit that we are not certain that we are accomplishing anything except serving the cause of 'revenge' or retribution? why, when we have bravely and nobly progressed so far in the recent past to create a decent, humane society, must we perpetuate the senseless barbarism of official murder?" ✱

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REFORM JUDAISM

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ajc THE AMERICAN JEWISH COMMITTEE, Institute of Human Relations, 165 East 56 Street, New York, N.Y. 10022

American Jewish Congress
CLSA
COMMISSION ON LAW AND SOCIAL ACTION

Lois Waldman, *Acting Director*
Marc D. Stern, *Assistant Director*
Sylvia Neil, *Midwest Legal Director*
Ronald A. Krauss, *Staff Attorney*

CLSA REPORT

ON

# THE PROTECTION OF PUPIL RIGHTS AMENDMENT (THE HATCH AMENDMENT)

## I. Introduction

The Protection of Pupil Rights Amendment, popularly known as the Hatch Amendment, has been the source of much recent controversy. Conservative groups, notably Phyllis Schlafly's Eagle Forum, have sought to use the Hatch Amendment, and the Department of Education's implementing regulations (issued September 6, 1984), to exert their influence on curriculum in public schools. Professional education groups, such as the National Education Association, have undertaken public relations campaigns to warn that the Hatch Amendment will permit these right-wing ideologues to take control of the public schools and severely endanger the academic freedom of teachers to conduct their classes.

Review of the legislation and the regulations reveals that some ambiguity of language could lead to an overly broad interpretation of the Hatch Amendment's scope. Nevertheless, there appears to be no solid basis for the view that the Hatch Amendment could be used as a weapon for control of the public schools. Thus both the assertions of the right-wing ideologues and the fears of the professional education groups appear overblown.

## II. Language of the Hatch Amendment

In 1978, Senator Orrin Hatch introduced and Congress enacted two amendments to the General Education Provisions Act (GEPA), 20 U.S.C. § 1232h(a) and (b). The Protection of Pupil Rights Amendment provided:

> (a) All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program [i.e., federally funded program] designed to explore or develop new or unproven teaching methods or techniques.



(over)

(b) No student shall be required, as part of any applicable [federally-funded] program, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning:

(1) political affiliations;

(2) mental and psychological problems potentially embarrassing to the student or his family;

(3) sex behavior and attitudes;

(4) illegal, anti-social, self-incriminating and demeaning behavior;

(5) critical appraisals of other individuals with whom respondents have close family relationships;

(6) legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor); or in the case of unemancipated minor, without the prior written consent of the parent. (emphasis added)

In brief, section (a) of the Hatch Amendment gives parents the right to inspect instructional materials which meet both of the following criteria:

1) are used in connection with a federally-funded research program; and

2) the research program must be designed to explore or develop new or unproven teaching methods or techniques.

Section (b) of the Hatch Amendment gives parents the right to have their children excused from participating in federally-funded activities which meet all of the following criteria:

1) involve psychiatric or psychological examination, testing or treatment; and

2) such psychiatric or psychological activities are primarily designed to reveal any one of the seven areas listed in section (b); and

3) such psychiatric or psychological activities are federally funded.

## III. The Department of Education Regulations

### A. Background

Although the Department of Education had already issued regulations for the Hatch Amendment, they merely restated the substantive requirements of the legislation. To insure compliance, on February 22, 1984, the Department issued proposed regulations to establish procedures for handling complaints under the Hatch Amendment. The Department of Education held public hearings on the proposed regulations in seven cities around the country during March 1984.

In addition, the Department received more than 1,900 comments on the proposed regulations from residents of every state and the District of Columbia. See 49 Fed. Reg. 35,318 (1984). After considering the public comments, the Secretary of Education revised the regulations and issued final regulations on September 6, 1984, to become effective November 12, 1984.

### B. Analysis

#### 1. Program Coverage

The final regulations apply to most programs administered by the Secretary of Education*

* Specifically, any program that was (a) transferred to the Department by the Department of Education Organization Act (DEOA); and either (b) was administered by the Education Division of the Department of Health, Education, and Welfare on the day before the effective date of the DEOA; or (c) was enacted after the effective date of the DEOA.

The Hatch Amendment does not apply to the following federally funded programs within the Department of Education:

--High School Equivalency Program and College Assistance Migrant Program;

--programs administered by the Commissioner of the Rehabilitative Services Administration under the Rehabilitation Act of 1973, as amended; and

--college housing under title IV of the Housing act of 1950, as amended.

49 Fed. Reg. 35, 321 (1984).

(over)

2. Parental Inspection of Instructional Materials

Under the provisions of the final regulations, parents may inspect all instructional materials, including teachers' manuals, films, tapes, or other supplementary instructional material, which will be used in connection with any research or experimentation program involving their children. The regulations define "research and experimentation program or project" as any covered program that is designed "to explore or develop new or unproven teaching methods or techniques." There is no definition of what constitute a "new or unproven" teaching method. See 49 Fed. Reg. 35,321 (1984). Presumably, however, general remedial assistance programs, such as those funded for years under Title I, would not be covered by the Hatch Amendment.

3. Student Excusal From Testing

As part of any covered program, no student may be forced to submit, without prior parental consent, to psychiatric or psychological examination, testing, or treatment in which the primary purpose is to reveal information concerning one or more of the seven areas listed in the statute. "Psychiatric or psychological examination or test" is defined somewhat ambiguously to mean a "method of obtaining information, including a group activity, that is not directly related to academic instruction and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs, or feelings." "Psychiatric or psychological treatment" is also defined ambiguously as an activity "involving the planned, systematic use of methods or techniques that are not directly related to academic instruction and that are designed to affect behavioral, emotional or attitudinal characteristics of an individual or group." See id.

4. Complaints of Violations

The Secretary of Education has designated the Family Educational Rights and Privacy Act Office (U. S. Dep't of Educ., 400 Maryland Ave., S.W., Washington, D. C. 20202) ("the Office") to investigate, process and review complaints under the Hatch Amendment. Under the regulations, the Office investigates complaints of violations and provides information about the requirements of the legislation. If the Office discovers a failure to comply, it will notify the federal fund recipient and give it time to remedy the violation on a voluntary basis. If the recipient fails to comply on a voluntary basis, the Secretary of Education is authorized to issue a notice to cease and desist, or to terminate or withhold funds as appropriate under the laws applicable to the federal program involved. See id. at 35,321-22.

C. Public Debate

As noted in the Introduction above, the Hatch Amendment and its implementing regulations have engendered a heated public debate over just what activities the legislation covers. The debate has divided into two opposite camps, one populated primarily by conservative parent

groups, the other by liberal professional education groups. As demonstrated below, neither group appears to accept Senator Hatch's view of what he intended this legislation to accomplish or to have a firm grasp of the actual terms of the statute.

1. The Conservative Parents Groups

Conservative parents groups, led by Phyllis Schlafly's Eagle Forum, have been exhorting parents to use the Hatch Amendment to cleanse public schools of curriculum materials and class discussion that deal with such subjects as evolution, death and dying, nuclear war, suicide, and premarital sex. These groups are particularly concerned about "values clarification," which utilizes hypothetical situations as a teaching method for exploring differing views on various "non-academic" topics, including some touching on sensitive moral issues. The conservative groups view these classes as a rejection of God's absolute moral authority, causing alienation of children from parents, and as a first step to social engineering to achieve an atheistic society. Hechinger, "Far Rights Steps Up Effort to Control Classrooms," N. Y. Times, April 11, 1985 at C 10, col. 3.

2. The Education Groups

A number of professional education groups have expressed concern over ambiguities in the language of the Hatch Amendment because they view those ambiguities as an instrument for conservative parents groups who wish to usurp control of classroom curriculum from teaching professionals.

The American Association of School Administrators (AASA) and 20 other professional and scientific associations have identified three significant ambiguities in the regulations which leave local school districts without any guidance as to how to comply with Federal law: the definitions of

1) the primary purpose of psychological and psychiatric examination, testing, and treatment;

2) a new or unproven-teaching method or technique; and

3) when a classroom activity is not directly related to academic instruction.

See American Association of School Administrators, et al., letter to Terrel H. Bell, Oct. 26, 1984. The National Parent Teachers Association (PTA) has pointed out that the lack of basic definitions in the regulations could create confusion for parents and school districts, would tend to disrupt legitimate local school district

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decision-making processes, and would invite costly litigation.* The National Education Association (NEA) argues that these regulations are in direct conflict with the Department of Education Organization Act, which prohibits Federal control of curriculum, instructional methods, or school administration. Section 103(b) of the DEO Act provides:

> No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.

Therefore, the NEA argues, the direct involvement of the federal government in a matter that is strictly of a local nature -- curriculum, instructional methods -- is impermissible under federal law.

The NEA also points out that most local school districts already have formal due process procedures for the resolution of student/parent complaints concerning evaluation and/or instructional program decisions. The Hatch Act regulations, according to NEA, interfere with the local operation of school systems, because complaints of parents/guardians should be channeled through existing local complaint resolution procedures, rather than federal channels.

Finally, the NEA asserts that the Hatch Amendment regulations represent a "chilling effect" on the First Amendment rights of education personnel in general and teachers in particular. The NEA argues that the proposals would provide a basis for unfounded litigation by parents who differ ideologically and philosophically with the public education system, thereby threatening the protection of teachers' freedom. See

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* The American Educational Research Association (AERA) and the American Psychological Association (APA) have expressed similar concerns with the broad definition of the terms "psychiatric or psychological examination or test" and "psychiatric or psychological treatment" in the regulations. The terms are so casually defined that they can include many activities that are unrelated to psychological tests, examinations, and treatment administered by trained psychologists. The breadth of these definitions, they believe, may severely restrict the provision of psychological services to students, and interfere with educational research in such areas as teaching methodology and student learning by placing unnecessary restrictions on local and state school officials.

National Education Association, Letter to Charles Heatherly, May 18, 1984.

3. Senator Hatch's Reaction

As the author of the legislation, Senator Hatch has expressed considerable surprise over the reactions to the Hatch Amendment by both conservative groups and education associations.

"It was the purpose of my amendment to guarantee the right of parents to have their children excused from federally funded activities under carefully specified circumstances," Hatch stated recently on the Senate floor. "The activities we are talking about are nonscholastic aptitude in nature." Senator Hatch believes that the implementing regulations were not intended to apply to the day-to-day curriculum, but rather to research, development, and psychological testing. 131 Cong. Rec. S1389 (daily ed. Feb. 19, 1985)

> "Do we really want the Secretary [of Education] to rule on the appropriateness of the course content?" Senator Hatch asked. "Do we want a Federal official to tell local school boards what is or what is not appropriate curriculum materials? I think not. This would be the first step in the direction of a federally sanctioned national curriculum, something that its anathema to both parents and educators, and at the present time, patently illegal." Id.

Senator Hatch stressed,

> . . . some parent groups have interpreted both the statute and the regulations so broadly that they would have them apply to all curriculum materials, library books, teacher guides, et cetera, paid for with State or local money. They would have all tests used by teachers in such nonfederally funded courses as physical education, health, sociology, literature, et cetera, reviewed by parents before they could be administered to students. Because there are no Federal funds in such courses, the Hatch amendment is not applicable to them. A number of States do, however, have statutes or State board regulations which do safeguard these parental rights. Id. (emphasis added).

Further, Senator Hatch pointed out,

> . . . there are also those who would have certain courses, such as sex education, paid for with other than Federal funds, eliminated from the curriculum. They contend that the Hatch amendment prevails because in such courses, pupils cannot discuss the course

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> content without making some value judgments about sexual behavior. Were such a course to be funded with Chapter II funds, for example, it certainly would be covered by the Hatch amendment and the Department of Education regulations. If the course is nonfederally funded, the Hatch amendment does not prevail. Id.

## IV. Conclusion

An objective reading of the Hatch Amendment and its regulations reveals no support for the conservative effort to assert control over public school curriculum, nor does it support the dire forecast of chilling teachers' rights predicted by professional teachers' groups.

The radical right's efforts to require parental consent to teaching in such areas as evolution, health (sex) education, sociology, etc. should not prevail under the Hatch Amendment because there are generally no federal funds involved in those programs. Because these programs are not federally funded, any parental complaints lodged with the Secretary of Education should be dismissed. Moreover, the complaint procedures require that state and local remedies be exhausted before federal review will occur. Accordingly, there is every reason to believe that local control of public schools by elected representatives or local school boards will continue as before. Efforts by radical right groups to utilize this legislation for unauthorized ends should be rebuffed rather quickly by both a common sense reading of the relevant language, as well as reference to Senator Hatch's legislative intent.

The reaction of professional educators, which seems to reflect the intensity of the conservative parents groups, is not wholly unjustified. There are significant ambiguities in the regulations' language -- the broad definitions of psychological testing; the vagueness of "primary purpose," "new or unproven teaching techniques," and "not directly related to academic instruction" -- could provide a wedge by persistent parents groups to try to force their curricular views on the schools. Nevertheless, the professional educators appear to be fighting the radical right on their terms, apparently accepting their assumption that the Hatch Amendment can be used to control public classrooms. While such a fight may be an effective rallying cry for public relations, it may prove unwise, as it lends credence to the radical right's claims. In addition, the professional educators may be overstating their case. Unfettered control by teachers over curriculum may not be wholly desirable; certainly, school boards may decide to exert more control, and to permit parents greater discretion on subjects from which children may be excused with no significant damage to the local educational enterprise.

Neither will greater parental control over psychological testing necessarily lessen the quality of public education. Efforts which appear to make professional educators the final, or only, arbiters of quality public education will only fuel the fires of those seeking to misuse the Hatch Amendment.

From time to time, many school districts have been involved in efforts by conservative parents to censor course content or textbooks, to expurgate scientific theories, or limit classroom discussions. Although the Hatch Amendment and its regulations are inapplicable to such efforts, conservative groups will undoubtedly use it to gain whatever advantage they can. Though such efforts should ultimately fail, they could still create volatile, highly emotional disputes in local school districts that could affect the quality of public education. Those concerned with the dangers that an uncritical and censored public education pose will have to redouble their vigilance. They can be assured that the Hatch Amendment, at least, despite the claims made for it, does not represent a legitimate weapon in the struggle for such censorship.

Ronald A. Krauss

May, 1985

*Memorandum from...* AMERICAN JEWISH CONGRESS
15 East 84th St., New York, N. Y. 10028 • TR 9-4500

May 28, 1985

TO: CRC's and Federations
Regional Directors
Commission on Law and Social Action

FROM Lois C. Waldman

RE: Secular Humanism

In reenacting a federal program to fund "magnet schools" (which are often created to counter racial segregation in large school districts) Congress stipulated that (20 U.S.C.§ 4059) "grants under this title may not be used...for the courses of instruction the substance of which is secular humanism."

There is almost no legislative history to this provision, which Senator Hatch had added during a House-Senate conference. What little debate there is (see attached) suggests that only local school districts are empowered to determine what is, or is not "secular humanism." In keeping with this legislative history, the United States Department of Education last week issued final regulations which track the exact language of the statute.

The upshot of this rather unusual state of affairs is that local school districts will, as in the case of equal access, be responsible for decision making in this controversial area. If school boards interpret § 4059 so as to ban on the teaching of the religion of Secular Humanism - i.e. the belief that man must make moral decisions without any reference to religious teaching - it will pose no major difficulties under the Constitition or for the Jewish community. I doubtful if any school district anywhere is teaching that set of beliefs, but if one is, it is no doubt violating the Constitution. Rather, the danger posed by this legislation is, that those on the religious right, who equate a failure to teach religion with "secular humanism" - an entirely different understanding of secular humanism - will use this provision as ammunition in their efforts to gain influence over the public school curriculum.

As detailed in AJCongress' letter to the Department of Education (attached) "secular humanism" so defined is simply a back door effort to circumvent the Supreme Court's decision outlawing religious instruction in the schools. The federal courts, including the Supreme Court, have several times so held, School Dist. of Abington Twshp. v. Schempp, 374 U.S. 203, 225 (1963); Grove v. Mead School Dist., 753 F.2d 1528 (9th Cir. 1985); Mozart v. Hawkins County Public Schools, 582 F.Supp. 201 (E.D. Tenn. 1984), app. pending, (6th Cir. 1985); Williams v. Bd. of Educ., 388 F. Supp. 93 (S.D.W. Va. 1975), aff'd, 530 F. 2d 972 (4th Cir. 1975); Civic Awareness of America, Inc. v. Richardson, 343 F.Supp. 1358 (E.D. Wis. 1972).



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Although the provision enacted last year, and the just issued regulations, apply only to programs funded under the magnet school program, and hence apply to only a relatively small number of school districts, these provisions are likely to serve as prototypes for other similar efforts on the federal, state and local level. In addition to being on guard against such legislative efforts at the federal, state and local levels, it is particularly important to monitor the reaction of school boards to this legislation.

We suggest that you contact school districts in your area to determine whether they are applying for magnet school grants, and if so, how they intend to ocomply with the no-secular humanism proviso. Such inquiries should be made informally, in a non-threatening fashion, and should not in any way suggest to a school district that is currently observing the law and not injecting religion into its courses, that any changes in current policy should or must be made. If your district receives federal magnet school funds, you should carefully monitor the District's performance to ensure that changes are not made in the curriculum to incorporate religious teaching. We are most interested in learning the results of your efforts.

schools assistance. Is it your understanding that a school district can meet any one of these conditions, but need not meet all three, in order to be eligible?

Mr. PERKINS. That is correct, I wish to say to the gentleman.

Mr. KILDEE. One other question on behalf of the gentleman from Pennsylvania [Mr. GRAY] and myself.

Another question on the magnet schools portion of H.R. 1310 as amended by the Senate. Section 702(3) makes voluntary desegregation plans in school systems which have adopted or are implementing a desegregation plan without having been required to do so eligible for funds. Is it your understanding that the term "voluntary plan" can mean plans that were not necessarily initiated by the courts and could include such voluntary plans as exist in the cities of Flint, MI; Rochester, NY; Seattle WA; and Philadelphia, PA; but that are otherwise meeting guidelines established under title VI of the Civil Rights Act of 1964?

Mr. PERKINS. The gentleman is correct.

Mr. KILDEE. One further question on behalf of myself, the gentleman from New York [Mr. NOWAK] and the gentleman from Pennsylvania [Mr. GRAY] relating to the magnet schools portion of H.R. 1310 as amended by the Senate. Section 702(1) of the bill states that a school system would be eligible for funds if it had lost at least $1 million following the repeal of the old Emergency School Aid Act. Is it your understanding, Mr. Chairman, that this $1 million loss applies to the total funding received by a school system under all chapter 2 antecedent categorical programs in the year immediately preceding the implementation of chapter 2 when compared to total funding received in the first year of chapter 2?

Mr. PERKINS. That is correct, likewise.

Mrs. BURTON of California. Mr. Speaker, will the gentleman yield?

Mr. PERKINS. I yield to the gentlewoman from California.

Mrs. BURTON of California. Mr. Speaker, I would like to ask the chairman whether section 709 of the Senate bill prohibits school districts from using their magnet schools assistance under title VII for courses the subject which is secular humanism. First of all, I want to know what that means. I thought I understood English. I might have an accent, but I do not know what secular humanism means.

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Mr. PERKINS. Well, let me state that since there is no definition of [illegible] humanism, [illegible] Department of Education is not [illegible] to any definition [illegible] Furthermore, [illegible] not authorized to [illegible] determination of [illegible] are or are not [illegible] purely up to the judgment of the local educational agencies. That is the essence of it.

Mrs. BURTON of California. Mr. Chairman, I do not understand the terminology. I do not know why we need it in the bill.

Mr. PERKINS. The local educational agencies will make that determination.

The SPEAKER. The time of the gentleman from Kentucky [Mr. PERKINS] has expired.

Mr. PERKINS. Mr. Speaker, I yield myself 1 additional minute.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield for the purpose of a question on this subject?

Mr. PERKINS. Yes, I yield to the gentleman from Ohio.

Mr. SEIBERLING. I am not sure what is meant by the term "secular humanism," but if this bill is intended to start regulating the content of teachers' subject matter in such vague terms, it seems to me that it is a real invasion of academic freedom, and I am equally concerned with the gentlewoman from California. Can the gentleman give us further assurances as to what the effect of this provision is?

Mr. PERKINS. Well, let me say to the gentleman, as I understand it, that there is no intent to bring into play any Federal interference, that teachers and the local boards will make the decision exclusively of everybody else. So I see no harm here.

Mr. SEIBERLING. Could I just ask one other question of the distinguished chairman?

The SPEAKER. The time of the gentleman from Kentucky [Mr. PERKINS] has again expired.

Mr. PERKINS. Mr. Speaker, I yield myself 30 additional seconds.

Mr. SEIBERLING. If the gentleman will yield further, is the theory of evolution and natural selection secular humanism, as the gentleman understands it?

Mr. PERKINS. That decision is to be made locally, I will say to the gentleman, by your local boards and your teachers.

Mr. SEIBERLING. I thank the gentleman.

Ms. OAKAR. Mr. Speaker, will the gentleman yield?

Mr. PERKINS. I yield to the gentlewoman from Ohio.

[Ms. OAKAR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

Mr. GOODLING. Mr. Speaker, I yield 3 minutes to the gentleman from New Hampshire [Mr. GREGG].

Mr. GREGG. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the legislation as proposed. As the ranking minority member on the Science and Technology Committee which has the responsibility for this math-science education bill, I think it is appropriate that we move it at this time. This bill addresses what we have all recognized here in the House to be a critical problem, and that is that we have an abysmal situation occurring in our math and science education, especially at the elementary and secondary school level. We are finding that we are short of qualified teachers, that those qualified teachers which we do have are difficult to retain because of the competition from the private sector and that we do not have adequate materials and adequate instrumentation in order to teach math and science at the elementary and secondary school level.

The role of the National Science Foundation under this bill has been significantly increased, and I think it can be an effective tool in addressing the need to educate our children in math and science. There are a number of programs under this bill which are really excellent in concept and which I hope will be promoted aggressively. We have a program which would allow teachers to go to summer institutions and be retrained by the National Science Foundation. We have a program which would encourage people to go into the teaching profession. We now find, unfortunately, that people going into the teaching profession are sometimes not at the top of their class. This program would encourage people to go into the teaching program and would retain and attract extremely qualified teachers.

We have a program in here which would identify the top students and the top teachers throughout the country and would reward them on the basis of the quality and the expertise of their experience and their educational activities.

This is an excellent bill. The issue of secular humanism is really a red herring in this bill. It is a minor line item in the bill which will not affect the vast amount of money which would be appropriated and spent under this bill and which has been approved by the Senate.

In fact, this bill would significantly reduce the strings which this Congress applies to educational activity, as the majority of the funds under the bill are block granted for the specific purpose of math-science education but the actual decision as to how the math-science education will be promoted is left at the local and the State school board level.

So it is a positive bill and it is the type of bill which those of us who have been talking about we need to do something in the area of math and science education should be willing to support.

Mr. PERKINS. Mr. Speaker, I yield 6 minutes to the distinguished gentleman from Florida [Mr. FUQUA].

(Mr. FUQUA asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. FUQUA. Mr. Speaker I rise in support of the request of the gentleman from Kentucky, my good friend Mr. PERKINS, to suspend the rules and

# AMERICAN JEWISH CONGRESS

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COMMISSION ON LAW AND SOCIAL ACTION

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January 4, 1985

Ms. Patricia Goins
Division of Educational Support
United States Department of Education
Room 2007, F.O.B.-6
400 Maryland Avenue, S. W.
Washington, D. C. 20202

Dear Ms. Goins:

The Department of Education has requested comments in respect to a notice of proposed rule-making in connection with the recently enacted Education for Economic Security Act, P.L. 98-377.

These comments, submitted by the American Jewish Congress, deal with only one section of these proposed rules, Section 280.40, relating to § 709 of the Act. That section provides that grants for magnet schools "may not be used...for the courses of instruction the substance of which is secular humanism." The only legislative history suggests that the determination of whether a particular course is "secular humanism" is left to teachers and local school boards -- 130 Cong. Rec. H. 7755 (July 25, 1984) (remarks of Representative Perkins). The proposed rule states in full " An LEA that receives federal assistance under this part may not ... (d) use funds for any course of instruction the substance of which the LEA determines is secular humanism."

In Torcaso v. Watkins, 367 U.S. 488, 495, n.11 (1961) the Supreme Court of the United States determined that secular humanism is a "religion" for constitutional purposes. Moreover, the Court has also held in School District of Abington Township v.Schempp, 374 U.S. 203, 225 (1963), that schools may not "establish a religion of secularism" in the sense of affirmatively opposing or showing hostility to religion. If all the Act means by "secular humanism" is either the teaching of the belief system of secular humanism, (e.g., the Humanist Manifesto), or the affirmative hostility to religion articulated in Schempp, it may well pass constitutional muster.

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There is, however, a common usage of the term "secular humanism" which poses far greater constitutional difficulties. If "secular humanism" as used in Section 709 is understood to mean any course of study in which religious views are not affirmatively urged upon the students, it is without question unconstitutional, Epperson v. Arkansas, 393 U.S. 97 (1968) (prohibition on the teaching of evolution unconstitutional): School District of Abington Township v. Schempp, supra; Engel v. Vitale, 370 U.S. 421, 433-34 (1962).

In Schempp, the Court dismissed the argument that forbidding the reading of the Bible as an opening exercise would constitute a "religion of secularism," and would require the exclusion of all discussion of religion from the public schools:

> [I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education , may not be effected consistently with the First Amendment. But the exercises here do not fall into those categories. They are religious exercises, required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion.
>
> 374 U.S. at 225.

See also Stone v. Graham, 449 U.S. 39, 42-3 (1981); McLean v. Arkansas, 529 F. Supp. 1255 (E.D. Ark. 1982) (schools must teach evolution without teaching "scientific creationism," despite arguments that doing so constituted religion of secularism).

The public schools are not, under our constitution, charged with religious education or with teaching religious values. In a society whose members are of so many faiths, it could not be otherwise. Whose views and whose values would be taught? And who would insure that the faith was taught properly? Religious education is the responsibility of parents and churches, not the public schools. That responsibility cannot be unconstitutionally shifted to the public schools under the rubric of avoiding "secular humanism."

We recognize that Congress has given the Department no specific authority to define the term "secular humanism". The proposed regulation is consistent with this mandate. However, it is a well settled rule of constitutional interpretation that statutes will be construed if at all possible to avoid constitutional difficulties, if for no other reason than Congress is presumed to act consistent with limitations on its power, Regan v. Time, Inc., 53 U.S.L.W. 5084

(1984); Welsh v. U.S., 398 U.S. 333 (1970). While the first interpretation of the statute suggested above is not wholly without constitutional difficulties, these are insubstantial compared to those created by the second reading of the statute.

We believe, therefore, that in keeping with the cases cited, the regulations should be amended to make clear that the Act does not authorize, much less require, public schools to urge religious views on their students. At a minimum the rule should make clear that neither the Act nor the regulations in any way are in derogation of established constitutional principles. Such a provision would not be inconsistent with the Congressional intent, in light of the presumption that it intended to act within constitutional limitation.

In the course of debate over Section 709, Representative Perkins several times stated, 130 Cong. Rec. H. 7755, that both teachers and local school boards would have sole authority to determine whether a particular course of study constitutes secular humanism. The regulation properly limits the authority to make such determinations to local education agencies, and not teachers. We believe this is appropriate.

In the first place, it is the LEA's which are the recipients of the grants and hence should have the responsibility for enforcing this provision. Moreover, Local Education Agencies operate in public view, frequently under compulsion of Government in the Sunshine Acts. They are thus likely to make the determination of whether a course is "secular humanism" only after public debate. Allowing teachers to make these determinations would undermine the authority of local school boards to make curriculum choices, See e.g., Island Trees Bd. of Educ. v. Pico, 457 U.S. 853 (1982); Seyfried v. Walton, 668 F.23d 214 (3d Cir. 1981), and would necessarily create anarchy with the same subject being treated as secular humanism in some classrooms, but not in others.

Moreover, because, as already noted, some consider "secular humanism" any course of study not affirmatively urging religious views, allowing individual teachers to make these determinations would be viewed by some teachers as an excuse to incorporate religion into their program of instruction. But because these decisions would be made informally by teachers without any formal public procedures, it would be far harder for parents to prevent such abuses.

We hope these comments prove helpful.

Sincerely,

Marc D. Stern

cc: Mark Pearl

The New York Times

# The Horrors of Secular Humanism

A new amendment slid quietly into the Education for Economic Security Act last year. It prohibits the use of Federal magnet school funds for "any course of instruction the substance of which is secular humanism."

At the same time, a 1978 Hatch amendment requiring schools to obtain parental permission before giving pupils psychological tests was broadened to the point of vagueness at the urging of groups led by Phyllis Schlafly. The purpose, again, was to ban secular humanism.

What, one may be forgiven for wondering, is secular humanism?

According to our dictionary, *secular* means "of or relating to worldly things as distinguished from things relating to church and religion." *Humanism* means "any system of thought or action based on the nature, dignity, interests and ideals of man." Put them together and you get . . . well, we don't quite know, but it doesn't sound like something to keep away from kids.

Oh, but it is, insist organizations like the Moral Majority, Christian Voice and Pro-Family Forum. They say secular humanism is anything that is anti-God, anti-American and anti-family. The precise definitions are up to the individual.

In Hillsboro, Mo., for instance, a parents' group, fearing secular humanism, protested the showing in school of the movie "Romeo and Juliet." In Cobb County, Ga., the school superintendent circulated a memorandum to teachers restricting classroom discussion on several topics, including evolution, communism and "valuing." In Maryland, a Coalition of Concerned Parents on Privacy Rights has distributed a letter citing the broadened Hatch regulations as requiring parental permission for 34 categories of classroom practices and materials. Among them are autobiographical assignments. Strictly speaking, to ask a student to write about "What I did on my summer vacation" would require a letter from home.

"I think about what I'm doing twice," a Texas teacher once told The Times. "Is there anything controversial in this lesson plan? If there is, I won't use it. I won't use things where a kid has to make a judgment." Parents who put their trust in the public schools now may find great holes in the education they provide, thanks to other parents waving the club called secular humanism.

Since definitions are so subjective, we'd like to suggest our own. Let secular humanists be people who believe that ignorance is the poorest armor. That keeping a careful eye on education ought not to mean rewriting history or expurgating science. That religious beliefs should not be forced on public schools. No educator would have anything to fear from secular humanists like that. Fortunately, they far outnumber their antagonists.

## Measuring Anti-Semitism

*There are many ways in which the state of anti-Semitism, and/or the potential for anti-Semitism can be assessed:*

1. Prevailing attitudes towards Jews: *These measurements of American public opinion have been made regularly for about a half century by a number of different agencies, often repeating exactly the same questions. The questions tend to concentrate on negative stereotypes (e.g., "Are Jewish businessmen more dishonest than others?"), on predispositions to action (e.g., "Would you object to a Jewish neighbor?"), and on general feelings (e.g., "Which of the following groups do you dislike?"). Comparing the answers to the same questions from year to year provides some trends for analysis.*

2. Covert acts of aggression against Jews: *These refer to the reported number of anti-Semitic graffiti, vandalism on Jewish buildings, mailed threats and the like. For the most part they are anonymous; and they are signals of* something. *Comprehensive measurements of these phenomena would require a highly systematic and universal system for reporting these acts; but a uniform information-gathering system—such as that being developed by the ADL—could provide significant trends for analysis.*

3. Discrimination against Jews: *These are more institutionalized forms of behavioral rejection: discrimination in employment, in housing, in places of public accommodation; and any disability for Jews in being appointed or elected to public office. There are some discrete systematic measurements of these phenomena: e.g., trend measurements of Jewish employment in executive positions; numbers of Jewish public officials appointed or elected; cases brought before statutory human rights bodies.*

4. Expressions of anti-Semitism by public figures: *Anti-Semitic expressions by public personalities—whether in politics, journalism, or other realms of public life—are usually given effective currency in the media. Although a systematic monitoring of media could provide some trend measurement, the evidence on this phenomenon has so far been largely impressionistic.*

5. Responses to conflict situation: *Prevailing attitudes towards Jews can be tested sharply by situations of severe conflict or pressure. For example: the oil embargo of 1973-74 and the gasoline lines of 1979 might have triggered sharp anti-Israel attitudes; that they did not, was significant.*

6. Official reactions to anti-Semitism: *Presumably, one index to a society's readiness for anti-Semitism is the extent and the alacrity with which public officials and official bodies, publicly reject any expression or manifestation of anti-Semitism. Although a systematic monitoring of media could capture this phenomenon, it has so far largely been an impressionistic measurement.*

7. Anti-Semitic "mass" movements: *One critical measure of anti-Semitism, although at a somewhat advanced stage, would be the relative growth of any movement for "organized anti-Semitism," such as neo-Nazi groups or the Ku Klux Klan. This growth has been subject to some measurement by law enforcement agencies and others.*

8. Personal experience with anti-Semitism: *This would entail the survey measurement of how many experiences Jews have had personally in a given period with anti-Semitic remarks or actions. There may be some overlap with other measurements. There has been some corroborative survey measurement of these trends, but the evidence is mainly impressionistic.*

9. "Risk" social conditions: *The potential for anti-Semitism is often prognosticated by an assessment of those objective conditions in society that traditionally have created a risk for the growth of anti-Semitism, notably: economic breakdown; intergroup or interclass conflict; and general breakdown in law and order. Indeed, any critical issue that tends to seriously polarize the community, regardless of the subject matter of that issue, must be regarded as a "risk factor." The state of Israeli-American relations has been added to this list. Obviously, no single one of these "measurements," unrelated to the others, can provide a definitive assessment of the state of anti-Semitism at any time.*

Reproduced from 198-83 Joint Program Plan

# MEASURING ANTI-SEMITISM: ASSESSING THE CRITERIA

By Robert F. Tropp
Director of Community Relations
Jewish Community Federation of Cleveland

For Presentation at the
NJCRAC Plenary Session
Monday, February 18, 1985 at 10 a.m.

I have been asked to discuss the criticisms of the criteria by which anti-Semitism is currently measured in the Jewish community relations field. In addition, part of my assignment is to indicate what factors are responsible for the "grass roots" perception that anti-Semitism is greater than various indices tell us.

One year ago, the Cleveland CRC argued before this Plenum that the draft Joint Program Plan Proposition on anti-Semitism and the draft Overview Statement seriously underestimated the level and intensity of anti-Semitism in the United States. We advocated that a new definition of anti-Semitism be developed.

Cleveland's concerns were referred for discussion to the Commission on Individual Freedom and Jewish Security and to NJCRAC's Executive Committee at the June, 1984, meetings. The upshot of those presentations was the authorization for the creation of a joint subcommittee of both the Commission on Individual Freedom and Jewish Security and the Domestic Task Force to re-examine some of the criteria for defining and measuring anti-Semitism in the United States. The subcommittee was charged with three specific objectives:

1. "To analyze and evaluate the apparent dichotomy between the conclusion that anti-Semitism continues to decline, and the widely-held view at the grass roots that anti-Semitism is either actually or potentially increasing;

2. to determine if new designs for measuring anti-Semitism are needed; and

3. to consider whether the criteria used in defining anti-Semitism encompass consideration of international factors such as the campaign of 'Anti-Zionism'."

The recommendation further asked that the joint subcommittee be asked to submit its findings before the next--this--Plenum.

Much has intervened between then and now to postpone the implementation of that recommendation. Primarily, the sudden and dramatic increase in concern with the substantive area of church/state

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separation on the part of NJCRAC and local agendas necessitated a reordering of priorities. But, that is part of the problem.

For as we move to emphasize the church/state area as a focal point of concern, we should also bear in mind that we may also be witnessing a movement and an attitude in this country which has the potential for affecting the security and well being of Jews deeply. In other words, scratch church/state issues, and just slightly below the surface you will find a reflexive, gut-level, well-founded concern among the rank and file of the Jewish community for their own security.

This is probably the best jumping off point to explore why it is expressed in last year's Joint Program Plan that 69% of American Jews still feel potentially threatened by anti-Semitism.

Almost 17 years ago, in September of 1968, there was a Reassessment Conference. The theme was "Combatting Anti-Semitism Today." That conference defined anti-Semitism as, "antagonism, hostile action, injury, threats, dangers, or difficulties, whether manifest or covert, and whether actual or potential, to individual Jews, to Jewish organizations, institutions, or community bodies, and to Jewish practices, identity, and continuity, specifically on the basis of their Jewishness."

The last time anti-Semitism had been seriously examined on a national level by the then NCRAC was in 1953. That initial conference focused on the overt forms of anti-Semitism which it identified as follows: 1) violence; 2) vandalism; and, 3) defamation. "We cannot...regard the mere frequency or degree of severity of episodes as a complete index of the extent of anti-Semitism," it concluded. Therefore, it is essential to look beyond the surface of overt acts. The conference then was saying that existing criteria for measuring anti-Semitism did not really present the full picture. Only the surface manifestations of virulent anti-Semitism were found to be relatively calm but no devices were developed to plumb the depths beyond the surface.

The conference in 1968 chose to continue the emphasis on examining overt anti-Semitism and only incidentally considered discriminatory practices.

That conference specifically did not seek to conduct new research nor to come to definitive conclusions about the underlying causes and theories of anti-Semitism. It did attempt to synthesize and bring to light all of the contemporary points of view and to reconcile them into some coherent picture of the overall phenomenon.

One conclusion of the conference was that "Anti-Semitism in latent form, is chronic in our society. Its overt manifestations

fluctuate, being aggravated by social tensions. Severe social conflict may cause it to become acute. In that form it tends towards virulence and may become epidemic." The Reassessment Conference recognized that anti-Semitism is latent and yet did not try to develop new ways to analyze or deal with it.

Much has happened since 1968 which, I suspect, has contributed to the increasing unease of American Jews despite the fact that standard definitions of anti-Semitism seem to indicate that it is on the wane. Why is it that when the 1983 Anti-Defamation League Audit of Anti-Semitic Incidents reported that anti-Semitism decreased for the second year in a row -- a decline of 19.2% from 1982, such information has given little real solace to the American Jewish community?

I suspect the answers may be found in an examination of the role of international events as they impact on the United States and the changing nature of our American domestic landscape. The role of the media in constantly publishing the sensational, dramatically overemphasizes current events in the contemporary Jewish consciousness. It reinforces fears and concerns through headlines and analysis.

We can no longer view anti-Semitism in the United States as simply a domestic concern. Today, anti-Semitism is nourished outside of our shores through the Soviet Union and Arab countries. One of the principal fortresses from which anti-Semitism emanates is the United Nations. Ever since the Zionism equals racism resolution was promulgated in 1975, the State of Israel and Jews everywhere have felt an increasing attack worldwide on the legitimacy of the Jewish state and -- more importantly -- the right of Jews to have a state.

Consider the following examples of recent events which have taken place around the world and which reverberate within our own domestic politics:

1. The development of a fundamentalist, religious revolution in Iran and its subsequent reaffirmation of Jewish second class subject status gives cause for concern. The Jewish community of Iran was for centuries well integrated and part of the overall national life. Yet, within just a few short years, with the rise of religious fundamentalism and the fall of the Shah, our 1984/85 Joint Program Plan characterized their position as being "vulnerable." Emigration is closed to them and many Jews remain in prison.

   While the United States is clearly not Iran, there has been a parallel rise in a religious fundamentalism which is sweeping our land. The President of the United States has put himself foursquare with the forces of those who would introduce

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prayer in the public schools, and who would Christianize America. The latest example occurred in President Reagan's support of the Defense Department's proposed budget by saying the "Scriptures are on our side." Christian scriptures are being used--some would say abused--to justify the increased defense costs. Whatever the merits of the proposal, Christian theology ought to be irrelevant. The group of Christian broadcasters to whom President Reagan spoke applauded loudly. They obviously felt there was no problem with the President of the United States arguing for a strong defense budget because Jesus wants it.

2. The recent decision in Lynch vs. Donnelly to allow a creche in Rhode Island further breaches what had once seemed to be an impregnable high wall between church and state.

   When Jews heard a prominent fundamentalist say that G_d in heaven doesn't hear the prayer of Jews, then it gave us pause to wonder about our security.

   My purpose is not to raise the level of hysteria, but simply to point out the reasons for unease among the rank and file of the American Jewish community. Add to all that I've said the fact that 34 of the 36 states necessary to call for a constitutional convention have done so at a time when the religious right is in ascendancy. Those of us who fear the emergence of the Christian nation so feverishly advocated by the religious right know in our heart of hearts that if such a convention takes place we will most likely find ourselves increasingly estranged in our own land.

3. Since the 1968 reasssessment conference, the Nicaraguan government was overthrown and Yassir Arafat praised that revolution and the role played by the PLO in achieving it. The small Jewish community of Nicaragua was forced to leave.

4. In France, the killings of four people and the injuries of 20 others at the rue Copernic Synagogue and the subsequent attack at Joe Goldenberg's Jewish Delicatessen in which six were killed and 22 injured, attest to the fact that the potential for active anti-Semitism is great where there is fertile latent ground.

5. In the 1984 presidential debate, televised nationwide, both candidates were asked to present their religious perspectives. Neither demurred to say this was inappropriate, that there is no religious test for public office--at least not in our constitution. In practice, it seems there really is a test. Both candidates vied to pass with the highest grade.

There are other signs of the times which concern me. The Anti-Defamation League of B'nai B'rith has been advocating the passage of paramilitary statutes to protect us from militant groups. Is the potential threat to our liberty so great that such statutes are necessary?

The recently uncovered knowledge that Nazi war criminals were either brought to the United States or were allowed to escape to other countries for their alleged intelligence values, gives us pause to wonder about Jewish security in our country. We remember the Holocaust and how little was done to admit refugees and bomb the death factories. Now, we are faced with governmental collusion in the sheltering of Nazis.

In the last few years, we have seen the rise of tensions regarding the "Jewish lobby" and attacks on our right to oppose the sale of AWACS to Saudi Arabia. We have heard the incautious remarks of Reverend Jackson buttressed by the blatant anti-Semitism of Reverend Louis Farrakhan and the consequent sounds of silence of too many of our fellow citizens and leaders. Is it any wonder that the feelings of security of our Jewish constituency is shaky?

In recent years we have seen the fight over anti-boycott legislation which was induced by the Arab League's boycott of products made in Israel. That boycott extended to companies and individuals who do business with Israel. Jewish Americans were discriminated against by fellow citizens for economic motives. There was an indifference to the discrimination which had to be overcome. It was not blatant anti-Semitism of the classic kind but equally pernicious.

I remember those days well. I was the staff person for the CRC in Seattle when we helped to write and gain passage of an anti-boycott bill in the Washington State legislature. I remember the businessmen who were opposed to that legislation because they felt that it would hamper their economic welfare. It did not matter that Americans were being denied fundamental rights which were imposed by outside powers or that our nation's sovereignty was being compromised in the process. It took a long time and a hard fight in several states before the U.S. Congress finally agreed to pass such legislation on a national level. Yet even today, companies routinely are called-up for violations of that anti-boycott law.

The difference between the reality of anti-Semitism -- whatever that may be -- and the perception that anti-Semitism has increased, may not be that great. It all hinges on the definition of anti-Semitism. I noted earlier in my remarks that both the 1953 and the 1968 Reassessment Conferences took as their point of departure oblique acts of violence and manifestations of anti-

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Semitism. Clearly those kinds of things are on the wane. So, if everything is so good, how come we feel so bad?

Perhaps we should be looking at current events as they impinge on our inherent Jewish interests. If we look at events not in light of their attack upon Jews qua Jews but rather in light of their potential impact upon the Jewish people, then perhaps we come closer to understanding the pervasive unease of American Jews.

If one looks at the reordering of NJCRAC's priorities to establish regional conferences on church/state issues instead of reassessing anti-Semitism in this context, then what we are really saying is that a basic and fundamental Jewish interest is at stake which must be preserved. The more important thing was to come to grips with the potential threat to Jewish life in America posed by the multitude of church/state issues than to deal with the "abstract" issue of anti-Semitism. I believe that the best way to solve a problem is to redefine it. The church/state issues exemplify the second side of the coin. Anti-Semitism as we now define it, is not the motivating factor. Yet, the answer to the perennial question -- Is it good for the Jews? -- must be answered in the negative. We know the effect will be to lessen our rights through a potential "tyranny of the majority." Regardless of the motivation, the effect on us should be what counts.

Based on that, it is my presumption that our perspective of anti-Semitism should become more sophisticated. The nine NJCRAC criteria measuring anti-Semitism relate only to the specifics of actions against Jews as Jews. They are therefore not refined ~~enough to pick~~ up the pre-anti-Semitism which is inherent in radical movements of the far right and in international forums where Zionism is ostensibly separated from Judaism but equated with racism. We all know that translates to the general public the concept that Jews are racists.

Last June, I told NJCRAC's Executive Committee that I was uncertain as to whether anti-Semitism was on the rise or not, but that there were reasons at the very least to question the way in which we view anti-Semitism. I still believe that it is necessary for us to reassess what it is we mean by anti-Semitism and thereby to re-evaluate the criteria that we use to measure it. We must be able to develop a sensitivity that goes beyond what we now have. When I attended the Executive Committee in June, I suggested that the current measures of domestic anti-Semitism were not inaccurate, only incomplete. At that time I also suggested that a basic tacit premise of the criteria stems from the supposition that the causes of domestic anti-Semitism are insular to the borders of the United States. That assumption should be re-examined. In addition, how we define anti-Semitism itself and how we view events should be fundamentally re-examined. That

examination must take place in light of what constitutes the Jewish interest. There must be a way to define our interests so that anything which imperils them can be identified and labelled for what it is -- a threat to the security of the Jewish community.

Anti-Semitism is a chameleon. Its form but not its essence changes. Creative Jewish survival is the core goal of our efforts. For us to continue, we must be able to identify, point to, and counteract the chameleon. To do that, we must first be able to identify it. Let us begin now, here, today, in that effort.

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1985 NJCRAC PLENARY SESSION

FORUM ON "MEASURING ANTISEMITISM"

EXCERPTS FROM PRESENTATION OF SEYMOUR MARTIN LIPSET

. . . Back in the time of Joe McCarthy the American Jewish Committee was sponsoring all sorts of studies about antisemitism. since then, as now, we've been monitoring the problem, and Jews were very sensitive to the fact that a disproportionate number of people who were charged with being Communists or being Russian agents, spies, were Jewish. But the Committee's study found that the public didn't know this; when the people queried were given various groups, and asked which groups were more likely to contain more Communists or Russian agents among them, Jews were very low in the response. I think they had basically an economic theory. They mentioned Blacks and poor people as being more likely to be Communists. They did not mention Jews. They weren't aware, most of the people, that the Rosenbergs were Jewish. That name didn't strike a bell that they were obviously Jewish. It does to us. We have this inherent hypersensitivity--for very good reasons--which has already been mentioned. We take for granted, again, for obvious reasons, that any conflict between Jews and non-Jews is antisemitism. If we are a normal people, we have interests, we have positions, and we have positions which deviate from that of the vast majority of the American population. We are the only white group that voted overwhelmingly for Walter Mondale, the only ones that turned against Ronald Reagan, who got less support this time than last time. We support all kinds of unpopular causes that aren't Jewish. And there are interest conflicts. There's a good reason why Arabs don't like Jews; they don't like Israelis and this is not antisemitism. Arabs use antisemitism--no question of the fact they do--but there are many Arabs, I'm sure, who believe in all sorts of antisemitic stereotypes, but there's an interest conflict between Israel and the Palestinians, between Jews and people who are pro-Arab. There's been an interest conflict between Jews and Blacks. . . . Actually, earlier, a lot of the Baptists were great advocates of separation of church and state, based on the fact they had been persecuted in Britain when they were a minority before they came to America. But we have this tension; it is an interest tension and a values tension. They have a right to their position. If they win, and win decisively, it will hurt the Jews. There's no question about that. But it's not necessarily anti-Semitism. Some Jews--perhaps many Jews, particularly the Orthodox--take similar positions as they do.

. . . To get back to the major topic, my own feeling is that the nine NJCRAC criteria for measuring antisemitism are good criteria. They make sense in that they do enable us to monitor what I consider to be the serious indicators of antisemitism. I know that there is the need to get beneath them in some sort of more sophisticated way, and yet it is also true, as you've already heard from both previous speakers, that most Jews are worried; that most Jews, in spite of the fact that Jews never had it so good anywhere in the world in terms of relations in a non-Jewish society, remain worried. They continue saying that anti-Semitism is a problem, both now and in the future. . . . The fact that Jews have not fully accepted that they have a secure position in American society I think can be demonstrated by aspects of their political and social behavior. Thus, we know that Jews are the highest income ethno-religious group in the country and remain the most liberal and Democratic-party-committed group. This is a tendency, which I've already pointed out, that increased in 1984. They continue to contribute disproportionately to the extremes of the society, and in spite of the leftist criticism of Israel, Jews continue to be heavily and disporportionately

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part of the left and a dominant part of the financing of the left in the United States. Also, although it's a different kind of phenomenon, but one that should worry us, although our data are not very good, are the data that consistently suggest that not only are Jews disproportionately part of the left wing total in political commitments, but disproportionately found in all sorts of cults.

. . . There's no question in my mind that antisemitic pressures on Jews have decreased; that Jews have improved their position enormously; that Israel is in a fantastic position.

. . . Now antisemitic movements remain. They are largely isolated, although one cannot ignore them. . . . One of the places where they're growing and where there is significant noise about them is among farmers. Posse Comitatus, which is one of the more vicious ones, can be found in the farm regions. Various farm organizations are worried about them. They have a fantastic whole conglomerative conspiracy theory about Jews and others. This growth of Posse Comitatus, which is still a tiny force, but growing, is clearly a reflection of the fact that a tremendous number of farmers are in dire trouble, and that there is no rational economic solution to their problem, and so they turn to irrational conspiracy theories, including the belief that Jews control the banks and the banks are after them, and so on. If we went into another crisis a la the 1930's, we'd see the equivalent of Father Coughlins, et al, showing up again and blaming these things on the Jews. One may hope that the increased education, increased sophistication of the American public, plus the change, not just of the relation to Jews, but of the whole picture of race relations that has occurred, would mean that there'd be more resistance to these phenomena.

. . . But there's another indicator: the whole question of election of Jews to office. There are thirty in the House, there are eight in the Senate, there are a lot more Congressional assistants. The Governor of Vermont is both Jewish and a woman. This suggests that America isn't going backwards, it's going forwards. Why the continued fears? . . . Well, antisemitism to us is a life-threatening situation. It's different. Italians complain about anti-Italian bias, and there is, and other groups also, but they haven't had the experience of a Holocaust. They don't have the 2,000 years and more of a history of persecution. Included in our history is the fact that there have been periods when Jews have been well off, as in Islamic Spain, and in other places in various parts of the world where they've been thrown out, where they've been persecuted, where they've been murdered. Our history includes the fact that we keep reminding ourselves that no matter how good it is, no matter how friendly the gentile community seems to be, that Jews before us have had this experience and that something went wrong, and so we can't trust them, and given that history, we'd be dumb not to worry. We magnify these incidents the way one magnifies something which might be a heart attack, such as a pain in the chest. We're the people one-third of whose members are in the living memory of the old ones among us who were slaughtered for the crime of Jewish origin, and we are in America, a country that didn't help.

. . . To get back into the monitoring issue: As I said before, the criteria and the methods used to measure them are good ones. The results, as we heard, suggest a steady dropoff, though they also imply that crises such as the current farm crisis can revive antisemitism. We obviously have to be on our guard, but we should also recognize that America is a different kind of society, that there never was a society like this from the point of view of the Jews, among other people, that has been as

open and as accepting and as unconcerned about religious origins and other forms of origin as the United States has been, and that Jews therefore have been able to do things in this country and to take positions and be treated in ways that they've never been in other countries. One thing we never measure, unless you take it as the outburst of what we do measure, is philosemitism. We are only concerned about antisemitism and we don't take the question of "Will people come to our aid?"--the question of philosemitism or a positive attitude toward Jews.

# National Jewish Community Relations Advisory Council

443 Park Avenue South, New York, N.Y. 10016 (212) 684-6950

July 8, 1985

Mr. Marshall Breger
Special Assistant to the
President for Public Liaison
The White House
Washington, DC

Dear Marshall:

Thanks for your nice note about the dinner with Ambassador Pickering. I very much welcomed that session with Tom Pickering, and I look forward to working with him in the years ahead. I was most impressed by his responses to the observations and questions.

As I indicated at that dinner, I was also impressed by the posture of the Administration in regard to the hostage crisis. I recognize that there were a few slips, but that's bound to happen. What was important was the posture taken by the President, the Secretary of State and the National Security Advisor. Fortunately, the hostages are now home without the United States having caved in to blackmail.

In connection with that crisis, I thought you might find of interest the enclosed communications, which NJCRAC sent out during that period.

Cordially,

Albert D. Chernin
Executive Vice Chairman

ADC:ej
enclosures

# NJCRAC CONSTITUENT ORGANIZATIONS

## NATIONAL AGENCIES

American Jewish Committee
American Jewish Congress
B'nai B'rith—Anti-Defamation League
Hadassah
Jewish Labor Committee
Jewish War Veterans of the U.S.A.
National Council of Jewish Women
Union of American Hebrew Congregations
Union of Orthodox Jewish Congregations of America
United Synagogue of America—Women's League for Conservative Judaism
Women's American ORT

## Local, State and County Agencies* and their Locations

**ALABAMA**
BIRMINGHAM JCC

**ARIZONA**
GREATER PHOENIX Jewish Federation
TUCSON Jewish Federation of Southern Arizona

**CALIFORNIA**
GREATER LONG BEACH AND WEST ORANGE COUNTY Jewish Community Federation
LOS ANGELES CRC of Jewish Federation-Council
OAKLAND Greater East Bay JCRC
ORANGE COUNTY Jewish Federation
SACRAMENTO JCRC
SAN DIEGO CRC of United Jewish Federation
SAN FRANCISCO JCRC
GREATER SAN JOSE JCRC

**CONNECTICUT**
GREATER BRIDGEPORT Jewish Federation
GREATER DANBURY CRC of Jewish Federation
GREATER HARTFORD CRC of Jewish Federation
NEW HAVEN Jewish Federation
EASTERN CONN., Jewish Federation
GREATER NORWALK Jewish Federation
STAMFORD United Jewish Federation
WATERBURY Jewish Federation
JCRC of Connecticut

**DELAWARE**
WILMINGTON Jewish Federation of Delaware

**DISTRICT OF COLUMBIA**
GREATER WASHINGTON JCC

**FLORIDA**
SOUTH BROWARD Jewish Federation
SOUTH COUNTY Jewish Federation
GREATER FORT LAUDERDALE Jewish Federation
JACKSONVILLE JCC
GREATER MIAMI Jewish Federation
GREATER ORLANDO Jewish Federation
PALM BEACH COUNTY Jewish Federation
PINELLAS COUNTY Jewish Federation
SARASOTA Jewish Federation

**GEORGIA**
ATLANTA Jewish Federation
SAVANNAH Jewish Council

**ILLINOIS**
METROPOLITAN CHICAGO Public Affairs Committee of Jewish United Fund
PEORIA Jewish Federation
SPRINGFIELD Jewish Federation

**INDIANA**
INDIANAPOLIS JCRC
SOUTH BEND Jewish Federation of St Joseph Valley
JCRC of Indiana

**IOWA**
GREATER DES MOINES Jewish Federation

**KANSAS**
KANSAS CITY, See Missouri

**KENTUCKY**
LEXINGTON CENTRAL KENTUCKY Jewish Association
LOUISVILLE Jewish Community Federation

**LOUISIANA**
GREATER NEW ORLEANS Jewish Federation
SHREVEPORT Jewish Federation

**MAINE**
PORTLAND Southern Maine Jewish Federation-Community Council

**MARYLAND**
BALTIMORE JCRC
(Montgomery County, see D C )

**MASSACHUSETTS**
GREATER BOSTON JCRC
MARBLEHEAD North Shore Jewish Federation
GREATER NEW BEDFORD Jewish Federation
SPRINGFIELD Jewish Federation
WORCESTER Jewish Federation

**MICHIGAN**
METROPOLITAN DETROIT JCC
FLINT Jewish Federation

**MINNESOTA**
MINNEAPOLIS Minnesota and Dakotas JCRC—Anti-Defamation League

**MISSOURI**
GREATER KANSAS CITY Jewish Community Relations Bureau
ST LOUIS JCRC

**NEBRASKA**
OHAMA JCRCommittee of Jewish Federation

**NEW JERSEY**
ATLANTIC COUNTY Federation of Jewish Agencies
BERGEN COUNTY JCRC of United Jewish Community
CHERRY HILL JCRC of Southern New Jersey Jewish Federation
DELAWARE VALLEY Jewish Federation
EAST ORANGE MetroWest New Jersey Jewish Community Federation
NORTHERN MIDDLESEX COUNTY Jewish Federation
RARITAN VALLEY Jewish Federation
UNION Central New Jersey Jewish Federation
WAYNE North Jersey Jewish Federation

**NEW MEXICO**
ALBUQUERQUE JCC

**NEW YORK**
GREATER ALBANY Jewish Federation
BINGHAMTON Jewish Federation of Broome County
GREATER BUFFALO Jewish Federation
ELMIRA CRC of Jewish Welfare Fund
GREATER KINGSTON Jewish Federation
NEW YORK JCRC
ROCHESTER Jewish Community Federation
GREATER SCHENECTADY Jewish Federation
SYRACUSE Jewish Federation
UTICA Jewish Federation

**OHIO**
AKRON Jewish Community Federation
CANTON Jewish Community Federation
CINCINNATI JCRC
CLEVELAND Jewish Community Federation
COLUMBUS CRC of Jewish Federation
GREATER DAYTON CRC of Jewish Federation
TOLEDO CRC of Jewish Welfare Federation
YOUNGSTOWN JCRC of Jewish Federation

**OKLAHOMA**
OKLAHOMA CITY JCC
TULSA JCC

**OREGON**
PORTLAND Jewish Federation

**PENNSYLVANIA**
ALLENTOWN CRC of Jewish Federation
ERIE JCC
GREATER PHILADELPHIA JCRC
PITTSBURGH CRC of United Jewish Federation
SCRANTON-LACKAWANNA Jewish Federation
GREATER WILKES-BARRE Jewish Federation

**RHODE ISLAND**
PROVIDENCE CRC of Rhode Island Jewish Federation

**SOUTH CAROLINA**
CHARLESTON JCRCommittee
COLUMBIA CRC of Jewish Welfare Federation

**TENNESSEE**
MEMPHIS JCRC
NASHVILLE AND MIDDLE TENNESSEE Jewish Federation

**TEXAS**
AUSTIN JCC
GREATER DALLAS JCRC of Jewish Federation
EL PASO JCRCommittee
GREATER HOUSTON Jewish Federation
FORT WORTH Jewish Federation
SAN ANTONIO JCRC of Jewish Federation

**VIRGINIA**
NEWPORT NEWS-HAMPTON Jewish Federation
WILLIAMSBURG United Jewish Community of the Virginia Peninsula
RICHMOND Jewish Community Federation
TIDEWATER United Jewish Federation
(Northern Virginia, see D.C.)

**WASHINGTON**
GREATER SEATTLE Jewish Federation

**WISCONSIN**
MADISON JCC
MILWAUKEE Jewish Council

*Community Relations Committee (CRC); Jewish Community Relations Council (JCRC); Jewish Community Council (JCC)