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SEPTEMBER 30-OCTOBER 6, 1988 BOSTON'S LARGEST WEEKLY FIVE SECTIONS 188 PAGES \$1.50

IN ARTS

MASTERS OF THE AVANT-GARDE



MERCE CUNNINGHAM

by Laura A. Jacobs

JOHN CAGE

by Richard Kostelanetz



Cage (left) and Cunningham

In News

POST-DEBATE DEBATE

Why Bush won (Lehigh, page 8)

Why Dukakis won (Berman and Gaines, page 8)



Save our schools

Prescriptions for a sick system

by Maureen Dezell

Just as surely as Boston has boomed and its economy has blossomed during the past decade, the city's public-school system has shrunk and withered, suffering from a lack of public attention and care. In the mid 1970s, court-ordered school desegregation — and the busing that was used to implement it — ripped the city into sometimes violent, and most assuredly embittered, factions. In 1981 Proposition 2½ and city-budget cutbacks forced the layoff of 1800 of the public-school teachers who'd lived through the throes of desegregation. School superintendents, each with an individual philosophy of administration and education, came and went. Boston has had nine men in charge of the headquarters at 26 Court Street since 1972 — six since 1980 alone. Most of those parents who have been able to afford private education and pull their children out of the public schools have done so. The city's affluent residents, most of the white population, and its rapidly shrinking middle class send their kids to private or parochial schools. Many minority

parents try to enroll their children in suburban schools under the Metco program. Right now, only one in nine Boston families uses the public-school system. And the adults in most of those families don't vote.

Of the 57,000 children who attend public schools in Boston today, almost 50 percent are black. Almost 20 percent are Hispanic. Close to 40 percent require either "special needs" or bilingual instruction. And most are needy — socially, educationally, or both. The high-school dropout rate in 1986 stood at 46 percent. The teen-pregnancy rate is higher than in many other urban school systems. In 1987 only four Boston public schools scored above the national median in grade-nine reading levels.

A small but vigilant group of parents and teachers who fight in behalf of the schools — and the handful of public officials who've paid attention to the public-school system — held high hopes in 1985 that Laya Wilson, the city's first

Continued on page 6

Rebuttal in the ACLU case (Silverglate, page 10)

Tote Board: 5-3 Bush (Stark, page 9)



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PRESENTS

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BRIEF CASES

Giving the union its due

BY HARVEY SILVERGLATE



Thornburgh cynically attacked the ACLU

The George Bush who has characterized the American Civil Liberties Union (ACLU) as hopelessly remote from the political mainstream, and damned Michael Dukakis as a "card-carrying member," would be hard put to explain the ACLU's upcoming appearance in a Boston federal appellate court. There, the union will argue not for the constitutional rights of some child pornographer or gay-rights activist but for those of a fundamentalist Christian church that is being destroyed by a rampaging judicial system.

The local Massachusetts ACLU affiliate, the Civil Liberties Union of Massachusetts (CLUM), is weighing in with a friend-of-the-court brief on behalf of The Bible Speaks, a fundamentalist, evangelical Christian sect. Only a remnant of the sect remains in Lenox, Massachusetts, after a disaffected former member and her army of lawyers, aided by the news media and a pliant United States Bankruptcy Court judge, all but destroyed the church and ran most of its leaders and adherents out of the state.

CLUM came to the church's aid when no one else was willing to help foil one of the most egregious violations of the First Amendment's freedom-of-religion guarantee since Congress, with the acquiescence of a compliant Supreme Court, dissolved the Mormon Church at the turn of the century. Contrary to the impression given by the ACLU's enemies, not to mention Dukakis's detractors, this is not at all an unusual position for the civil-liberties organization; the ACLU will come to the aid of just about any beleaguered citizen or group whose constitutional rights are being trampled by a temporarily crazed government official or agency responding to majoritarian or popular sentiment.

While the ACLU's arms are being pinned by the Bush people, at least one political figure who should know better is taking advantage of the situation to earn his stripes by landing a punch. US Attorney General (and former Kennedy School honcho, Pennsylvania United States Attorney, and Pennsylvania governor) Dick Thornburgh, according to a Washington Post story and a New York Times follow-up, recently joined in the fray. What made this attack by Ed Meese's successor at the Justice Department particularly abhorrent was not only

that Thornburgh is a relatively reasonable intelligent, and fair-minded individual, but also that from 1967 until 1969 he belonged to the Pennsylvania ACLU affiliate in Pittsburgh and was a member of its board of directors.

Thornburgh's youthful dalliance with the ACLU did not garner any attention during his uneventful confirmation hearings in the Senate but it belatedly came to light in the September 16 Washington Post. When the article came out, Thornburgh felt obliged to assuage the Reagan administration's and Bush campaign's embarrassment by issuing an explanatory statement.

Thornburgh sought to absolve himself by claiming that when he was a member the union stood "for free political discourse and the legitimate rights of the accused." One of his more personal motives for joining, he pointed out, had been his family's "continuing personal interest in securing the full enjoyment of the rights of our mentally retarded son during a period when the rights of handicapped persons in the areas of education, rehabilitation, housing and institutional care were far from assured." However, Thornburgh continued, "as it became increasingly clear that the ACLU was diverting itself from these types of efforts into the pursuit of a separate political agenda, many portions of which I strongly disagreed with, I resigned from the organization."

To understand the attorney general's defection fully, however, one has to go beyond his words and ask precisely what he means by the union's "separate political agenda."

Not that much has changed about the ACLU since the days when Thornburgh was on the Pennsylvania-affiliate's board of directors, or indeed since the union's founding, in the 1920s. The organization has always represented the unpopular — the popular, after all, hardly need protection — and hence has drawn the fire of the larger society and its government. Despite this, the ACLU has time and again been in the forefront of liberty's advance in this country. The union was the only major organization, for example, to oppose the WWII relocation of Japanese-American citizens from the West Coast to internment camps, and though at the time it drew stinging attacks for its alleged lack of patriotism, even Ronald Reagan recently admitted the nation's error when he signed a congressional enactment giving each internee still living \$20,000 and a formal apology from the United States.

(Harvey Silverglate is a card-carrying member of the American Civil Liberties Union and former president of the Civil Liberties Union of Massachusetts.)



AP/WIDE WORLD

And the ACLU fought Dovydenas's attack on *The Bible Speaks*.

When the ACLU started to defend the equal rights of handicapped and retarded persons, and to litigate the outrageous and medieval conditions under which some of those people were warehoused in state-run mental institutions — institutions into which they were often tossed without any due process — people like Richard Thornburgh became members.

Why did Thornburgh join? Because, as he said in his confirmation statement, he had a retarded son whose full rights of citizenship were being trampled, and the ACLU was leading the movement to change the situation. And why did Thornburgh leave the union? Thornburgh, subsequent news reports suggest, left the ACLU not because he objected to its "political agenda" but because he was appointed United States Attorney for Pennsylvania and faced potential conflicts of interest arising from the ACLU's frequent litigation against the Department of Justice. It was reported that an ACLU member present when Thornburgh announced his departure said that Thornburgh had indeed given his Department of Justice appointment as the reason but had emphasized that he still supported the union's work. As he developed a political career that led to the governorship of Pennsylvania, Thornburgh remained outside the organization.

If Thornburgh's leaving the ACLU was occasioned by something other than its "political agenda," his vehement criticism now of that organization seems to derive from more than the need to avoid embarrassing the Reagan administration and the Bush campaign. Perhaps Thornburgh really believes, or at least tells himself, that his turning on his former ACLU colleagues is justified by that organization's switch from fighting for the rights of the handicapped and retarded to fighting for the rights of gays, women, and blacks.

Yet how does Thornburgh justify drawing a principled distinction between his retarded son and a gay person, or a woman or a black or, for that matter, a member of a minority religious sect or an American Communist? What theory makes the fight for handicapped rights a legitimate civil-liberties concern but the struggle for the rights of these other groups somehow a "separate political agenda"? Only one distinction is immediately apparent: Richard Thornburgh happens to have had a retarded child; he did not have one who was gay or black, or a Jehovah's Witness or a Communist. Once the movement for handicapped rights began to take off — as it did in the late '60s and early '70s, resulting in the myriad federally and state-protected rights the handicapped enjoy today — Thornburgh no longer needed the organization. And so he never returned to it. It's not that the ACLU became

politicized. Rather, it lost its usefulness for Thornburgh's highly personal agenda, and at the same time it became an inconvenience for his political career to fight for truly unpopular people.

By definition, however, there's really no such thing as a fair-weather civil libertarian, since to believe in civil liberties is to grant the same rights to those you hate as to those you love. One is tempted to call Thornburgh a hypocrite, but his about-face is more complicated than that. Thornburgh is one of a large number of people who can recognize the dangers inherent in unequal treatment under the law only when he or someone close to him is the victim. Maybe that is human nature more than hypocrisy. Certainly it is no profile in courage.

The role played by the Civil Liberties Union in the case of *Dovydenas v. The Bible Speaks* is instructive in revealing the union's true agenda.

In 1987 Judge James F. Queenan Jr., of the US Bankruptcy Court in Worcester, ruled that *The Bible Speaks* Church had to pay multimillionaire heiress Elizabeth "Betsy" Dovydenas more than \$6.5 million, money she had earlier donated to the church at the suggestion (she called it "undue influence") of its charismatic (some called him "unscrupulous") pastor, the Reverend Carl H. Stevens. The church argued, to no avail, that a court does not have the power to order a church to return contributions made by a onetime believer who gives up the faith. It is, argued the church, the rankest crossing of the line of separation of church and state, since it involves the court in decisions about the validity and propriety of the church's spiritually based appeals for funds. In this particular case, continued the church, the ruling also violated the church's First Amendment freedom to practice religion, as the judgment would bankrupt the church and effectively terminate its existence.

The judgment did, indeed, bankrupt the church. Judge Queenan, even before the church had an opportunity to appeal, placed a court-appointed trustee in charge of *The Bible Speaks*, whereupon Pastor Stevens and most of the flock, unwilling to adhere to a church run by the federal court, left Massachusetts for a more congenial place to practice their religion. Queenan then ordered his appointee to sell the church property to Dovydenas in a bankruptcy sale. That order was entered during the course of an emergency hearing convened by the judge when he realized that the church was planning to appeal the verdict and might well win its case. By forcing the immediate sale of the church buildings, Judge Queenan was seeking to assure

Continued on page 13

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operation with enough cash to propel the bimonthly *Boston Business* magazine into a monthly publishing cycle, and he had frequently reassured the troops that the out-of-town owners would let him continue to run the operation. But did he drift out of the loop as MCP began moving him to the sidelines? "Where was Bergenheim?" asks one interested observer now, putting a twist on the infamous campaign slogan.

But what happened on September 22 is also more than simply a dollars-and-cents story. It is, according to many of those close to the situation, also a jarring lesson in the reality of out-of-town corporate ownership. "Any time you have a family operation, it's not going to be the same as a \$75 million company," says Roger Bergenheim. The lesson was learned the hard way.

In truth, there was suspicion among the staffers from the outset that things would change dramatically under the MCP reign. One story goes that during an introductory meeting with *BBJ* personnel, Hopp told his new charges that, according to Standard Industry Codes, "we are in the manufacturing business. We manufacture words." It was a statement that played into fears that the new corporate owners in Minnesota were much more infatuated with the ink in the bankbook than the ink on the pages. Another time, Hopp is said to have lectured employees on the high costs per page of his Boston operation. There was a point according to sources, when the money seemed to dry up, when expense checks and freelance checks slowed to a trickle and when the phone company threatened a service cutoff. And one former employee recalls receiving a communication from the home office in Minnesota with his name misspelled on the envelope — to him, a sign of the company's detachment from its Boston employees.

All this helped feed into the perception that MCP had come into this city clinging to a formula that was developed elsewhere, ignorant of the uniqueness of this market, and overlooking the fact that the Boston publications were considerably more sophisticated than the company's other holdings.

The *BBJ* really came into its own in the early '80s as a quirky but provocative business paper that seductively packaged features, politics, and economic trends — while regularly breaking hard news — for a class of readers dying for relief from the stodgy gray ladies of the business world. The magazine, which came four years later, was never marketed aggressively, but it won praise and attention for its ability to tap insightfully into the Boston business psyche and to keep its readers' attention.

How much all that meant to MCP is debatable. "They bought the property, but they had no understanding and appreciation of the paper's standing in the community," says one source. "Plain and simple, they want to make money," adds another. "They are not publishers. They are printers."

Whether or not MCP will succeed with a streamlined *BBJ* staff and a retooled (some would say "maimed") magazine remains to be seen, but some of the impact is already clear.

"There won't be another shoe to drop," says Roger Bergenheim, yet shell-shocked editorial staffers have been concerned. The cutbacks presented a trial for the younger Bergenheim, who is 37, he was suddenly thrust into the front-man role, and to put it charitably, some argue that he can grow into the publisher's job. It was certainly no easier for *BBJ* editor Manning, still feeling his way into the job, who was reportedly quite shaken by the layoffs. The real question is how

much psychological damage has been done — not only to the rank and file but to leadership as well.

And then there is the specter of new competition in light of the MCP moves. *Phoenix* publisher Stephen Mindich has already been mentioned, in last Wednesday's *Herald*, as a potential competitor. "Given that Nancy McMillan is a long-term friend of mine and indeed worked here before... and the fact that other people who are here have worked at the *BBJ*, I would be less than honest if I didn't concede that the thought has arisen that I start a publication to compete," he says. "It is equally fair to say there is no firm plan to do that at this time. It's a matter of looking and exploring." □

Brief

Continued from page 11

The Bible Speaks in Lenox would be forever destroyed as a church and would never return to Massachusetts, even if it were eventually to win its case. The judge went even further. In an effort to prevent the church from resisting its own destruction, he refused to allow the expenditure of any church funds on an appeal, saying that such a move would be frivolous and would waste the church's assets. To what use were the church assets supposed to be put? Why, to pay off the \$6.5 million judgment to Dovydzenas, of course.

What Queenan did not count on was that the hardy band of parishioners remaining in Lenox, led by board president Gerald J. Doherty, were determined to go forward with or without church funds. They raised enough money among themselves to pursue an appeal. And despite a last-ditch effort by Judge Queenan to prevent them from using even their own funds for the appeal, they filed their brief. In addition to a challenge to the propriety of the Dovydzenas judgment itself, one of the issues in the appeal is the right, or "standing," of this group of parishioners to pursue the appeal on behalf of the church, using their own money. Judge Queenan and Dovydzenas's attorneys are arguing, in a page directly out of Catch-22, that since the church has been effectively destroyed (by the Bankruptcy Court's orders, of course), there is no church left to prosecute the appeal of the destruction.

At the parishioners' request, CLUM decided to enter the case, arguing both that the court's verdict was unconstitutional and that Judge Queenan's efforts to prevent an appeal violated the church's right of access to the courts. The case is set for oral argument before a three-judge panel on October 4, and it should be quite a show. The issue is nothing less than whether a small, powerless Christian sect can be treated differently from the nation's major religious groups and churches in regard to the First Amendment.

This is not, of course, the first time the ACLU has represented a minority religious group. Nor is it unusual for the Civil Liberties Union to represent those seen as being at the right wing of the political spectrum. The ACLU has argued in favor of Oliver North's Fifth Amendment privilege against self-incrimination, and is in favor of the dismissal of the indictments against him on the basis of his earlier compelled congressional testimony. It has taken the side of the tobacco companies in opposing a ban on cigarette advertising on First Amendment free-speech grounds. It has argued that anti-abortion rights proponents have the same rights to protest as do pro-abortion rights activists.

Continued on page 14



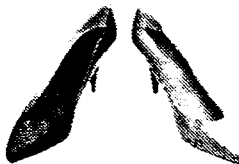
*When Friend fell,
he called for Help.
But the only ones
there, were*



Ignorance,



Incompetence

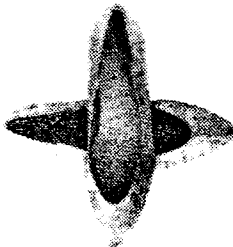


and Indifference.

*Friend called for
Help again,*



*but Confusion
came instead.*



*At last Help came,
and Help knew
what to do.*

*In times of emergency,
are you Help?*

*If not,
learn Red Cross First Aid*

*where you work
or call your local chapter.*

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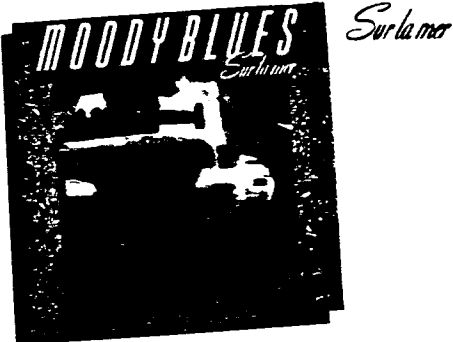
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Brief

Continued from page 13
 And, despite its strong anti-fascist stands, it has represented the rights of American Nazis to march in Stokie, Illinois, and elsewhere.

One of the most puzzling aspects of the conservative movement in America today is its strange mixture of laissez-faire doctrine in matters relating to the economy and to government regulation, and its anti-libertarian, indeed statist, thinking on matters of citizens' rights. Today's "conservatives," it appears, are opposed to government interference in their own ability to pursue their personal agendas but are all for the heavy hand (if not the boot) of governmental power telling others how to live.

The ACLU is attacked as the devil incarnate by these people. It is a shameful and demagogic assault. George Bush has jumped on the bandwagon out of an overweening ambition to occupy the White House being vacated by his mentor, Ronald Reagan. Dick Thornburgh has turned on his former friends and principles for perhaps more complex reasons. Neither one is to be admired.

Nice

Continued from page 8
 money, those moments came when he took firm, unequivocal stands and contrasted them with those of the vice-president. Abortion was one. "What he is saying, if I understand him correctly, is that he's prepared to brand a woman a criminal for making this choice," Dukakis retorted after Bush dodged a question on what penalties he would impose on a woman who sought an illegal abortion. "Let me simply say that: I think it has to be the woman, in the exercise of her own conscience and religious beliefs, that makes that decision. And I think that's the right approach, the right decision, and I would hope by this time that Mr. Bush had sorted out this issue and come to terms with it, as I have." Bush hadn't, of course; it was his fumbling answer that penalties would have to be sorted out that set up Dukakis's rebuke and more emphatic response.

Similarly, Dukakis was cogent on health care. His plan to require most businesses to provide basic health insurance continues to be his most compelling proposal. (A recent KRC poll showed that fully 70 percent of Americans favor such a law.) "The fact of the matter is that employers who today are insuring their employees are paying the freight because they're paying for those who aren't," Dukakis said. "And I think it's time that when you've got a job in this country, it came with health insurance."

Dukakis's linking of homelessness to the diminution of the federal government's role in helping provide affordable housing was similarly adroit. But here the governor's own vagueness began to catch up with him. Although he was critical of Reagan and Bush, Dukakis himself had little to offer other than the assertion that bankers, builders, and developers all "want to see

