ASHES & DIAMONDS

By Alexander Cockburn

Indict the children and try them and their parents for perjury

Ray Buckey is a man whose life has already been effectively destroyed. The first charge of child abuse against this teacher at the McMartin infant school in Manhattan Beach, Calif., was laid against him in the summer of 1983. The allegations against him had been extorted from her two-year-old by a woman—now dead—with a history of mental illness who also claimed that an AWOL Marine had sodomized her dog.

It was not long before Buckey had direct experience of the disspassionate operations of the justice system. The Manhattan Beach Police Department sent a letter to 200 families whose children attended McMartin which read in part, "Photos may have been taken of the children without their clothing. Any information from your child ever having observed Ray Buckey to leave the classroom alone with a child during any nap period, or if they have ever observed Ray Buckey tie up a child, is important."

By the spring of 1984 Buckey, his mother, grandmother, sister and three fellow teachers had been arrested and the police claimed no fewer than 1,200 alleged victims of abuse. Briefly released, Buckey was rearrested and spent five years in jail. On January 18, after more than two years' trial, a jury acquitted Buckey and his mother on 52 counts of molestation. On 13 remaining counts of molestation and conspiracy against Ray Buckey the jury was deadlocked (though it seems a majority was convinced of his innocence) and a mistrial on these counts declared.

Any sane society would have permitted the Buckeys peace to recover as best they could from this horrible ordeal. A medieval village, having thrown a suspected witch into the local pond, would sometimes decide that she was not, in the last analysis, an instrument of Satan and would leave her to recover on the bank.

But on the analogy of the McMartin case, they would have thrown the suspect back in. On January 31 Los Angeles County District Attorney Ira Reiner announced that Ray Buckey would be retried on at least some of the 13 counts. The decision came after a period of grotesque agitation by the parents of the supposedly abused McMartin children. They appeared on talk shows, terrorized the Los Angeles County Board of Supervisors into voting, 4 to 1, to urge the district attorney to a new trial and, if he did not, to call upon the state attorney general to take the decision out of Reiner's hands. This intervention in the justice system by the board, which obviously caused qualms even among the poltroons voting in the majority, seems to be virtually without precedent, and indeed it is hard to think of a case of equivalent political and psychological squalor.

First take the political squalor. Ira Reiner is running for the office of attorney general. He has, in the recent past, already lost a series of well-publicized cases. The McMartin verdict was another substantial reverse to his political fortunes. His opponent in the attorney general race is Arlo Smith, who won office in San Francisco by running Joe Freitas into the ground for losing the Dan White case. So Reiner could not afford to have Smith rampaging around the state of California accusing him of wimpishness for not tossing Ray Buckey into the witch's pen once more.

Reiner was presumably under tremendous pressure from Attorney General John Van de Kamp to retry Buckey. Van de Kamp is running for governor and vividly remembers what happened to him when he, then district attorney in Los Angeles County, decided to try Angelo Buono Jr., the "Hillside Strangler," on a lesser count because he thought there was insufficient evidence to assure a murder conviction. The judge rejected his decision and turned the case over to then-Attorney General George Deukmajian, whose office won a murder conviction.

So here we have two men with tremendous incentives to put Buckey back in the dock—in an atmosphere so polluted with hysteria that it must be doubtful whether any panel of jurors could be decently assembled to assure Buckey a fair trial. For their part, the members of the board of supervisors were keenly aware, as is any ambitious politician in California, that public sentiment was strongly resentful of the jury's acquittal of the Buckeys on all but the 13 counts.

So much for the political squalor. The psychological squalor is even more disturbing. The McMartin case was but one in nearly 40 outbursts across the country between 1983 and 1987 in which prosecutions against teachers or supervisors in infant schools were prompted by children's accusations. Many of these accusations, taken seriously by parents and the justice system, were of the most fantastic nature. McMartin children said they had been marched to cemeteries to dig up bodies. One child said he saw his teacher fly and another said Ray Buckey had killed a horse with a baseball bat.

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In 1984 in Sacramento, children said they had watched snuff movies and cannibalism. In 1985 children in Pennsylvania said teachers had forced them to have oral sex with a goat. In 1986 children in a preschool in Sequim, Washington, said they had been made to watch animal sacrifice in a graveyard. In Chicago the kids said they had watched a baby being boiled.

Terrible injustices were done in this extraordinary replay of the 17th-century Salem witch trials. People were tossed into prison for years on the say-so of infants. In all 50 states children as young as two or three can testify to abuse without corroboration from adults and without physical evidence. In many states they can make their charges without having to endure cross-examination, being bounced up and down on a judge's knee in private chambers. In some states the charges can merely be repeated as heresay by adults.

Imagine, dear reader, that you were suddenly placed under arrest as a child abuser and told that your accuser was a two-year-old who, on the account of a social worker, had nodded assent when she suggested—manipulating dolls—to him that you had stuck a screwdriver up his behind and then made him watch while you blew up a hamster. Remember, your lawyer cannot cross-examine this child and later you find that the child—perhaps now four years older—had retracted the charges but was persuaded by parent or social worker or "therapist" that his retraction was prompted by shame and that it was psychologically essential for the child to have his day in court. Remember, you could go to jail for 20 years.

You think I'm joking about the hamster? Here's a conversation with a child by an investigator in a case in Memphis:

Mother: *How did the hamster explode? Was it stuck with a knife?*

Boy: *No, she [Mrs. Ballard] put a bomb in it.*

Mother: *Was it a firecracker?*

Boy: *No, it sounded like it.*

Mother: *Are you sure the hamster was real?*

Boy: *Yes, I saw it and it moved. We could not touch it.*

Mother: *Was there blood?*

Boy: *Yes.*

Mother: *How did she clean it up?*

Boy: *With a broom.*

Mrs. Ballard is still in prison, supposedly for kissing a four-year-old on his penis. She was acquitted on many other absurd allegations.

What was the reason for this wave of self-evidently preposterous stories about satanic rituals at infant schools and other tales of ritual abuse?

Society seems to have a periodic need for these witch trials, whether at Salem or the McCarthy hearings. At the center of the Reagan era there weren't really any Communists around to persecute, so the hunt went back to the traditional exorcism of Satan, whose horns and cloven feet assumed the form of your local day-care teacher.

The '80s also brought the great onslaught against Freud, arguing against oedipal fantasy and in favor of the reality of physical abuse. The women's movement had a good deal to do with this. (It also has a good deal to be ashamed about in its cowardice in dealing with cases like McMartin. Mothers in the home abuse children—not nearly as much as fathers, but it does happen. Didn't Hedda Nussbaum deserve just a bit of blame when her demented partner in New York threw the child against the wall?) These days everyone likes to claim that they were "abused" as a child. It's a way of absolving yourself for screwing up, shifting the blame back to a time of infancy when you can't be blamed for anything. From these gymnastics, by which "therapists" make their money, the adult emerges guilt-free.

Also the charges were quintessentially Reaganite in that they took child abuse out of the family, which is where 90 percent of it occurs, and put it into day-care centers that, in the Schlaflyite scheme of things, are an abode of Satan anyway.

Again, some parents probably feel a fair amount of guilt for dumping their children in day-care centers anyway and are obviously, by way of compensation, ready to leap passionately to the "defense" of their children. I put the word "defense" in quotation marks because any considerate parent or sane therapist (as opposed to the hysterical self-promoters who mostly feature in these cases) would realize that months and years of interrogation and court procedures are the very last things a child needs after a genuine case of abuse. The public investigation and litigation merely magnify the hurt.

The trouble is that these parents now have a huge emotional investment in "the case," whether it be the McMartin or similar episodes. Indeed in some of these court trials the parents also have a strong material interest, in the form of very substantial awards by insurance companies who cover infant schools in the event of such charges being made against them.

So now the McMartin parents can triumphantly torture poor Ray Buckey all over again, abetted by the cowards in the justice system. But if people can be persecuted and prosecuted on the word of children, then children should take responsibility for what they are saying. If a child says he saw Ray Buckey kill a horse with a baseball bat (which one did) and if this charge is disproved (which one was), then the child should be indicted for perjury. If a parent supported the child in this false accusation and can be shown to have abetted it, then the parent should be indicted for perjury too. If the court then establishes that parent and child were lying, they should be sent to jail, just as so many of their victims have been.

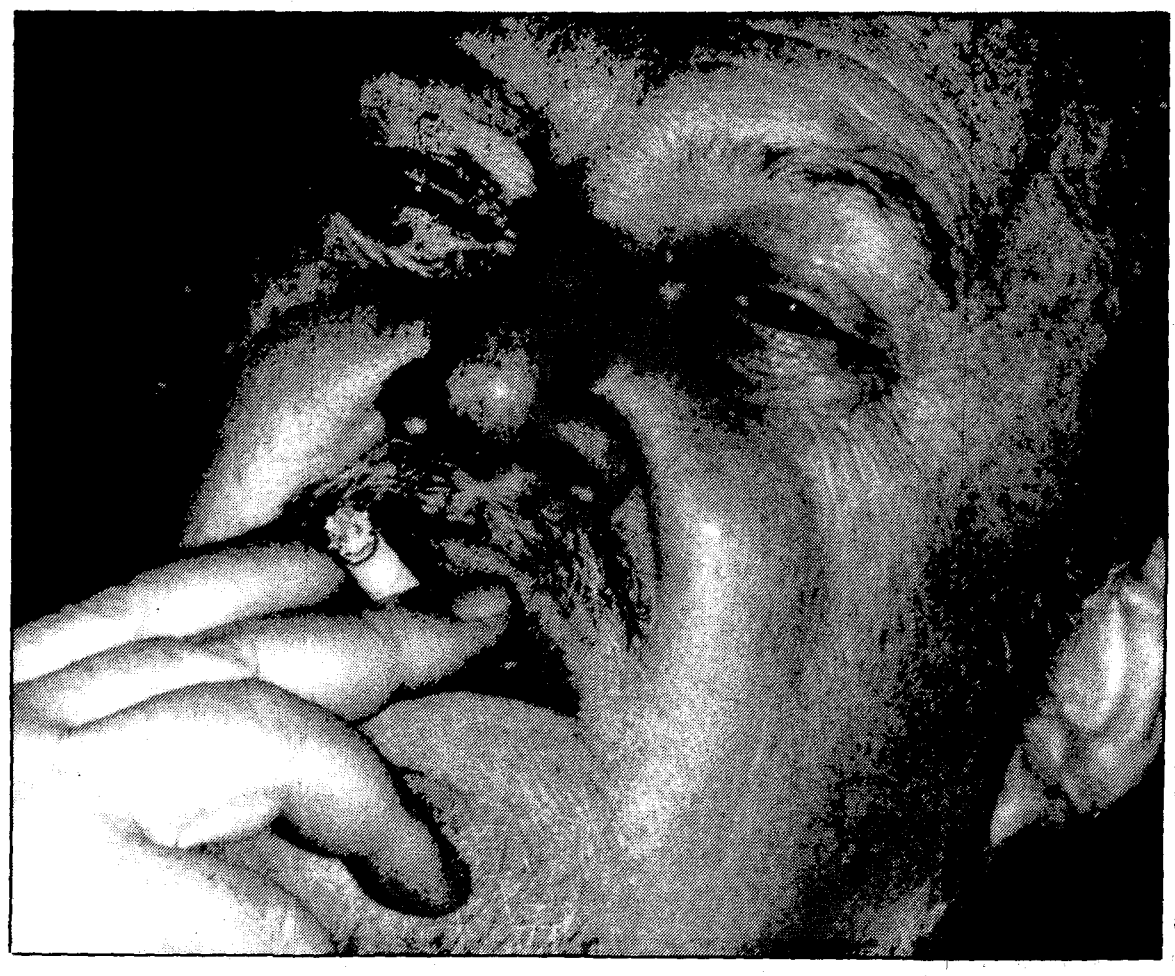
A few well-publicized cases of imprisonment of children and parents (along with "therapists" and social workers, it goes without saying) and we would see an end to these disgusting miscarriages of justice. Indict the children, and their parents with them!

Distributed by *LA Weekly*. ■

Bork's notion of framers' 'original intent' smells like big frameup

The Tempting of America
By Robert H. Bork
Free Press, 432 pp., $22.50

By Eric Foner



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ROBERT BORK'S *THE TEMPTING of America* is a revelation, but not the kind the author intended. Combining a highly selective review of the Supreme Court's history, a critique of contemporary legal thought and an account of the 1987 fight over his own nomination to the court, it reveals Bork as a tendentious and shallow mind given to reducing complex political, legal and moral issues to simplistic slogans.

The temptation alluded to in Bork's title is the lure of politics,

CONSTITUTION

which, he contends, has lately infiltrated institutions from the courts to the academy. Like Allan Bloom in *The Closing of the American Mind*, Bork imagines a pre-'60s golden age when teachers, lawyers and journalists pursued their callings innocent of politics and ideology. Anyone even slightly acquainted with the history of these callings, or who has read Ellen Schrecker's account of McCarthyism in the universities (*No Ivory Tower*), will realize how ludicrous Bork's account is.

Intentional fallacies: As for the courts, Bork reiterates the familiar right-wing complaint that judges have strayed from interpreting the Constitution in order to enact their own political views into law. The Supreme Court's proper role, he asserts, is simply to determine and apply "the objective meaning that constitutional language had when it was adopted."

It soon becomes clear, however, that the call for a jurisprudence of "original intent" is less a carefully reasoned principle than a political rallying cry, a justification for undoing modern Supreme Court decisions that have broadened the definition of constitutional rights.

At times, in Bork's account, the Constitution offers a definitive answer to legal questions; at others, it provides little more than "a major premise" from which judges should reason (a position not unlike that of the liberals Bork attacks). Bork would entirely ignore some parts of the Constitution (such as the Ninth Amendment, which guarantees rights not specifically mentioned elsewhere in the document) and would interpret others in ways the founders never dreamed of (like the clause guaranteeing each state a republican form of government).

In an age of deconstruction, there is something quaint in Bork's naive idea that a text like the Constitution can be reduced to a single "objective" meaning. But Bork's argument

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really falls apart when he tries to apply his "method" to actual constitutional questions, past and present.

If "original intent" is to have any meaning, it requires a careful examination of the beliefs of the framers who wrote the Constitution, the congressmen who approved its amendments and the legislators who ratified them. It also demands familiarity with the historical context, the political assumptions that gave meaning to constitutional language.

Amazingly, Bork cites few historical works and no actual sources. Of crucial episodes in American history he displays a profound ignorance. Yet he confidently makes historical judgments based on nothing more than his own prejudice.

Bork roast: Take, for example, the 14th Amendment. Adopted during Reconstruction, this established the principle of equality before the law for all citizens and gave the federal government broad powers of enforcement. The amendment was intended both to erase nearly a century of jurisprudence based on slavery and discrimination and to force the states to recognize the fundamental rights of all Americans. Congress couched these aims in general language—"due process of law," "equal protection of the laws"—precisely to allow future lawmakers and federal judges to define and protect citizens' rights.

Ignoring the amendment's broad wording and a historical record that makes clear the framers' desire to embed in the Constitution a statement of general principle, Bork insists the amendment has little real meaning other than to invalidate state laws discriminating against blacks. It has no bearing, he insists, on other Americans and does not impose upon the states the same obligation to respect basic liberties as the Bill of Rights established for the federal government.

People who find state law oppressive, Bork says, should not go to court; they should "vote with their feet" and move to some other state. Not only does Bork's position display a remarkable insensitivity to individual rights but it has nothing to do with the "intent" of the men who drafted and ratified the 14th Amendment.

If Bork the jurist succumbs again and again to sloppy thinking, Bork the spurned nominee indulges in a peculiar combination of self-aggrandizement and self-pity. Excessive modesty is certainly not Bork's problem: he says he wanted the Supreme Court seat in order to demonstrate to his benighted colleagues "the proper method of judging." His nomination was intended not to add another conservative vote to the court but to restore it to "the design of the American Republic." But President Reagan's altruism fell victim to a conspiracy of "left activists" who somehow control the media, the universities and the Democratic Party.

This, it seems, is Bork's real target: not the judges who, in his view, have been making wrong decisions for nearly two centuries but the "left-liberal culture" that supposedly dominates American life. Like Bloom, he seems obsessed with the sexual revolution and by feminism. Bork demands the repeal of *Roe vs. Wade* not only on "original intent" grounds but because legal abortion reflects the spirit of "untrammeled individualism" and "moral relativism in sexual matters."

Bork has been hailed as a major intellectual of the right. But, like Bloom, he actually panders to the complacency and anti-intellectualism of the Reaganite middle class. Bork assures his readers that they do not have to take new ideas—from critical legal studies to deconstruction and feminism—seriously. Indeed, there is no need for any hard thinking on constitutional issues. Old premises and prejudices will suffice.

With *The Tempting of America*, the case is closed and only one verdict is possible: Robert Bork is utterly unqualified to sit on the Supreme Court. ▣

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