

# Liberty

July 1996

Vol. 9, No. 6

\$4.00

Ayn Rand  
revises her  
premises

## Sexual Abuse in Wenatchee: Epidemic or Inquisition?

In a rural community in Washington, police have accused a fundamentalist pastor of leading ritualistic rapes of little girls on the altar of his church. In all, more than 50 people have been charged with sexually abusing dozens of children.

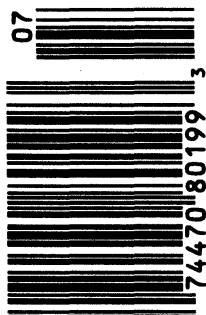
Is an outrageous evil running wild in small-town America? Or is this a witch hunt fed by mass hysteria? *Kathryn Lyon* investigates.



## Shock Waves from Oklahoma City: This Time the Victim Is Freedom

by *David Kopel and Joseph Olson*

Also: *Bob Black* on the White Man's Ghost Dance; *Ted Galen Carpenter* on how the CIA pimps the press; *Jesse Walker* on slave labor in America today; *David Boaz* on Ira Magaziner's megalomania; *Nathan Crow* on the apotheosis of Ron Brown . . . plus other Articles, Reviews, and Humor



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# Letters

## The State vs. the State

Regarding R.W. Bradford's "A mispacked court" (May 1996), I'm not so sure the Supreme Court's decision was bad. Federalism is an important structural limit on government. I oppose the federal government — including the judicial branch — superseding state laws, even ones that violate the constitutional rights of citizens. So even if the Michigan law violates natural rights, we ought not empower the Supreme Court to overturn it.

N. Stephan Kinsella  
Philadelphia, Penn.

## Exhuming the Pony's Corpse

Okay, I realize that someone is liable to say, "Put away your whip, the pony is dead!" But I can't resist making a couple more comments on R.W.

Bradford's comments ("The Truth and Ayn Rand," May 1996) on my comments ("In Search of Rand's Roots," March 1996) on Chris Sciabarra's book.

(1) Bradford says I mischaracterized his position when I said he claims that Rand was "simply lying" about her encounter with Lossky. His actual position, he says, is that she was inventing myths about herself to make a philosophical or personal point. Actually, this is what I *thought* Bradford was saying, but such inventions are examples of what I call lies. They are a sort of lie that poets and other artists are prone to indulge in. I don't want to get into the philosophical issue of whether this really is the right thing to call them, but I would like to point out that the burden of proof that rests on someone who says that this is what Rand was doing is the same as the burden shouldered by someone who says Rand is a liar.

(2) Bradford points out that, contrary to what he takes me to be saying,

Rand had plenty of reasons to invent the story: the anecdote, after all, presents her in a very favorable light, as brilliant, fearless, etc. But I wasn't saying that she had no motives that could have been served by the exam story; I was saying that she had none that could be served by inventing a connection with Lossky. Lying about him would not have advanced the point of the myth — if such it were — at all, and it requires an explanation. If the story is false, why would she plug in the name of a completely obscure figure from whom she never took a course, given that there were presumably other philosophy professors whose names would be much easier to remember because she really did take courses from them?

Lester H. Hunt  
Madison, Wisc.

*Bradford responds:* I appreciate Prof. Hunt's response, which raises several interesting issues. At this point, I would simply observe that there remains a vast difference between how I characterized what Rand did and "simply lying." Though I granted the possibility that she "took a course" from Lossky, I considered it unlikely. But I did stipulate she may have heard a guest lecture by him. As to why she would plug Lossky into her story, I think the answer is obvious: he was convenient, added a touch of verisimilitude, and (Rand surely thought) was sufficiently obscure that the myth she promulgated would never be found out — as indeed it wasn't for more than three decades.

## The Wit and Wisdom of Arnold Schwarzenegger

While I admire Wendy McElroy's clear writing and consistent adherence to her anarchist principles, when she concludes that WWII is preferable to putting an X on a piece of paper ("Why I Would Not Vote Against Hitler," May 1996), there must be an error somewhere. Ignoring the state won't make it disappear — it will only reveal its true nature as an overt criminal enterprise maintained by violence. A kind of natural selection dictates that those who are

most ruthless and cunning will rise to the top of the state, and such people are unwilling to say, "Oh, sorry," and go home when faced with McElroy's insubordination.

To retain their power, however, they often must give us the option of voting them and their state into oblivion. The X doesn't necessarily say, "I support the state." It can also say, "*Hasta la vista, baby!*"

Richard D. Fuerle  
Grand Island, N.Y.

## One Vote for Voting

If voting for Bill Clinton means you must share responsibility for his official acts (and I believe it does), then surely financing his acts by paying taxes must also mean you share responsibility. This is why I'm voting for Harry Browne.

If I do not want to participate in the state's abuse of individual liberty, then I must not pay the taxes that are used to enslave the citizenry. If I do not pay the taxes, I will surely go to jail or worse. Since I do not want to go to jail, I will pay my taxes. If I would still like to end the tyranny of the state, what choices do I have left? Mostly unpleasant ones. The state allows me one course of action that usually goes unpunished: voting. So I find a man whom I believe to be a man of honor and vote for him.

By doing so, I have not legitimized the election. I have added to the percentage of people who voted against the continuing tyranny of the state. Every four years, the government is reminded that 1% of the population does not condone its power. I wish Ms. McElroy would answer two questions: *What choices do we have other than voting?* and *How does one oppose voting on moral grounds yet continue to finance the state by paying the taxes that fund the BATF, IRS, and DEA?*

Allyn Uptain  
Chipley, Fl.

## Survivor on the Road

I feel a reply to John Semmens' accusation (Letters, May 1996) that my approach to driving is cavalier and that I have disavowed responsibility for my driving mistakes is absolutely necessary.

I drive a motorcycle to work almost every day, and take my vacations on a motorcycle. I feel the full brunt of responsibility for every mistake made,

## Letters Policy

We invite readers to comment on articles that have appeared in the pages of *Liberty*. We reserve the right to edit for length and clarity. All letters are assumed to be intended for publication unless otherwise stated. Succinct, typewritten letters are preferred. Please include your phone number so that we can verify your identity.



# **“Voilà logic!”**

—P. J. O' ROURKE

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serious  
blueprint  
for change.”**

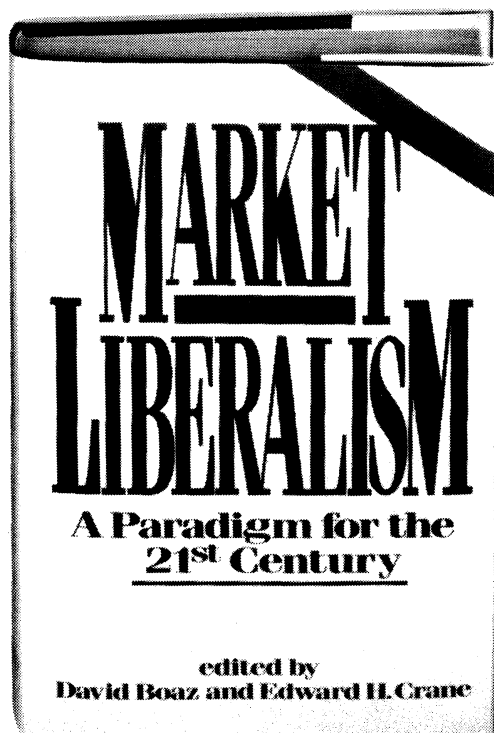
—GEORGE F. WILL

**“A futuristic  
vision ...  
charts new  
territory for  
the decades  
ahead.”**

—GOV. WILLIAM F. WELD

**“Should be  
the principal  
compass  
for  
policymakers  
and  
public servants.”**

—MALCOLM S. FORBES, JR.



**“Provocative new  
ideas ... a road  
map for our  
new president.”**

—GOV. L. DOUGLAS WILDER

**“Should be read  
and re-read  
by every member  
of Congress.”**

—JACK KEMP

**“A  
splendid  
collection  
of  
informed  
analyses ...  
must reading.”**

—MILTON FRIEDMAN

**“Bristles  
with  
uncomfortable  
ideas.”**

—PETE DU PONT

**“Facts,  
reason,  
clear-eyed  
and  
disinterested  
analysis ...  
voilà logic!”**

—P. J. O'ROURKE

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and there have been a few.

As far as John's subtle thought that only the poor would repudiate their personal responsibility, the one person who ran me down and left the scene dropped a trail of Mercedes parts. Why did he (she) do it? The same reason the insurance company wouldn't pay — because they can get away with it. What did the cops do? "Hell, kid, with 2,500 hit and runs already this year, what do you expect us to do?"

So, John, where you may see restitution after an altercation, I see only mandatory driving fees — insurance, registration, licensing, and emission fees — which, when all is said and done, leave me alone responsible for my own survival on the road.

Harold E. Shull  
Phoenix, Ariz.

### **Jew/Not a Jew**

Franklin Sanders (Letters, May 1996) hoped to demonstrate his lack of anti-Semitism by citing his co-author, Larry Abraham: "I've written a lot of controversial things about the Establishment, even a book . . . with Larry Abraham,

who happens to be half Jewish and a Roman Catholic."

To enlighten Mr. Sanders and, perhaps, other readers, there is no such thing as being "half Jewish" and Roman Catholic. A person who accepts any other faith than Judaism is *not* Jewish, regardless of his parentage. A person who identifies himself (or herself) as "half Jewish" is also in error. One is either a Jew, i.e., born of a Jewish mother or converted according to Halacha, or one is not a Jew. If one's father is Jewish, but one's mother is not, one is not a Jew.

Therefore, Mr. Sanders, your Catholic friend is not a Jew in any sense of the word. He may correctly claim descent from Jews, but he himself, having accepted Jesus, has lost his Jewishness, which, if the "half" was his father, he did not have in the first place.

Charlotte Levin  
Espanola, N.M.

### **It's My Party and I'll Spoil If I Want To**

After Ron Wyden beat Gordon Smith in Oregon's U.S. Senate race,

Randal O'Toole may not have *read* any account that mentioned the influence of third parties on the close election results, but I sure *heard* Rush Limbaugh raving about that factor the next day ("Spoiler alert," May 1996). I wrote to tell him the same thing I'll tell you.

If Republicans would give libertarians someone worth voting for, rather than trying to scare them into voting against the Democrat, they'd vote Republican. I was in Oregon over Christmas, and saw Smith's commercials. Lousy! All they did was call Wyden a tax-and-spend liberal, and one even did so while attacking him for voting to *cut Medicare*! Wyden's commercials were also attack ads, but at least they were internally consistent. But neither were worth voting for, so third parties cast their protest votes.

I submit that it is the function of minor parties to act as "spoilers" when the major party candidates are both lousy. This forces the major parties to take minor parties into account when choosing their candidates, especially after they lose a few close elections.

*continued on page 46*

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# Reflections

***I vote for a beehive*** — Given her belief in collective decision-making, it was charming to read that when an Internet website was created to display Hillary Clinton's various hairstyles and ask visitors to vote for their preference, Clinton told a journalist, "Certainly, I'm very keen on the democratic process." A fair trade: the Department of Health and Human Services will tell us all how to rear our children, but we get to vote on the first lady's hairstyle. —DB

***Innocence restored*** — A recent newspaper report carried the headline, "Oregon congressman's ex-wife says he chronically told lies." Fortunately, the story explained that Rep. Wes Cooley, Republican of Oregon, and his ex-wife had been embroiled in a bitter divorce proceeding, and the former Mrs. Cooley is now involved in defending herself against allegations that she illegally collected veteran's benefits. I was immensely relieved to learn the messy details casting doubt on the ex-wife's claims. After all, the very idea of a congressman who chronically lies — well, it shatters one's faith. —RH

***The cruelest month*** — Upon signing the "anti-terrorism" bill, President Clinton proclaimed that "America will never surrender to terrorism." Please note that the president, ever the politician, waited until nine days after April 15 before so describing the taxpaying public. —TWV

***Faintheart*** — When a new class of Republicans won Congress in 1994, it looked like some sort of sanity was at last returning to American government. The new Republicans ran on hard promises of no more "politics as usual," calling for real spending cuts, real tax reductions, and a real balanced budget.

The chairman of the House Budget Committee, John Kasich, touted a huge list of government bureaucracies to be gutted, including four entire cabinet departments. The final deal, he said, was "the most significant amount of savings since World War II." But when pressed by reporters to name some programs that were actually cut, he managed to come up with only one: a tick eradication program in Puerto Rico.

Worse still, the GOP surrendered completely on the issue of entitlements, failing even to cut back *increases* in Medicare spending. The much touted "Freedom to Farm" bill, widely portrayed as an end to farm subsidies, actually *increases* them for the next seven years. Then the bill expires and we return to the old system. The much ballyhooed line-item veto enacted by Congress gave the president the option to veto parts of appropriations bills — provided they are not entitlements and provided Congress doesn't exempt an appropriation from the line-item veto. In other words, the line-item veto does nothing to help get spending under control.

I'm not going to spell out all the gruesome details here. It was surrender, pure and simple. Bill Clinton outmaneuvered Congress and manipulated the media, and the Republicans

backed down.

Last year I was on a panel that was asked to make long-term predictions about the 1996 presidential election. "The Republicans will win," I said, "unless they nominate Bob Dole. He's the only Republican who Clinton can beat. Unfortunately, I think they'll nominate him."

I am sorry to say that it now looks like my prediction was a good one. (It's times like this that I'm glad Harry Browne is running for president.) Still, I don't see this as an unmitigated disaster. Dole is a compromiser from way back. Newt Gingrich wasn't off by much when he characterized Dole as "the tax collector for the welfare state." In the unlikely event that Dole is elected president, the GOP congress will grow even more spineless, following the lead of Compromiser-in-Chief Dole. My hope is that the GOP will retain control of Congress so it can finish the job of proving Bill Clinton a crook.

A couple of months ago, I wrote an article on Bill and Hillary for this magazine, entitled "The Road to the Big House." But I don't really think either will end up in jail. If Dole captures the presidency, I think he'll feel obliged to pardon Clinton once the evidence reaches the point where criminal conviction is likely. If he doesn't, the GOP will seem hypocritical: after all, Gerald Ford pardoned Nixon. If Clinton is re-elected, I think Gore will pardon him once he's forced to resign. Either way, we'll be rid of Clinton.

Of course, the fate of the Clintons isn't terribly important. They're just a couple of crooked politicians, not much different from any others. What's really important is whether government is going to continue to get bigger and bigger, to have more and more power over our lives, to take a bigger and bigger chunk of our earnings.

Well, no one ever lost any money betting that a politician would actually cut spending. Why? Because no one is dumb enough to make the bet. —CAA

***Panic at 40,000 feet*** — It has been widely reported that a faulty O-ring caused the incineration of seven astronauts in the January 28, 1986 Challenger disaster. What is not well-known is the conclusion reached by the U.S. Geological Survey's Malcolm Ross: the explosion would not have occurred if NASA hadn't replaced another ring out of an unwarranted fear of asbestos-based putty. Since the asbestos in the putty had virtually no chance of harming anyone, the episode illustrates how the quest for safety, when it ignores trade-offs, can have terrible consequences.

We may now be on the verge of more fiery disasters, thanks to unwarranted fears of one of the most effective of fire extinguishers, halon chemicals.

Because of the speed at which they work, and because they are non-toxic, halons are commonly used in closed areas where fire could kill very rapidly — airplanes, ships, armored military vehicles, and the like. If you are ever involved in an

airplane crash, you had better hope that the Halon 1211 and 1301 fire extinguisher systems are in good operating order. For fire control, halons have many advantages over water and carbon dioxide. They are electrically nonconductive, light in weight, harmless to human beings, tasteless, odorless, and colorless, and they leave no residue. In airplanes, where high levels of carbon dioxide would have disastrous health effects and water is impractical because of weight, halons are indispensable.

The Montreal Protocol, an international environmental agreement that took effect January 1, 1994, banned halons, on the grounds that their continued manufacture could deplete the stratospheric ozone layer. The United Nations Halon Technical Options Committee has refused to exempt halon manufacture for aircraft use, arguing that existing stores are sufficient for the time being and that unnamed viable replacements will be available in the future. But it has proved very difficult to find a replacement. The 3M Company has suggested using a class of chemicals called perfluorocarbons, but these chemicals are opposed by environmental groups such as the World Resources Institute, which believes they may cause global warming. Olin Aerospace is also experimenting with a replacement, but it has yet to be proven practical in human-occupied space.

Nor, apparently, did it occur to the U.N. Committee that the price of halon would skyrocket as stocks become depleted, and that at least part of this inflation would be passed on to the airline passenger. Halon gas that cost \$7–\$10 per pound in 1985 is expected to cost \$80–\$100 per pound by 2000.

One would think that chemicals of obvious value would be banned only if they posed a clear and present danger to the environment. The complaint against halons is that they are bromine compounds, and bromine is reputed to be more efficient than chlorine in destroying stratospheric ozone. But the concentration of bromine in the stratosphere is at the nearly undetectable level of about 0.02 parts per billion, and halon in aircraft extinguisher systems is rarely released anyway. In short, the ban appears to be an expensive exercise in hysterical overkill.

This assessment is strengthened when one realizes that a far more ubiquitous source of bromine is methyl bromide. The scientific consensus is that only about a third of the world's methyl bromide is man-made; the rest is natural in origin. The ocean, in fact, is supersaturated with it.

The American people are paying a high price for failing to realize that there are costs to regulation and that sometimes these costs are higher than the benefits we are supposed to receive in exchange. Let us hope that it does not take a disastrous aircraft fire to correct the dangerous course we are following.

—Guest reflection by Ben Bolch and Harold Lyons

**Polls invade Germany** — And you thought political correctness was bad over here? The *Financial Times* reports that the leading polling organization in Germany, the Allensbach Institute, has admitted that it

deliberately understated the pre-election popularity figures for a right-wing party in order to hurt that party's chances for success. The anti-immigration Republicans won over 9% of the vote in the southern state of Baden-Württemberg, the same figure the Allensbach Institute found in its pre-election polls. But it had chosen to publish instead the figure of less than 5% Republican support, which would have been under the minimum for winning seats in the state parliament. Renate Koecher, co-head of the Institute, has defended the decision to falsify the polling results, stating that the real figures might have created a bandwagon effect for the Republicans.

—RR

### **Pitchfork Pat and Hardscrabble Bob** —

Patrick J. Buchanan has failed to gain the Republican nomination, but he has succeeded in setting an ugly political tone. The economy is growing, unemployment is less than 6%, and real personal consumption is up more than 14% since the recession. Yet Buchanan has fanned the resentment of economically anxious groups, goading them to class warfare. He speaks of layoffs as caused by "corporate executioners" and declares, "The peasants are coming with pitchforks." Bill Clinton and Bob Dole dignify Buchanan's rhetoric by taking it seriously and pandering to the same prejudices.

A hundred years ago, populist economics was at the center of another presidential contest, when Republican William McKinley opposed Democrat William Jennings Bryan. In those days, when lavish farm subsidies were only a gleam in the farmers' eyes, they really did wield pitchforks. A populist rabble-rouser, the one-eyed South Carolina senator Benjamin R. Tillman, became known as "Pitchfork Ben" after he called President Grover Cleveland "an old bag of beef" and said he was "going to Washington with a pitchfork and prod him in his old fat ribs."

The populists had formed a new party — as Buchanan hints he might — the People's (Populist) Party. James B. Weaver, their presidential candidate in 1892, got more than a million votes — about 8% of the total. In 1896, the Populists endorsed Bryan, the "Boy Orator of the Platte," whose Cross of Gold speech at the Democratic convention became a classic. The nineteenth-century populists, like their present-day

counterparts, raged against big corporations, especially banks and railroads. They favored many new government interventions in economic life, including an inflationary "sub-treasury" scheme to subsidize farmers.

After Bryan lost in 1896, populism declined. But it never died, and it flamed up episodically in hard times. People with economic worries remained vulnerable to politicians casting blame on big corporations and the rich. Populism tends toward xenophobia and nativism. In the 1890s many populists thought the machinations of Jewish international bankers explained the plight of frontier farmers. Today Buchanan evokes similar suspicions and makes jokes about shooting José.

Dole, a preeminent Washington insider,

### **Liberty's Editors Reflect**

CAA	Chester Alan Arthur
DB	David Boaz
RWB	R.W. Bradford
SC	Stephen Cox
NC	Nathan Crow
BD	Brian Doherty
RH	Robert Higgs
BK	Bill Kauffman
LEL	Loren E. Lomasky
RO'T	Randal O'Toole
RR	Ralph Raico
CS	Clark Stooksbury
TWV	Timothy Virkkala
JW	Jesse Walker



feels obligated to play along. He began a recent speech, "My father was a grain-elevator operator. He wore his overalls to work every day for 42 years, and he was proud of it." The politician who rakes in millions from corporate and interest-group PACs reminded the voters, "I grew up hardscrabble, know what it means to be at the bottom of the ladder economically."

Clinton, of course, is no stranger to flogging the rich, who, according to his 1992 attempt at humor, "get the gold mine" while "the middle class gets the shaft." On the president's left flank, House minority leader Richard Gephardt aims to make the elections a referendum on income security, touting new government mandates for job training, portable pensions and health insurance, higher minimum wages, and other extensions of the welfare state. How does this strategy square with the president's recognition that "the era of big government is over"? It doesn't, but Clinton will not be deterred by mere inconsistency.

In a dynamic economy, some people always have to make difficult adjustments. The only way to prevent such adjustments is to lock the economy into a fixed configuration that would soon condemn everyone to economic retrogression. The flux of hiring and firing, hardly a new phenomenon, is not the true source of the economic difficulties many people have experienced, or feared, in recent years.

Instead of lecturing business on "corporate responsibility," the president should set the government's own house in order, because the true source of the economic malaise is the government, specifically the relentless growth of taxation and regulation. In 1990 the federal government grabbed \$1,031 billion in revenues. Last year it took \$1,351 billion, an increase of 31% (15% after adjustment for inflation). If that \$320 billion of extra federal revenue had not been taken last year, it would have left every man, woman, and child in America with more than \$1,200 extra, or almost \$5,000 for a family of four.

Simultaneously, additional costly federal regulation, such as the Americans with Disabilities Act, new environmental requirements, and new FDA labelling rules, sapped resources that might otherwise have been devoted to increasing productivity and raising incomes.

Populists misperceive the real problem. It's not corporate layoffs, not Japanese imports, not NAFTA and José. It's a government that won't keep its hands off the economy and won't allow us to keep the income we earn. —RH

**The scandal of our libraries** — Whenever municipalities' allegedly "tight" budgets are threatened by some petty 2% reduction in the next scheduled tax increase, the few services that most people agree have real value — police, fire, library, recreation — are immediately trotted out and threatened with bloody amputation. Behind-the-scenes bureaus and local pork are left unmentioned simply because their imminent reduction would provoke no response from an unappreciative public. Although it is probably not worth trying to explain this pattern to the gullible donkeys who elected Bill Clinton, libertarians might at least try pointing out that the majority of such institutions could be staffed largely, if not entirely, by volunteers — not in a misty anarchist utopia, but right now. That they are not is often due to

restrictions demanded by bureaucrats jealous of competition.

The Seattle Public Library is a case in point. Despite the fact that the entire place could be staffed almost entirely by volunteers (I know — I used to work in its Volunteer Services Department), it pays some of the highest salaries in the nation to a staff that is often grumpy or unavailable. Salaries, indeed, are so high that a few years ago there was no money left to buy books.

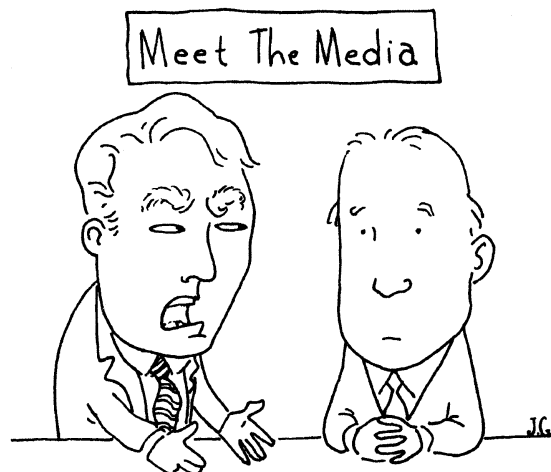
The primary reason the library's branches are not filled to the rafters with eager volunteer workers is that the union will not allow them to perform any task currently performed by a credentialed master/mistress of Library Science. Having mastered the profession through costly and arduous months of graduate training, the library's illuminati are understandably reluctant to admit that amateurs of the art could do what they do.

The great, secret scandal here is that many would-be volunteers actually have the required M.L.S. degree. Well-meaning housewives who simply want to keep a hand in, they are kept out by mean-spirited union leaders, with the help of politicians who consider the library a useful straw-man to drag out during budget debates.

Maybe it's time someone called their bluff.

—NC

**Born-again libertarian?** — Ralph Reed, executive director of the Christian Coalition, said in a speech distributed by Hillsdale College that America is held together by "a vision of a society based on two fundamental beliefs. The first belief is that all men, created equal in the eyes of God with certain inalienable rights, are free to pursue the longings of their heart. The second belief is that the sole purpose of government is to protect those rights." It would be hard to express the libertarian credo better. Dr. Reed isn't dumb, so he knows the longings of men's hearts vary widely. Some men's hearts long for wide-open spaces, others for densely crowded cities. Some long for Jesus, some for Mohammed, others for Reason. Some long for a pot of tea, others for a pot of coffee, others just for the pot. Some men's hearts, indeed, long for the hearts of other men. It's good to know that, whatever moral objections Dr. Reed may have to some longings,



"Senator, how do you answer critics who charge that you've lost your once vaunted ability to respond with artful equivocation?"

as a good Jeffersonian he is committed to defending all men's rights to pursue happiness in their own way. —DB

**Falsified memory syndrome** — Apologists for the Clintons have a new line: investigation of wrongdoing by the First Couple is a waste of money. Its most colorful promoter is James Carville, whose applause line is that the Whitewater investigation has now "cost more than the investigation of the bombing of the World Trade Center."

Of course, he doesn't mention that the bombers were amateurs who left a trail of evidence that even a cretin could follow, while the Clintons are two Yale-trained attorneys perpetrating complex white-collar crimes, covering their tracks using all the sophisticated tricks that they and their coterie of even more high-powered shysters can muster.

On March 21, Hillary Clinton responded in writing to a series of Congressional questions about the "Travelgate" mess. Here is a box score of her answers (*Wall Street Journal*, April 9):

"I do not recall"/"I cannot recall"	21
"I do not believe"	9
"I have no knowledge"/"I have no first-hand knowledge"/"I have no personal knowledge"	7
"I simply don't know"/"I don't know"/	
"I do not know how"/"I do not know what"	5
"It is possible"/"It is quite possible that I had"/	
"It is possible that I may have"	4
"I believe"	3
"I may have spoken"	3
"I have no specific recollection"	2
"I may have expressed the view"	2
"I cannot identify"	2
"I do not know for certain"	1
"It is hard to remember"	1
"I have tried to state . . . such recollection as I have"	1
"It is . . . difficult now to distinguish"	1
"I believe I became aware"	1
"I do not remember precisely"	1
"I have a vague recollection"	1
"I am not aware"	1
"He may have mentioned"	1

In all, some 67 lapses of memory about a series of events that occurred less than three years earlier.

Plainly, we are dealing with people a lot slipperier than the Arabs who rented a truck under their own names to house the World Trade Center bomb. Faced with the complexities of the various felonies and misdemeanors in which the Clintons are implicated and with stonewalling by the First Couple at every turn, the cost of investigation is bound to mount up — though nowhere near the \$60 million that was looted from the federal treasury by the Madison Guaranty fraud alone. —CAA

**A kinder, gentler pink slip** — The progressive folks at *The Nation* have been plugging a St. Paul, Minnesota initiative that would require businesses receiving "more than \$25,000 in city assistance . . . to pay workers with a family of four above the poverty level, i.e., \$7.21 an hour [sic]." I can't think of a better way to make sure such businesses don't hire people with a family of four. In *The Nation's* "progressive" worldview, providing incentives to keep parents unem-

ployed is the next best thing to socialism.

The initiative was defeated, but a bill based on a similar idea was recently passed by the Minnesota legislature. Now the idea seems to be to make such firms pay *all* of their employees this customized minimum wage (or more), as part of a nationwide effort by economically illiterate lefties to raise the minimum wage on the local rather than the federal level.

Fortunately, Governor Arne Carlson has vetoed the bill. I guess it was either that or repeal the laws of economics. —NC

**Occam's hammer** — Pretty much all economists have long agreed that one effect of raising the minimum wage is to reduce employment. Their logic is ridiculously simple. If you raise the price of something, less of it will be sold.

Some economists, mostly libertarian ones, have sometimes been alarmist on the issue, claiming that an increase in minimum wage will dramatically increase unemployment. When the law goes into effect and unemployment figures don't rise dramatically, minimum wage advocates are quick to point out that the economists were wrong. After the last increase, a hack economist did a "study" that concluded that the increase had no effect on employment levels, even at jobs where the minimum wage is the prevailing wage. He arrived at this conclusion, I recall, by telephoning a bunch of fast food businesses and asking whoever answered the phone whether anyone had been laid off lately. Needless to say, this study was flawed.

One reason that increases in the statutory minimum wage don't always notably increase unemployment much is that sometimes the minimum wage is substantially below the prevailing wage. In many places, even fast food joints pay more than the \$5.25 hourly rate the Democrats propose, let alone the current minimum wage of \$4.25. Not surprisingly, the new minimum won't affect employment much in those markets. Indeed, I doubt the higher minimum wage will have much effect on national employment numbers. The most dramatic effect will be found in places where market wages are lowest, i.e., in areas beset by poverty. Happily for politicians, few such areas have high voter turnouts and fewer still are hotbeds of the sort of clear thinking that would enable the law's victims to understand the source of their problems.

I wonder what I would think if some economist did a good empirical study that discovered an increase in minimum wage diminished unemployment. Would this invalidate the thinking of economists?

The empiricist in me says yes. But upon reflection, I'm not so sure. We all agree that smashing one's thumb while hammering nails is an injury. Suppose that someone did a good empirical study, examining the health records of 100,000 victims of smashed thumb syndrome, and that, say, five years later the 100,000 thumb-smashees were on average healthier than a control group of 100,000 not-smashees. Would I therefore conclude that maybe my smashed thumb was not really an injury at all? Would I go out and smash my thumb? —RWB

**Where Freeman will stand** — So what is going on out there in Montana?

The FBI's standoff with the Freeman is fascinating, as all such standoffs are; frightening, since we know how similar

showdowns have ended; annoying, because it doesn't fit into the standard script for which past events have prepared us. The feds have surrounded a small group of anti-government activists who just want to be left alone — right? Well, no. Ralph Clark, owner of the Freeman's secessionist farm, may rail against the tax-sucking powers that be, but he and his partners have slurped down \$676,082 in other people's taxes over the last decade. They may want to be left alone, but they aren't willing to pay others that courtesy: they've harassed and defrauded individuals and companies across the country. And the G-men seem more restrained than usual this time around, though it may just look that way by comparison to their last couple of fiascos.

I've been in danger recently of getting pigeonholed as a "pro-militia" writer, simply because I've felt it my duty to criticize, in as many venues as possible, the ongoing demonization of the new populists. Groups like the Freeman are a helpful reminder that there's more to this movement than semi-libertarian dissidents enjoying their First and Second Amendment rights. Militia members range from anti-corporate leftists in Maine to anti-Semitic rightists in Idaho to Jewish libertarians in California. Any social phenomenon as decentralized as this is going to attract its share of crooks and creeps, and the nutty legal mumbo-jumbo popular among the militiamen has drawn the cons in like flies. The New Left of the '60s collapsed under the weight of Maoist cults, Castroite terrorists, occultist snake-oil salesmen, and budding Democratic Party pols. Thanks to folks like the Freeman, the militias may similarly dissipate with only a little help from the government.

Or the feds might do something really stupid, like charge into a certain Montana farm with their guns a-blazin'. Then all bets will be off. —JW

**Progress** — It's easy, in the midst of an electoral conflict between Bob Dole and Bill Clinton, to wonder if any political progress is being made in America.

But don't despair! When the price of gas shot up in April, the politicians began competing with one another to offer proposals for reducing gas taxes. Some even began to squabble about whether or not they personally bore any guilt for raising taxes in the past.

Compare this good conduct with politicians' behavior during past "crises," and you'll notice the wonderful absence of proposals for price controls and rationing. Even the consistently entertaining Eleanor Clift opined on a recent *McLaughlin Group* that higher prices might make people use less gas, thereby aiding her favorite goal of "conservation." I think that's what she meant; it's sometimes hard to tell with her. If so, it demonstrates that a glimmer of economic knowledge is beginning to penetrate the post-New Deal fog. —SC

**Oil? Where's the beef?** — The international price of oil has risen for a variety of reasons, and so has the price of gasoline at the pump. Politicians have responded in their predictable, idiotic ways. Republicans call for cutting the tax on gas; Bill Clinton orders the sale of twelve billion barrels of stockpiled oil to drive prices down.

Meanwhile, the price of another key consumer good is falling sharply. Wholesale prices of beef are at their lowest

level in years — so low that supermarkets advertise ground beef for 79¢ per pound and sirloin steak for \$2.49 per pound. You might think that a reduction in the price of such a widely consumed commodity would please the president. But no. His reaction to the lower price of beef was the same as his reaction to the higher price of gasoline: intervene in the marketplace, this time by ordering the immediate purchase of \$50 million of beef for the federal school lunch program. He also eased restrictions on grazing on environmentally sensitive federal grasslands, a move that presumably will cut costs for beef producers and counteract the increased federal beef purchases' effect on prices.

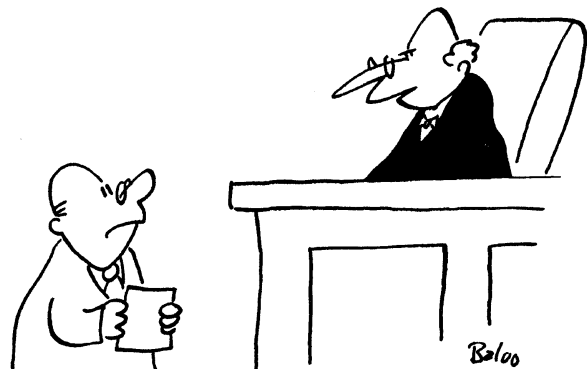
The common denominator of all these seemingly inconsistent actions, of course, is that they are designed to buy votes. Gasoline consumers will be pleased that Clinton is acting to ease the price of the gas they buy, and beef producers will be pleased that he is acting to raise the price of the beef they sell while cutting their production costs.

Thank goodness all this hasn't been left to the free market! —RWB

**Warm over the Cold War** — The 1996 April Fools' issue of *The Weekly Standard* devoted a special section to that favorite subject of conservatives: anti-Communism. Its centerpiece was Paul Johnson's review of *Not Without Honor*, a history of the American anti-Communist movement. Johnson affects a world-weary tone and states that "there is an almost irresistible urge to close this depressing chapter in human history and turn to better things." But we shan't, of course — "we need to understand why so many were taken in for so long." Or so Johnson would have us think.

The real reason for reliving this history is that conservatives have long treated Communism as the stepchild that laid the golden egg. The "twilight struggle" to put Communism on the "ash heap of history" unified the Right for a generation, and it is difficult to let go of such a powerful symbol. And so conservatives have adopted a strategy of denial. *National Review* still furrows its editorial brow over the future of "the West," Jesse Helms tries to make war on Cuba, congressional Republicans increase the already bloated war budget, and the newborn *Weekly Standard* has a special issue on anti-Communism.

Johnson devotes much space to anti-anti-Communists



"Your client is on trial for overtime parking — referring to her as a 'freedom fighter' is a bit much."

who were constantly getting in the way of the intellectual Cold War: "They judged the occasional excesses of anti-communism as a greater menace to the freedom of the world than communism." I suppose Johnson is right that the sins of Joe McCarthy have been overblown: efforts to silence opponents with smears and innuendo occur far too often to single him out as the worst of the worst. And I agree that it is incredible that anyone could be taken in by such an evil system as Communism. But Johnson, in turn, minimizes the evils of anti-Communism.

According to Johnson, the CIA was run by "old-fashioned WASPs who simply wanted to preserve American institutions and frustrate the schemes of America's totalitarian enemies." He scoffs at the suggestion that it was the "moral equivalent" of the KGB. He may be correct in that regard, but he weakens his case by neglecting to mention Guatemala, Chile, Iran, or anyplace else where the locals might feel differently about the CIA's values. Johnson ignores any facet of recent history that might call the glory of the anti-Communist crusade into question. That means no mention of the more than 100,000 American soldiers who died "containing" Communism in Korea and Vietnam, or of the foreign leaders assassinated and governments toppled. (He does spare us the embarrassing spectacle of reliving America's victory over socialism in Grenada.)

Communism is a malignant philosophy whose adherents have murdered millions. But anti-Communism has also led to a great many deaths, and the victims of Pinochet, Somoza, and Nixon would probably not be comforted to know that they perished for a cause that *The Weekly Standard* finds noble. —CS

**Our Lady of the Bad Example** — In a recent column, *Newsweek's* Jonathan Alter prevails upon the songstress "Madonna" to marry. Madonna is with child. Yet she has rejected marriage. A year with Sean Penn, it seems, was enough to curdle not just the boy but the institution.

Alter is broad-minded. If she can't stick it with her personal trainer/semen donor Carlos Leon, or any male, then, he advises, marry a woman. *Just get married. Why?*

Well, not because God would have it so. Not because it would make mom and dad feel better. (Does "Madonna" have a mom and dad?) Not because it would make a better video.

No, it's because "the research . . . is unambiguous." Marriage, researchers tell us, does wondrous things for men, "taming" them and forcing them to hold a job. (Marriage to a woman is, of course, irrelevant to this argument, but never mind.) Society is depending on Madonna to do her part!

Here is the new American creed in all its cheapness. Morality means subservience to the social patterns that, statisticians say, are correlated with good things (good things being the things that middle-aged people want). *The research is unambiguous equals the Bible tells me so.*

All of this, of course, is both wrong (social science research is never "unambiguous") and vacuous. If "the research" informed us that, say, the marriage of two women was bad for the kids (which, by the way, isn't true), Alter would not accept a hetero obligation. He even admits that Madonna's own divagation from the commands of "the research" may be acceptable, for Madonna is rich. Such liberty is impermissible, however, to "the disadvantaged," for whom departure from this particular regression analysis may be the "killer correlation." And so, if she will not marry, Madonna ought at least to preach marriage to her *lumpen* admirers. Hypocrisy is the least she can do for the New Morality.

Thus does the '60s generation — undoubtedly the most annoying group of people in the history of the planet — reinvent in its weak-kneed, intellectually stunted way the moral imperatives of bygone days. They've had their fun; but now that baldness, impotence, and teenage offspring afflict them, fun must cease. Because they are tired and read *The Atlantic Monthly*, there will be no more cakes and ale. God is not Christ or Buddha, Marx or Maslow. God is a correlation. To which fantasies one can only reply, with Madonna, "Papa, don't preach."

—NC

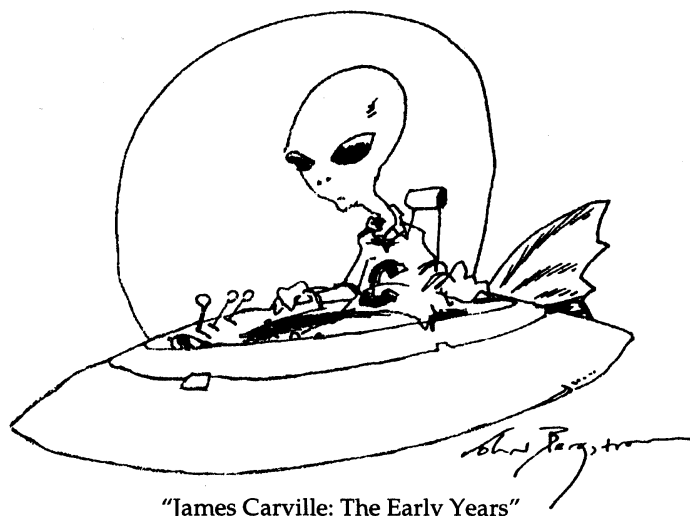
**Endangered candidates** — Recently, two candidates were running for national office in environmentally conscious Oregon. In a debate, they were asked how they felt about the conflict between endangered species and jobs. The more-libertarian candidate answered, "Saving endangered species is important. But people are important too. We have to protect jobs and local communities."

Wrong answer, especially in a state like Oregon, whose mostly urban workers don't feel threatened by endangered species. The candidate lost by a hair.

Here is what he should have said:

"I want to save endangered species as much as anyone. But the Endangered Species Act is failing to save species. Complying with the law costs rural landowners huge amounts of money and costs rural workers many jobs. But more species are still going extinct than are recovering. What we need is a new Endangered Species Act that gives landowners incentives to protect habitat and creates jobs rather than destroys them. Such a law will save far more species and cost taxpayers far less money than the existing failure."

This might not have made the difference in the election. But if libertarian candidates can take a consistently positive



"James Carville: The Early Years"



stand on environmental issues — “We want to save the environment, and carrots will save it better than sticks” — they won’t be perceived as being anti-environment. That could make the difference for many.

—RO’T

**It takes a voucher** — The Cato Institute’s Stephen Moore, opining in the *Washington Times*, pegs President Clinton as “another ‘education president’” and comments that “our children simply can’t afford many more of them.” Clinton is a tool of the education establishment, Moore argues, because he just wants to “throw money at the problem.” Better to abolish the Department of Education — or, barring that, to . . . throw money at the problem. Moore suggests three different voucher plans he thinks might move us in the right direction. One: “\$2,000 grants to the parents of five million school-aged children . . . with the lowest incomes first.” Two: “Establish pilot grant programs in the 100 worst-performing public school districts in America and give \$3,000 education grants to the parents of kids trapped in those schools.” Three: “Allow families to opt out of schools that are beset with guns and violence. Why not start immediately by offering parents who are forced to send their kids where a child has been injured with a gun, or where there is a well-founded fear of violence, a grant to pull their kids out from under the cloud of terror?”

All of these proposals would undermine the independence of any private school that accepts vouchers. All would create millions more constituents for the Department of Education, making it that much harder to kill. All would, like any other government program, tend to grow inexorably. The third proposal would have the unintentional effect of shipping violent students into better schools, which then might not stay “better” for long.

Moore is right about one thing: killing the Department of Education is a good idea that is unlikely to happen soon. So, in the interest of being constructive, I have come up with my own ideas as to how to better spend this money.

One: Give grants to the five million or so politicians, pundits, and pointy-heads who keep going on about “our children,” to be redeemed at the nearest federal prison or mental home so that we can be free from their incessant prattling.

Two: Establish pilot grant programs at the 100 best universities in the country. In the tradition of agricultural subsidies, these schools’ education departments would be paid *not* to award degrees. This would encourage school districts to

hire history majors to teach history, physics majors to teach physics, etc. Or, even more shockingly, they might search for intelligent and motivated teachers irrespective of their academic credentials.

Three: Allow families to opt out of schools that are beset by textbooks and boredom. Why not start immediately by offering parents who are forced to send their kids to a public school where a child has been bored with an execrable “Social Studies” text, or been forced to read *Catcher in the Rye*, a grant to pull their kids out from under the cloud of tedium?

I know what you’re thinking: my ideas may have unintended bad side effects. (Bad side effects I don’t intend. However, any good side effects I do intend.) You may be right, but my proposals have about as much chance of passing as Moore’s, and they’d do at least as much good. —CS

**Mr. Paul goes to Washington** — Former Libertarian Party presidential nominee (and occasional contributor to *Liberty*) Ron Paul moved one step closer to a return to Congress when he easily defeated GOP incumbent Greg Laughlin in an April 9 primary runoff.

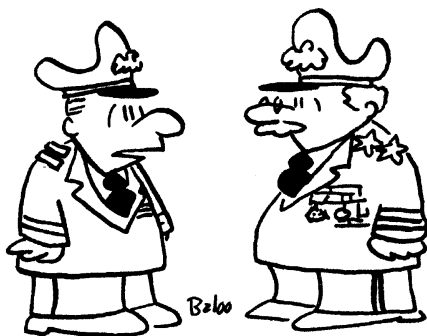
In capturing a whopping 54% of the vote against Democrat-turned-Republican Laughlin, Paul has almost certainly ended the practice of party-switching by incumbent congresspeople attracted to the GOP by the prospect of easy electoral victories. Whether this is good or bad for the GOP remains to be seen. The converts had increased the size of the GOP majority in both the House and Senate, but at the expense of diluting the GOP’s ideological vigor by adding middle-of-the-road pragmatists like Laughlin.

One thing is certain: the Republican establishment wants to keep the flow of turncoats to their party. Party leadership closed ranks behind Laughlin, who enjoyed support from Texas Governor Jeb Bush (son of George), both Texas senators (Gramm and Hutchinson), and Speaker of the House Newt Gingrich.

When Paul’s primary campaign began, it looked like its winner would be a shoo-in for election in November. Not only was the district comfortably Republican, but 1996 seemed like a good year for Republicans. As Bill Clinton’s popularity has soared, however, the outlook has changed. A relatively attractive Democrat has grabbed the chance to oppose Paul, and most observers now rate the race a tossup. (At least one, PBS’ Mark Shields, predicts Paul will lose.)

But I wouldn’t bet any money against Paul, who has proved himself an effective candidate with the ability (thanks to direct-mail maven Lew Rockwell) to raise substantial sums of campaign funds.

—CAA



“You know those ‘smart’ bombs we deployed, General? They went AWOL.”

**The fascist Enlightenment?** — John Gray is a name that will be familiar to libertarian academics, and to others in the movement as well. He is an Oxford don who, at the start of his career, wrote studies of F.A. Hayek, Herbert Spencer, and others from a classical liberal, virtually libertarian, point of view. Over the years Gray has mutated a number of times, to the point where he is now, as *The Economist* puts it, Britain’s “most prolific and certainly most agitated anti-Enlightenment thinker.” Agitated is the right word (hysterical might be better), since it is hard to find anything like a sustained argument in the articles and reviews Gray

keeps grinding out for the London press, and, increasingly, for American magazines as well. One thing is clear: he thinks that the chief product of the Enlightenment, "atomistic" liberalism — a.k.a. libertarianism — is an unmitigated disaster.

A typical example of Gray's effusions was a piece in the *New York Times Book Review* (February 25), discussing a new work on the history of European fascism from 1914 to 1945. This is one of those hack reviews where you can tell the writer knows nothing about the subject that he didn't gather from the book itself. Amazingly, there is no mention of Lenin, the Comintern, or the Leninist Italian Socialist Party of post-World War I, although these provided the perceived threat without which Mussolini and his gang would have remained curiosities of the Italian political scene. But, while silent on the origins of fascism, our ignorant Oxford don jumps at the chance to denounce the major present-day threat to "stable democratic institutions" — the assault on the welfare state by the spiritual descendants "of libertarian doctrinaires like the philosopher Herbert Spencer and the conservative journalist Albert Jay Nock."

"There is a cruel paradox," Gray finds, "in the truth that the chief danger to liberal democracy now should come not from fascism but from the rebirth of a primitive form of liberalism." Sadly, we can expect to see more rubbish of this sort, since it is so much to the taste of papers like the *Times* — especially when it comes with an Oxford imprimatur. —RR

**Insuring banality** — Forgive me, Mr. Denlea; I'm about to make fun of you. And please don't cancel my insurance.

Leo E. Denlea, Jr., is chairman and chief executive officer of the Farmers Group, Inc. Because I have Farmers insurance, I receive, free of any charge, their public relations magazine, *Friendly Exchange*. As such things go, it isn't too bad.

In the latest issue, Mr. Denlea's column, bravely entitled "One Point of View," takes up the question of why we are "Lucky to Be Americans." Mr. Denlea's thesis, if there is one, is that his readers should show their appreciation for America by "actively participat[ing] in our nation's future." A grand phrase — but as Mr. Denlea uses it, "our nation's future" seems to be synonymous with nothing more than, well, voting. There is also some talk of "worthwhile civic volunteer projects." Pretty controversial stuff.

No more precise idea emerges when Mr. Denlea thinks about just why it is that we are fortunate to be Americans in the first place. Mr. Denlea says that America has "initiative, community, partnership, sharing and trust." I suppose that no other country has such bold and lovely things. But America also has "people [!], millions of citizens who care deeply about their freedom and its preservation." This freedom can be preserved by "participat[ion] in our democratic system." It's as simple as that.

But wait! Maybe some further exploration of these deep political ideas would be helpful. In case it would be, Mr. Denlea quotes at some length from the winning entry in his company's essay contest on "The Meaning of Democracy." The winning employee wrote, "In my lifetime, democracy has been threatened by the Cold War [note, not by communism, but by the Cold War], internal conflicts, political corruption

and, most of all, indifference. . . . [I]n order for democracy to survive, it is essential that we exercise our privilege and our responsibility to participate in the government."

So there. That'll give you some concepts to chew on for a while. I don't want to blame the contest winner. I haven't seen the whole of her essay. Maybe the rest of it would make John Locke blush with envy. Instead of blaming her, I'll blame Mr. Denlea. I'll blame him and all the other corporate executives whose idea of defending America's freedom, the freedom that allows them to enrich themselves, consists of making their political communications as inane as they possibly can make them.

But who cares, you say, about what comes out in some miserable public-relations copy? We get junk like this in our mailbox every day!

Well, that's just my point.

—SC

**Gas attack** — Supplies are tight, demand is up, and prices at the pump ratchet upward, ever upward. In the bad old days, some vote-seeking congressmen would find themselves a stump from which to declare their deep concern for constituents (though the locution "feel your pain" is, I believe, of recent coinage) and demand an investigation of the culprits responsible for raising prices.

But now we have a new Congress, a Republican Congress. They have sworn to forgo the blunt tools of political control in areas of our personal and economic life in which government simply has no legitimate role. So here we have a splendidly clear test case of the impact the Republican Revolution has made on our body politic. Will the sons and daughters of Gingrich hold true to their proclaimed ideals, or will they instead succumb to the temptation to pander during an election year?

Well, in the immortal words of Emily Litella, "Never mind."

—LEL

**Unkindest cuts** — American borders are most open to refugees from countries designated "politically repressive." But it takes a *lot* of repression for a nation to be so labeled. And the officials who cook up policy and judge special cases are often amazingly ignorant.

Consider Donald Ferlise, an American immigration judge. A year ago, Ferlise judged the case of Fauziya Kasinga, a 19-year-old woman from Togo. Kasinga explained that she was fleeing her homeland to avoid "female circumcision." Her father, who had protected her and her sisters from this African and Arab practice, had recently died. Her aunt had taken over the household and arranged for Kasinga to be married into a polygamous family, which entailed subjecting her to the gruesome operation. In 1994, Ms. Kasinga fled Togo for America and (she thought) freedom. Indeed, when she stepped off the plane, she asked for political asylum. This, alas, was a mistake. *Canada* recognizes female genital mutilation as grounds for granting asylum, not the U.S. The INS grabbed her and she has spent over two years in prison, under somewhat brutal conditions.

Kasinga's plea did not impress Judge Ferlise. He found her story, the *Washington Post* reports, "inconceivable, nonsensical and irrational." Deeming her more likely paranoid than persecuted, the judge ruled for her to be deported back

to the dark continent of stone knives and patriarchal tyranny.

You might have expected Judge Ferlise to be a little better informed, or at least to do a little research before making his ruling. I first learned of "female circumcision" as a teenager, when I read Lawrence Durrell's *Alexandria Quartet*. Accepting the term at face value, I wondered, first, what it possibly could mean, and then what the big deal was — after all, *male* circumcision was a common practice in ancient Egypt, became a self-defining custom of the Israelites, and is common in America today. It took me a while to find out what was going on, but I persisted. (My trusty *Encyclopedia Britannica* was not as trustworthy on this subject as I'd hoped.) "Circumcision," I discovered, is something of a misnomer: we are not talking foreskins here. Or at least not usually — "female circumcision" is a *range* of genital mutilations, from

complete excision of the clitoris and external genitalia to partial operations. It seems likely that the practice originated in Ancient Egypt, then spread through the Levant and much of the ancient "civilized" world a long time ago, with a variety of bizarre excuses being given for the practice. Mohammed, progressive humanitarian that he was, advised that only a *part* of the clitoris be removed.

Of course, when Ferlise was growing up, Americans did not speak of such things. Today, there is considerably more talk about the subject. Novelist Alice Walker, for one, has been crusading against the practice for some time. Feminists have been protesting female (not male) genital mutilation for years. Yet none of this talk seems to have reached a certain judge's ears.

*continued on page 68*

## Medianotes

**Snow job** — A recent notice in *USA Today* announced a new political talking-heads show, *Fox News Sunday*. The host is former Bush speechwriter and current *USA Today* and *Detroit News* columnist Tony Snow. Can you imagine anything more useless than yet another "news and information" program crammed full of conventional wisdom? Don't worry: I didn't and won't be watching it (I felt dirty enough just reading about it in the "nation's newspaper"), so I can't give you any gory details.

The first episode's panelists, it was announced, included two representatives of the respectable right: host Snow and Linda Chavez, a couple of ghosts from previous Republican administrations. On the "left" were Paul Begala, who is paid to concoct flattering lies about Bill Clinton, and Al Hunt of *The Wall Street Journal*, who does it for free. What chance is there that this crowd will ever come up with anything intelligent or original to say about U.S. politics?

The most annoying part of the article is the statement that the show is not going to be "geared to the Bart Simpson crowd." Said Snow: "We're not interested in that crowd because they're not interested in politics." Nonsense! *The Simpsons*, for the uninitiated, is often very political; with wit and style, it regularly exposes America's political culture for the fraud that it is. It has far more intelligent things to say than any chat show. Maybe that is because Bart Simpson — a cartoon character, a ten-year-old boy who hasn't aged a minute in the last six years — is more real than Tony Snow will ever be.

—CS

**Mr. Mike goes to cyberspace** — When Microsoft hired super-journalist Michael Kinsley to edit an "online" magazine, pretty much everybody was surprised. Though a lot of magazines have what are called "Web pages" — that is, hypertext articles and pictures stored on computers and accessible from the subset of the Internet called the "World Wide Web" — and though there are even some Web-only magazines, none of these are real profit-makers. So

Microsoft's decision to hire Kinsley for a small fortune seemed a little rash.

I have no idea if this new magazine — dubbed *Slate*, and slated to debut in June — can make a go of it. Personally, I rarely return to a Web site frequently enough to make it worthwhile to *pay* for the service (I have paid for nothing on the Web, yet). But then, I am still new to the Internet.

Bill Gates' gargantuan Microsoft, however, is all for settling things. Like most near-monopolies, it frowns upon fluidity, and is trying to figure out ways to bring stability to cyberspace. I wish them the best, if only to encourage more computer-phobic people into the ranks of the cybernauts. Michael Kinsley, a self-described "eclectic liberal with a libertarian streak," might help entice such a mass entry into the Internet Interzone. And he may even attract the largest political phalanx on the Net, the libertarians. Perhaps to ensure this, he has hired libertarian journalist Jack Shafer (late of Washington's *City Paper* and San Francisco's *Weekly*) as deputy editor.

If *Slate* fails, and breaks into pieces, Kinsley will have no trouble returning to the Gutenberg dimension. But what would be left on the Net? Only the shards of thought, fact, misstatement, and opinion that browsers of the Web have come to love and hate and read and ignore: in a word, *diversity*. But a little more upscale — I hope. The Web still reeks of e-mail debates and Usenet banter; more traditional editorial approaches couldn't hurt cyberspace culture one bit. —TWV

**Tune in, turn on, and wait** — Timothy Leary, whom I profiled in the last *Liberty*, is an Internet enthusiast. I am a Net skeptic. At his suggestion, I recently checked out his home page, which is set up as a virtual tour of Leary's home. Having been in the real thing, I remain resolutely unimpressed.

Doing the full graphics display took a stunningly long time, and even without graphics, shifting from one area to another took nearly two minutes. Despite this, the total text

and information available seemed less than one would find in . . . well, in my article. Some great ideas turned out to be more interesting in their promise than their execution. There was a daily diary of Leary's psychoactive chemical intake — with only two entries. His library was supposedly available for browsing — but I couldn't connect to it.

Sure, if all the information in Leary's library really were accessible at a reasonable speed, that would be a fine thing. And his henchmen seem to be working on it; it's even supposed to be set up so that visitors can add their own writings. But even that wouldn't be anything more than a high-speed emulation of a bunch of books. Certain aspects would indeed be different and special; one can't word-search a physical text. But even at its best, the Web is basically just a means to read a lot of words and watch bad-looking animation. We can already do both, and have been able to for years. *This* is supposed to be an evolutionary leap over printing?

The average computer-owner already has access to more information and entertainment than he could ever hope to cope with. Speed and breadth of choice are grand things — but Earth-shattering? I don't think so. —BD

**The extreme center** — In a farfetched attempt to rewrite the spectrum of Italian politics, Christopher Hitchens recently claimed that "Italy is the only country in Europe to have been governed exclusively by the right since the end of the Second World War" (*The Nation*, April 15, 1996). "Exclusively"? In 1983, Italy inaugurated a Socialist-dominated governing coalition, headed by the Socialist Party's leader, Bettino Craxi.

Hitchens' claim can be rendered plausible only by a radical reinterpretation of the Italian political landscape, whereby the Communists occupy the center, the Socialists the "right," and the Christian Democrats the "far right," leaving the Red Brigades on the left. I'm not sure even Hitchens wants to take things that far. —NC

**Frown, you're on Candid Camera** — Rush Limbaugh and many other conservatives have made a great deal about Bill Clinton's "hypocrisy" during the funeral march of Ron Brown. Clinton was caught on camera laughing — and then, when he noticed that he was being photographed, immediately bowed his head and teared up. Rush repeatedly showed this clip on his late-night TV program, and went on and on about how this showed Clinton as the posturing phony he is, etc., etc.

The problem with Rush's tack is that Clinton did what any decent person would do: sober up when caught unceremoniously forgetting his social role as mourner. There are a lot of reasons to believe that Clinton is basically insincere, even a congenital liar. This is not one of them. Indeed, this is one of those incidents that convince me that there is something indecent about a lot of media coverage. Not to mention punditry. —TWV

**Shadow on the land** — Kathleen Hall Jamieson, dean of the Annenberg School for Communication, performs the well-compensated job of expressing the conventional wisdom while having a vagina. She outdid herself in a recent *Newsweek* forum on Americans and the media. After opining

that "the country would be poorer were it not for," among other snoozefests, "*The Newshour with Jim Lehrer* and the probing of the Sunday interviews shows" — the former sponsored by the U.S. government, the others by Archer Daniels Midland and General Electric, subsidiaries thereof — Jamieson shared the really good news: "Those seeking substance in such faraway places as Austin, Texas, can now subscribe to the *New York Times*, *The Wall Street Journal*, and the National Weekly Edition of the *Washington Post*."

Shrewd analysis, Kathleen. People hate the media giants and their tyranny of the bland so what we should do is . . . shove the tyranny even farther down their throats! Yes, that's an inspiring vision of America's future: Al Hunt and Abe Rosenthal boring the good people of Austin and Anniston and every burg from sea to shining sea. No matter where you roam or ramble — whether you're lost in the redwood forests or submerged in the Gulf Stream waters — David Broder will shadow you all your days.

Information Age, please end.

—BK

**Front page woman** — A report from an organization funded by the Freedom Forum, itself a beneficiary of the Gannett Newspapers fortune, complains that women make up 52% of the population but are the subject of only 15% of front-page newspaper articles." A free press in a democracy should reflect all its voices," says Nancy Woodhull of Freedom Forum. "The press needs to focus on this trend toward the invisibility of women and their concerns."

The day the study was reported, I checked four front pages, and I have this advice for the ladies: commit more murders, overthrow a government, get accused of sexual harassment, and run for president. —DB

**Sauce for geese, but not ganders** — The Clintonista perspective on Al D'Amato's Whitewater investigations — that witch-hunting Republicans are just angling for political advantage in an election year — is reminiscent of the Reaganite line on the Iran-*contra* affair. If you got all your news from *The American Spectator* and *National Review*, you'd think the only 1980s scandal involving the National Security Council was the amount of money Lawrence Walsh spent investigating it.

Naturally, now that a Democrat is president, the *Spectator* crowd is happy to investigate any ancillary Iran-*contra* naughtiness that might damage the Democrats. So R. Emmett Tyrrell and company are willing to suggest that Clinton was privy to drug- and gun-smuggling through the tiny Arkansas town of Mena — and simultaneously ignore allegations that this smuggling was part of the *contra* resupply network.

If, a few years down the road, Democratic congressmen start raking Vice President Lamar Alexander over the coals for a Whitewater-style scam, don't be surprised to see the same folks who stuck up for Hillary suddenly call for an independent counsel to take on Lamar. —JW

**Sullivan's travels** — The recent "resignation" of Andrew Sullivan from *The New Republic* is an occasion for sadness. I put quotation marks around "resignation" because, despite Sullivan's testimony that he resigned to pursue other

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## Analysis

# Bipartisan Reign of Terror

*by David B. Kopel and Joseph Olson*

"All the horrors of the reign of terror were based only on solicitude for public tranquillity."  
—Leo Tolstoy, *War and Peace*

The heinous bombing last year of the Alfred P. Murrah federal building in Oklahoma City has raised public fears of terrorism. As is common after sensational crimes, some people have used it as an excuse to call for a bigger federal government and a narrower Constitution. A few

days after the anniversary of the bombing, President Clinton signed new "anti-terrorism" legislation into law — legislation with profound implications for the future of Americans' constitutional rights.

The bill Clinton signed was a compromise between the broadly intrusive Senate bill and a less extreme House version. (The Senate bill was itself the product of negotiations over Clinton's original proposal and Sen. Robert Dole's slightly narrower legislation.) The House Judiciary Committee had quickly approved a bill, proposed by Rep. Henry Hyde, that was mostly the same as the Senate's. But the measure then ran into strong opposition on the floor, from a diverse coalition of Democratic civil libertarians and Republicans skeptical of an expanded federal government. In March 1996, an amendment sponsored by freshman Bob Barr saved the bill by removing most of the provisions critics had found objectionable — but even with this amendment, 177 legislators voted against it. The final version of the bill was created in April 1996, when a House-Senate conference committee restored some but not all of the provisions the Barr Amendment had removed.

The battle over the terrorism bills showed the increasing clout of a new Bill of Rights alliance — one that has been coalescing over the past several years, but worked together now as never before. The alliance cuts across the traditional political spectrum, including groups both "left" (the American Civil Liberties Union, the National Association of Criminal Defense Lawyers, the American Friends Service Committee, the Presbyterian Church) and "right" (the National Rifle Association, the Eagle Forum, Americans for Tax Reform, Gun Owners of America).

### **Legal Suppression of Terrorism**

The word "terrorism" originated in the French Revolution, when the government instituted the Reign of Terror to execute political opponents, seize their property, and terrorize the rest of the population into submission. In the debate over the new bill, two terrorist threats were invoked. One side feared a vast militia conspiracy of armed and paranoid "angry white men." The other side worried more about terrorism in the original sense of the word — state terror —

and the risks of unleashing and further militarizing the federal government.

It is sometimes suggested that persons who worry about the second type of terrorism are only a strange fringe of American society. In fact, they are the majority. According to a November 1995 CNN-Time poll, 55% of Americans believe that "the federal government has become so large and powerful it poses a threat to the rights and freedoms of ordinary citizens." Repressive measures, far from reassuring the American public, may intensify already widespread fears.

In the United States, there is a long and sad history of interest groups and government officials inflating a few isolated incidents into a vast threat that requires an immediate, repressive response. In 1798, President John Adams and the Federalists who controlled Congress were scandalized by the vicious campaigns against them in the press. These scurrilous charges — for example, the accusation that Adams had sent General Pinckney to England to procure a pair of young mistresses for each of them, or that Adams was

plotting to establish an American monarchy — illustrate that today's foolish conspiracy theories are nothing new. At the same time, French officials attempted to bribe American newspapers into taking the French side in their conflict with England and to criticize President Adams' pro-England policy.

In 1798, a furious Adams prevailed upon Congress to enact the Alien and Sedition Acts. These hated laws allowed the extra-judicial deportation of any legal resident alien the administration considered a security threat. Criticism of the president was termed "sedition" and was banned. President Adams' political opponents were persecuted for supposed disloyalty.

Rather than calming the political waters, the Alien and Sedition Acts provoked an angry backlash. The Kentucky and Virginia Resolutions were enacted, with both states asserting the authority to nullify within their territory laws that violated the Constitution. Had Adams decided to force the issue, civil war might have resulted.

Happily, the Acts were never uniformly enforced, and after Thomas Jefferson was elected president in 1800, they were allowed to expire.

Similarly, John Brown's unsuccessful raid on Harper's Ferry provoked fears in the South of larger revolutionary conspiracy, leading to attempts to suppress anti-slavery speech. In the decades following the Civil War, worried authorities reacted to labor militancy with "criminal syndicalism" laws. In the twentieth century, too, radical critiques of the government have too often been met with repression. During World War I, for example, Eugene V. Debs' peaceful criticism of the draft landed him in federal prison.

After the war, when Communists took over in Russia, fears of violent foreign radicals intensified. In August 1919, Attorney General A. Mitchell Palmer established the FBI's predecessor, the "General Intelligence Division"

of the Department of Justice. The Division was headed by J. Edgar Hoover and charged with gathering information on radicals. Over the next year, 6,000 people were seized in the "Palmer Raids," many of them innocent of any crime and many of them unconnected to radical politics. Suspects were often held in filthy jails and beaten into false confessions. Even people who came to visit these prisoners were arrested, on the theory of guilt by association. Palmer hoped to use the hysteria he had helped create as a stepping-stone to the Democratic presidential nomination, but he overplayed his hand. The major terrorist attack he predicted for May Day, 1920

a terrorist threat that must be suppressed.

## There Is No Terrorism Crisis

But is there a terrorist threat? According to the State Department, international terrorist attacks are at their lowest level in 23 years. In the United States in the last eleven years, there have been only two international terrorist incidents. One was the World Trade Center bombing. The other was a trespassing incident at the Iranian mission to the United Nations, in which five critics of the Iranian regime took over the mission's offices and refused to leave.

As for domestic terrorism, there was none in the United States in 1994;

nor was any prevented by police. In 1993, the FBI classified eleven incidents as "terrorist." Nine took place in a single night in Chicago when animal rights activists set off small incendiary devices in four department stores that sell fur.

The Oklahoma City bombing was one of the most terrible single crimes in American history, but it was just that: a

single crime. Isolated incidents of mental aberration and evil — the mass murder by arson of several dozen people in a New York City nightclub in 1989, the Oklahoma City bombing, the awful Dunblane murders in Scotland — are crimes, not organized terrorism. The same goes for repeated crimes committed by small groups, such as the fraud and intimidation perpetrated by Montana's misnamed "Freemen." To the extent that these acts involve more than a pair of criminals, prosecution of the handful of individuals involved will suffice to destroy whatever pathetic "organization" they call themselves. According to the prosecution's theory of the Oklahoma City bombing, that crime was perpetrated by the two defendants, alone. Although the trial has not yet taken place, there simply isn't sufficient evidence at this time to base public policy on the theory that there is some vast conspiracy the federal government has

**Terrorist Incidents in the United States**

	Actual	Prevented	Suspected
1994	0	0	1
1993	11	7	2
1992	4	0	0
1991	5	4	1
1990	7	5	1
1989	4	7	16

FBI data, reported in *Misleading "Findings" in Clinton Terrorism Bill* (Washington, Feb. 22, 1995)

failed to materialize, and the national panic subsided.

Later, many southern state governments — as well as the FBI — accused "Communist agitators" of leading the civil rights movement. But the presence of a few Communists within the civil rights leadership did not mean the movement was fundamentally Communist, nor that it should be suppressed. Nonetheless, that is precisely what many state governments attempted to do.

If it is easy for many Americans to understand, in hindsight, the viewpoints of Jeffersonians, abolitionists, labor organizers, or the civil rights movement, it is not so easy for some Americans to respect the current concerns of their fellow citizens. Today, tens of millions of people are terrified of the government, and tens of thousands, perhaps more, participate in militias. According to many in the government and the media, they pose

failed to discover yet.

Nonetheless, the bill has been passed and signed into law. What does this mean?

### What's in the Law

Before the terrorism bills were even introduced, federal law appropriately forbade the provision of material support to foreign terrorist acts. The law forbade investigations of people solely for lawful First Amendment activities.

The bill signed by the president eliminates this statutory protection of First Amendment rights. It also expands the "support" prohibited to include support for the lawful, nonviolent activities of any group the secretary of state designates a "foreign terrorist" organization. As the bill moved through Congress, the Clinton administration retreated from its original insistence that such a designation be exempt from review by the courts. This will certainly reduce the risk of domestic dissident groups being designated "terrorists," since they would be able to show in court that they were not foreign. But it should be remembered that historically, American courts have been extremely deferential to presidential foreign policy decisions. If there were even a scintilla of evidence in favor of the secretary's designation of a foreign group as "terrorist," then it is virtually certain that courts would not overturn the designation. Furthermore, in such cases the government would be able to use secret evidence, shown *ex parte* and *in camera*.

Moreover, the bill requires banks to freeze the domestic assets of any account-holder deemed an agent of a foreign terrorist organization. This doesn't even require designation by the secretary of state — it's an independent legal duty of the bank. The bill offers no provision for an individual or organization to appeal the freezing of their assets.

Skeptical readers should try imagining this legislation in the hands of their worst political nightmare. An organization that provides support to the government of Israel or to the Israeli Defense Forces (both of which are considered "terrorist" in some political circles) could be outlawed, as could (by a different president) a group that provides support to

Palestinian refugees.

One important distinction between the Clinton and Dole bills was that the Dole bill created an explicit exception to the "material support" statute: "'Material support' . . . does not include humanitarian assistance to persons not directly involved in such violations." Thus, sending a Christmas food package to an Irish Republican Army prisoner would constitute material support, but giving money to a fund that assists

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### *The Oklahoma City tragedy has become a vehicle for "wish list" legislation that has nothing to do with Oklahoma City.*

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the orphaned children of IRA members would not. The final legislation did not include even this exception.

So under the new terrorism law, a donor to an IRA orphanage would be a federal felon, subject to ten years in prison. If the "material support" language had been law in the early 1980s, people who gave money to church relief groups in El Salvador and Nicaragua that opposed American policy could have been prosecuted as "terrorists." So could anyone who spent five dollars to attend a speech by a visiting lecturer from the African National Congress.

The Constitution mandates that if a person is to be punished for associating with a group with unlawful objectives, the government must prove that the individual specifically intended to further those goals. The Clinton/Dole bill returns us to practices the Supreme Court outlawed over half a century ago, when the Immigration and Naturalization Service attempted to deport labor organizer Harry Bridges because of his affiliation with the Communist Party. Bridges had supported only lawful Communist activities, but the INS argued that, since the organization had unlawful purposes, Bridges' intent was irrelevant. The Supreme Court disagreed, and dismissed the case.

Has the White House shown any sensitivity to any of these problems? Pressed at congressional hearings, an

administration spokesperson acknowledged that minor support for the African National Congress' peaceful activities could have been felonized had the bill been law a decade ago, but insisted that the American people should simply trust the president not to abuse the immense power Clinton was requesting.

But as another president, Lyndon Johnson, put it: "You do not examine legislation in light of the benefits it will convey if properly administered, but in light of the wrongs it would do and the harms it would cause if improperly administered."

### Federalizing Violent Crime

It was already a federal felony to make a real terrorist threat — threatening, say, to set off a bomb or to assassinate the president. The new bill widens the definition of "terrorism" to include almost all violent crime except for sex offenses: any assault with a dangerous weapon, assault causing serious bodily injury, killing, kidnapping, maiming, or creating a risk of serious bodily injury through destruction of property. (This provision is actually narrower than the original Dole and Clinton bills, which also labeled any property damage, no matter how trivial, as "terrorism," even if there were no risk to any individual's life or limb.) The effect is to federalize crimes that are ordinarily dealt with on a state or local level.

Another effect is to upgrade the severity of certain offenses. Mugging a Department of Agriculture employee is now "terrorism." So is breaking someone's arm while on a private boat in American territorial waters. Other provisions go even further, classifying any offender who "uses the mail or any facility of interstate or foreign commerce in furtherance of the offense" as a terrorist. And a crime is now considered "terrorist" if it "obstructs, delays, or affects interstate or foreign commerce," or would have done so had it been consummated.

To limit the federalization of virtually all violent crime, the final version of the law requires a terrorist offense to involve "conduct transcending national boundaries," defined as "conduct occurring outside the United States in addition to conduct occurring inside

the United States." This last provision is considerably narrower than earlier proposals. If courts enforce this language seriously, then the terrorism bill will not turn into a *de facto* federalization of all violent crimes other than sexual assaults. On the other hand, given the great lengths to which "interstate commerce" has been stretched, it is entirely possible that the requirement for "conduct occurring outside the United States" could be met simply through the use of a weapon manufactured outside the country, or the perpetration of the crime by a visiting tourist.

Once the government accuses someone of any of the above ordinary violent crimes, with some conduct occurring outside the United States, a heavy set of hammers begins to fall on the accused. Although the law allows state definitions of a crime to be used in order to create federal jurisdiction, it forbids defendants from invoking constitutional protections of the state where the alleged offense took place. Sentences for "terrorism" are severe, and must run consecutively to any other sentence imposed. Those accused of "terrorism" will be denied bail.

### Wiretapping

Having defined almost all violent and property crime as "terrorism," the proposed Dole and Clinton bills would have allowed wiretaps for "terrorism" investigations. Other proposals would allow wiretaps for all federal felonies, rather than just the subset of felonies for which they have been determined to be especially necessary. It is worth noting that wiretaps are already available for the fundamental terrorist offenses, arson and homicide. Authorizing wiretaps for evasion of federal vitamin, gun,

or wetlands regulations is hardly a serious contribution to anti-terrorism, but amounts to a bait-and-switch on the American people.

Currently, the FBI may legally wiretap, bug, and break into the property of Americans in the name of "national security" after approval from a judge on a seven-member federal court that meets in secret. Applications for national security surveillance orders are made, in secret, before specially selected judges of the Foreign Intelligence Surveillance Court. Of the 8,130 applications that have been

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*Of the 976 federal electronic eavesdropping applications in 1993 and the 1,154 in 1994, not one was for investigations of arson, explosives, or firearms, let alone terrorism.*

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made, only one has ever been rejected. The standard for a FISA search order is lower than for a normal Fourth Amendment search warrant. The potential for abuse is substantial, since all applications remain sealed and unavailable to the public and since targets are never notified that they have been spied on.

These existing powers contradict the government's argument that it needs expanded wiretapping power to combat terrorism. Interestingly, as federal wiretaps reach new highs each year, they are used almost exclusively to combat gambling, racketeering, and drugs — not terrorism. The last known wiretap for a bombing investigation was in 1988. Of the 976 federal electronic eavesdropping applications in 1993 and the 1,154 applications in 1994, not a single one was for investigations of arson, explosives, or firearms, let alone terrorism. From 1983 to 1993, of the 8,800 applications for eavesdropping, only 16 were for arson, explosives, or firearms. Even more disturb-

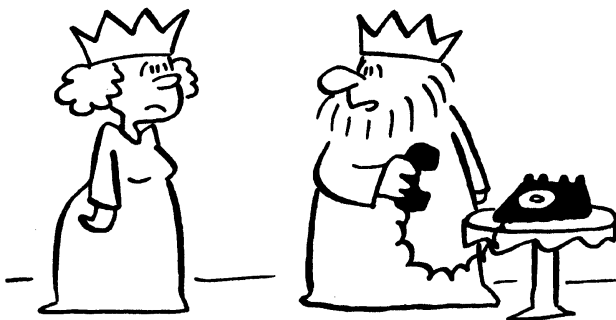
ing than proposals to expand the jurisdictional base for wiretaps are efforts to remove legal controls on their use. For example, wiretaps are authorized for the interception of particular speakers on particular phone lines. If the interception target keeps switching telephones (as by using a variety of pay phones), the government may ask the court for a "roving wiretap," authorizing interception of any phone line the target is using. Yet while roving wiretaps are currently available when the government shows the court a need, the original Clinton and Dole bills would have allowed roving wiretaps for "terrorism" without court order. (Again, remember that both bills defined "terrorism" as almost all violent or property crime.)

The final terrorism bill, while deleting provisions for warrantless roving wiretaps, did significantly expand wiretapping authority. Earlier, the Electronic Communications Privacy Act had banned wiretapping by the government or private parties, with certain exceptions (e.g., when a warrant is obtained). Now the terrorism bill has narrowed what types of communication interceptions are considered to be wiretapping, and thereby greatly expanded the scope of communications that can legally be intercepted — without probable cause or a search warrant — by private individuals as well as government officials. Wireless transmission of computer data is now subject to search at will.

### Habeas Corpus and Political Surveillance

For some government agencies, the Oklahoma City tragedy has become a vehicle for "wish list" legislation that has nothing to do with Oklahoma City.

One prominent example is language in the final terrorism bill that drastically curtails the right of habeas corpus — the first major statutory constriction of it since the creation of Great Writ many hundreds of years ago in England. (Habeas corpus is a writ requiring a person in custody to be brought before court; its prime importance is in determining whether he is being lawfully held.) Although Supreme Court decisions in recent years have already significantly lim-



"I don't like the looks of this — all my Secret Servicemen have called in sick!"



ited habeas corpus, prosecutors' lobbies have pushed much further. Two obvious points should be made. First, habeas corpus has nothing to do with apprehending criminals; by definition, anyone who files a habeas corpus petition is already in prison. Second, habeas corpus has nothing to do with terrorism in general or Oklahoma City in particular.

Then there are the proposals to loosen restrictions on political spying. Within days of the Oklahoma City bombing, conservative talk show host Rush Limbaugh began casting blame on civil libertarians, such as former Ohio senator Howard Metzenbaum, who had promoted strict guidelines on FBI surveillance of dissident groups in the U.S. Others have also called for abolishing the remaining limitations on FBI investigations.

Yet there is no evidence that the FBI wanted to spy on anyone suspected in the Oklahoma City bombing but was prevented from doing so by the current guidelines. Thus, Limbaugh and the others are demanding a "solution" for which there is no demonstrated problem.

Furthermore, the guidelines in question exist for a very good reason. Before they were implemented, the FBI spied

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*Isolated incidents of mental aberration and evil are crimes, but they are not organized terrorism.*

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on literally hundreds of thousands of Americans who were doing nothing more than exercising their constitutional right to question government policies. Victims of these abuses included Dr. Martin Luther King, Jr., the Ku Klux Klan, the Congress on Racial Equality, Barry Goldwater, Cesar Chavez, and anti-war activists, among others. Far from being confined to a single type of dissident, or to a few years of excess, FBI abuses dated back to the 1940s and were pervasive until brought to light by 15 months of hearings before Sen. Frank Church's special committee in 1975-76. Altogether, there were 675 FBI operations against civil

rights, white supremacist, and anti-war groups, which led to only four convictions. Even after all the public hearings, and the implementation of guidelines, the FBI continued to abuse the rights of dissidents through massive surveillance in the mid-1980s of members of CISPES (Committee in Solidarity with the People of El Salvador). The CISPES investigation, justifiably regarded today as shameful, would have been lawful if the new terrorism bill had been law.

Right up to the present, FBI infiltrators have frequently served as *agents provocateurs*, inciting and directing murders and other violent crimes. In one of the most notorious recent cases, an FBI informant solicited the murder of Louis Farrakhan by a dissident family of Muslims. The *New York Times* wrote that the case "reeked of entrapment" by an FBI informant "clearly motivated by money and the need to please the government."

The first set of FBI guidelines was implemented by President Ford's attorney general, Edward Levi, in 1976. In 1983, these guidelines were loosened by President Reagan's attorney general, William French Smith. Then-FBI Director William Webster stated that the Smith guidelines "should eliminate any perception that actual or imminent commission of a violent crime is a prerequisite to investigation." Thus, a former FBI official's highly-publicized claim that "you have to wait until you have blood in the streets before the bureau can act" is patent nonsense.

While the Smith guidelines would prevent infiltration of groups simply because they sharply criticize government policy, they allow infiltration of groups that actually threaten violence. For example, in Virginia, a group of 15 men who allegedly wanted to resist the federal government held only three meetings before a government infiltrator's secret tape recordings led to their arrest for weapons violations. Moreover, militia and patriot groups generally hold public meetings, sometimes advertising in local newspapers. There is hardly a need for greater "surveillance" of such public political discussions.

Rather than being obliterated, guidelines on FBI domestic surveillance

should be brought up to full strength. A statute combining the Levi and Smith guidelines should be enacted.

Once again, those eager to "unleash" the FBI ought first to go through the mental exercise of imagining their worst nightmare as president. Liberals might imagine Pat Buchanan or Pat Robertson. Conservatives could imagine Richard Gephardt or Jesse Jackson. In such a scenario, would you

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*The Clinton/Dole bill returns us to practices the Supreme Court outlawed over half a century ago.*

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want the FBI to be free to spy on whomever the president does not like? Under Nixon, Johnson, and Kennedy — all of whom were moderates within their own parties — the FBI did so, with baleful results.

### **Aliens and the New Star Chamber**

Although the United States has suffered only one alien terrorist attack in the last eleven years, special harsh rules for aliens were at the top of the "anti-terrorism" agenda. The new law allows prosecutors to use secret evidence in deportation cases in which the government asserts that secrecy is necessary for national security. Georgetown University Law Professor David Cole calls the secret court the new "Star Chamber," since its powers resemble those of the inquisitorial court that the British monarchy, in violation of the common law, used to terrorize dissident subjects.

The modern Star Chamber proceedings are to take place before a special court (one of five select federal district judges), after an *ex parte, in camera* showing that normal procedures would "pose a risk to the national security of the United States." Based upon further *ex parte, in camera* motions, evidence that the government does not wish to disclose may be withheld from the defendant, who will instead be provided a general summary of what the evidence purports to prove. In other words, secret evidence

may be used. Of course, any of the "showings" that the government makes behind closed doors may be based on the unreviewable allegations of a secret informant.

No evidence may be excluded because it was illegally obtained, no matter how flagrantly the law was broken.

Legal aliens do not, of course, have the full scope of constitutional rights guaranteed to American citizens. For example, they cannot exercise rights associated with citizenship, such as voting or serving on a jury. But a recent Ninth Circuit case affirmed that First Amendment rights of association

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### *Wireless transmission of computer data is now subject to search at will.*

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are fully applicable in alien deportation cases — i.e., you can't throw people out of the country for the company they keep. Likewise, legal aliens have always been accorded the same protections in criminal cases as citizens. After all, the Fifth Amendment's guarantee of due process protects "all persons," not just "all citizens."

Procedures like those adopted in the new terrorism bill have already been found unconstitutional. As the District of Columbia Court of Appeals put it:

Rafeedie — like Joseph K. in *The Trial* — can prevail before the [INS] Regional Commissioner only if he can rebut the undisclosed evidence against him, i.e., prove that he is not a terrorist regardless of what might be implied by the government's confidential information. It is difficult to imagine how even someone innocent of all wrongdoing could meet such a burden.

The argument for allowing secret evidence in deportation proceedings is that otherwise the identity or operational mode of a confidential informant might be jeopardized. But the very same argument would apply in every other case, especially cases in which use of informants is routine, such as tax evasion, drug sales or possession, and gun laws. Obeying the

Confrontation Clause in those cases may likewise impede the short-term interests of law enforcement. But the Constitution has conclusively determined that a criminal justice system without a right of confrontation poses a far greater long-term risk to public safety than does requiring the government to disclose why it wants to imprison, execute, or deport someone.

Simply put, confidential informants sometimes lie. Informants are rarely good citizens who come forward to help prevent a crime. They generally are criminals who have turned informant in order to protect themselves from prosecution; they have every reason to lie and falsely accuse people.

Confidential informants who are not professional criminals may have other reasons for lying. Consider the 1950 case in which the Supreme Court held that secret evidence could be used to prevent a female alien from entering the United States. (She was married to an American.) Because the case generated so much publicity, the alien was granted a hearing anyway, and it was discovered that the confidential informant was her husband's angry ex-girlfriend.

Some people may accept the Star Chamber for legal resident aliens under the presumption that such procedures would never be used against American citizens. They should remember that cancers always start small. If one international terrorist incident in eleven years is considered sufficient reason to justify a Star Chamber for certain terrorism suspects, it will be hard to resist the logic that crimes that are actually widespread (such as homicide, rape, and drug trafficking) should be entitled to their own Star Chamber.

### **Censoring the Internet**

The final terrorism legislation requires the attorney general to study the availability, in all media, of bomb-making instructional manuals, and the constitutionality of restrictions on such manuals.

Some congresspersons have announced their dismay that a recipe for explosives and other instructions for making products that are illegal without a special license can be found on the Internet. But it is legal in the United States, and always has been, to

publish information about how to make firearms, or explosives, or any other type of weapon. The only attempt to create an exception involved instructions for making nuclear weapons.

Thus, the sixties relic *The Anarchist Cookbook* remains lawfully available today, and can be bought by mail-order and in many bookstores. Likewise, it is legal to purchase and read any number of books that detail how to break various laws, steal things, or resist the government, such as Abbie Hoffman's *Steal This Book*.

The fact that some such books are distributed electronically, by phone lines, rather than by printing and mail-order, hardly changes their protected status under the First Amendment — any more than the fact that *The Anarchist Cookbook* was printed with a high-speed modern printing press rather than a Franklin press deprives that book of constitutional protection. It is well-established that the government may punish persons for breaking the law, or for imminent incitement to break the law. But it may not punish people for knowing how to break the law, or for reading about it.

### **Other Objections**

Most civil libertarians, concerned about the constitutional issues discussed above, raised little objection to the terrorism bills' proposed increases in federal spending. Not surprisingly,

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### *Wiretaps no longer require even judicial approval.*

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the final bill became a Christmas tree of new federal money, with the FBI taking an additional \$462 million, the Drug Enforcement Agency (which has no anti-terrorist responsibilities) getting \$172 million extra, and various other federal and state agencies many millions more. But instead of adding still more federal debt, Congress could have found whatever additional anti-terrorism resources are needed by reassigning federal agents currently assigned to matters that are not legitimate federal concerns, such as child support enforcement, obscenity, and non-interstate drug enforcement.

As we consider anti-terrorism policy, we should remember not only the Constitution, but also the Declaration of Independence. Solicitude for foreign governments should not blind us to the fact that most of the nations of the world are dictatorships, and that many of them promote state terrorism. Under the principles on which America is based, governments

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*A culture of lawlessness has permeated much of American law enforcement.*

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without the consent of the governed have no legitimacy, and it is the right of the people to overthrow them.

Yet the new terrorism law applies prison terms of up to 25 years to any person who plans the destruction of state property in a foreign nation with which the United States is "at peace." Thus, if Chinese refugees living in the United States planned a jailbreak to liberate political prisoners in China, they would be guilty of "terrorism." If Americans in 1940 had plotted the destruction of railways leading to Nazi concentration camps, they too would have been guilty of "terrorism." So would the countless American Jews who smuggled firearms to the Jewish resistance movement in Palestine in the 1940s. Had such a "terrorism" law been universal in 1776, the Dutch, French, and other private citizens who provided material assistance to the American Revolution while their governments were at peace with the British Empire would have been "terrorists" as well. It ill becomes a nation born in violent revolution with foreign assistance to felonize the very charity that allowed it to become free.

### **The British Tragedy**

More government secrecy, more police powers to detain people at will, less governmental accountability, less freedom — these are not novel responses to terrorism. They are precisely the approach that has been taken in Great Britain since the early 1970s. The British experience offers sobering lessons to those who believe we can set down this road without endangering

ordinary citizens' basic rights.

In 1974, IRA terrorists bombed pubs in Birmingham, killing 21 people. Home Secretary Roy Jenkins introduced the Prevention of Terrorism (Temporary Provisions) Bill. Approved without objection in Parliament, the Bill was supposed to expire in one year, but has been renewed every year since. Under the Bill, the police may stop and search without warrant any person suspected of terrorism. They may arrest any person they "reasonably suspect" supports an illegal organization, or any person who has participated in terrorist activity. An arrested person may be detained up to 48 hours, and then for five more days upon the authority of the secretary of state.

Of the 6,246 people detained between 1974 and 1986, 87% were never charged with any offense. Many detainees reported that they were intimidated during detention and prevented from contacting their families.

The Prevention of Terrorism Bill also makes it illegal even to organize a private or public meeting addressed by a member of a proscribed organization, or to wear clothes indicating support of such an organization.

The Act allows the government to issue an "exclusion order" barring a person from ever entering a particular part of the United Kingdom, such as Northern Ireland or Wales. Persons subject to this form of internal exile have no right to know the evidence against them, to cross-examine or confront their accusers, or even to have a formal public hearing.

The European Court of Human Rights has ruled the Prevention of Terrorism Act to be in violation of Article Five, Section Three of the European Convention on Human Rights, which requires suspects to be "promptly" brought before a judge. Nevertheless, the British government refuses to abandon its preventive detention policy, and evades the European Court's ruling by invoking Article 15's provision for countries to ignore the Convention on Human Rights "in time of war or other emergency threatening the life of the nation."

One of the most important lessons from Britain is that even huge restrictions on civil liberties do not long remain "sufficient" in the eyes of the

government. At least in regard to civil liberties, the Domino Theory has proven correct, as one traditional Anglo-American freedom after another has fallen under the government's assertion of the need for still more anti-terrorist powers.

In Northern Ireland, the right to trial by jury has been "suspended" for political violence cases; judges in the Diplock courts hear the cases instead. Confessions extracted through "the five techniques" — wall-standing, hooding, continuous noise, deprivation of food, and deprivation of sleep — are admitted as evidence without corroboration. Convictions may be based solely on the testimony of "supergrasses" (police informers). Wiretaps no longer require even judicial approval.

In 1988, the Thatcher government enacted additional laws restricting civil liberties. Television stations were forbidden to broadcast in-person statements by supporters of a legal political party, Sinn Fein. The ban even applied to rebroadcasts of archive films taped many decades ago, such as footage of Eamon de Valera, the first president of Ireland. A confidential British Broadcasting Corporation memo announced the government's intention to keep journalists from

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*The most important thing the government can do to prevent terrorism is to not practice it.*

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broadcasting any statement by U.S. Senator Edward Kennedy supporting Sinn Fein. BBC radio even banned songs protesting the U.K.'s Ireland policies.

As in America, gun prohibitionists hitched their wagon to "anti-terrorism" with little regard for an actual terrorist nexus. Although British laws regarding possession of actual firearms were already severe, the Firearms Act of 1982 introduced restrictive licensing for imitation firearms that could be converted to fire live ammunition. The sponsor of the new law promised that it would help stem "the rising tide of crime and terrorism," although there had never

been a crime or terrorist act committed with a converted imitation weapon.

A suspect's decision to remain silent under interrogation may now be used against him in court. Although terrorism in Northern Ireland was the stated basis for the change, the change also applies in England and Wales. No one who has seen Great Britain's slide down the slippery slope can feel confident that repressive measures introduced solely for terrorism will not eventually seep into the ordinary criminal justice system.

The first time the Prevention of Terrorism Act was used was after another pub bombing, in the English town of Guildford. Four people were arrested, held incommunicado in prison for a week, and coerced into false confessions through administration of drugs and threats against their families. While the "Guildford Four" were being held, the police fabricated evidence against them. Although already imprisoned members of the Irish Republican Army confessed to the Guildford bombings, the Four were tried, convicted, and sentenced to life in prison. Several leading English statesmen, including Roy Jenkins, felt that the defendants had been framed. A campaign to free them continued for 15 years, until, upon discovery of police notes of fabrication of evidence, the Guildford Four were released.

The Birmingham bombings that had led to the Prevention of Terrorism Act resulted in the conviction of a group of defendants called the "Birmingham Six." Amnesty International charged that their confessions were extracted under torture. The forensic scientist whose testimony convicted the Birmingham Six later admit-

ted that he lied in court. The Birmingham Six confessed while being held incommunicado by the police; the various confessions were so factually inconsistent that they could not have been true. Civil libertarians fear that the Birmingham case is only one of many instances of police obtaining coerced confessions.

The Birmingham Six were also eventually freed. Britain, fortunately, has no death penalty. In America — where, before anyone had even been indicted, President Clinton announced that the perpetrators of the Oklahoma City bombing should be executed — the federal death penalty means that any vindication of persons wrongfully

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*The battle over the terrorism bills showed the increasing clout of a new Bill of Rights alliance.*

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convicted of terrorism might be post-mortem.

To state the obvious, all of Britain's "anti-terrorist" legislation has hardly immunized that country against terrorism. But Britain has, in two decades, eviscerated the magnificent structure of liberty and limited government that took over a millennium to construct. Britain was once the freest nation in the world; today, it is one of the least free in Western Europe. No matter how great a country's tradition of liberty, its freedoms can be lost in less than a generation.

### Practice What You Preach

Contrary to some militia rhetoric, the United States government is not a terrorist conspiracy. But it too often behaves in a terrifying manner, leading a majority of the American people to fear their own government. The police excesses documented in recent years demonstrate that a culture of lawlessness, militarization, and violence has permeated far too

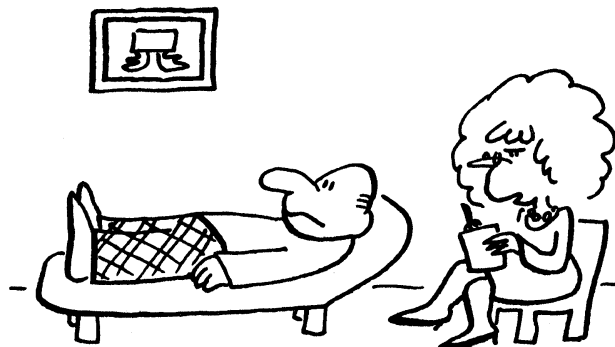
much of American law enforcement.

Ultimately, the most important antidote for almost every civil liberties problem discussed above is the same. The federal government should get out of criminal issues that it has no authority over in the first place. The Constitution specifically authorizes federal enforcement of only two types of laws, both of which involve uniquely federal concerns. The first is based on the congressional power to "provide for the punishment of counterfeiting the securities and current coin of the United States." The second involves the power to "define and punish piracies and felonies committed on the high seas, and offenses against the law of nations." Although currency and the high seas clearly involve areas of federal, not state concern, the authors of the Constitution felt a need specifically to authorize congressional law enforcement regarding these matters. Given that need for specific authorization, it is hard to justify Congress arrogating to itself vast criminal powers from the "necessary and proper" clause, the interstate commerce power, and the taxing power.

Most of the federal government's criminal law jurisdiction is built on an intellectual foundation of sand. Perhaps one day it will be swept away by jurists committed to the text of the Constitution rather than the political trends of the hour.

In the meantime, the most important thing the government can do to prevent terrorism is to not practice it. Without the unjustifiable, illegal, militaristic, deadly federal violence at Ruby Ridge and Waco, there would be no militia movement. If Ruby Ridge had led to a real investigation and genuine corrective measures instead of years of coverup by both the Bush and Clinton administrations, followed by grudging, ersatz reforms, America would be both safer and freer.

When the federal government, especially the executive branch, stops demanding new powers and starts exercising its existing powers in a responsible and lawful manner, we will see a massive reduction in the tension between it and the American people. Our government should be a trusted servant, not a terrifying master. □



"Sex, sex, sex — you men are all alike!"

## Investigation

# Witch Hunt in Wenatchee?

*by Kathryn Lyon*

Something is terrorizing Wenatchee, Washington. Is it a dangerous sex ring — or a new Inquisition?

Wenatchee and its neighbor, East Wenatchee, coil around the confluence of the Columbia and Wenatchee Rivers at the eastern foothills of the Cascade mountain range. The two Washington cities bask in abundant sunshine, muzak on main street, and apparent community well-being.

Yet beneath this idyllic mask, Wenatchee has been the site of a wave of child sex abuse prosecutions over the last two years. Dozens of people have been imprisoned for bizarre sex crimes. But, on closer examination, it is possible that the real criminals may be the prosecutors.

If you believe former Wenatchee Child Protective Services (CPS) caseworker Juan Garcia, or former Wenatchee Child Welfare Services (CWS) caseworker Paul Glassen, or Glassen's former supervisor Juana Vasquez, the prosecutors' search for the truth took a hike because of a long-standing prejudice — the government's paternalistic notion that Wenatchee's less fortunate kids would be better off in middle-class homes. Wenatchee and East Wenatchee are towns of great economic and social disparity. There are wealthy orchardists, and there are migrant workers; there are middle-class professionals, and there are people caught in a generational cycle of welfare. And a small but significant proportion of the locals is poor, disabled, or illiterate.

### **The Heart of the Scandal**

Central to the controversy are Wenatchee Police Detective Robert

Perez and his foster daughter, referred to in court documents as "D.E." Long before D.E. came to live with Perez, she had learned some hard lessons about the expectations of those in authority. In 1992, the then-seven-year-old girl told police and CPS officials that two six-year-old boys had struck her in the crotch with a stick or their hands. D.E.'s brother backed up her story, but the state didn't buy it.

Although no one had accused her parents of abusing her, D.E. was removed from her home, placed in the charge of a foster parent, and reminded that she would have to name an adult molester if she ever expected to go home. For a time, although it was officially acknowledged that D.E. "didn't do well in foster care," she stuck to her story. But eventually, D.E. accepted that no one wanted to hear about the first graders. After two weeks of separation from her family, D.E. was questioned at length and caved in, whispering to a teddy bear the name of a family friend: Abel.

Abel Lopez, an illiterate Hispanic, was brought in for questioning. Maybe D.E. touched him first, he was

told. Maybe she forced him to touch her. The court will go easier on you if you confess. After a few hours, a bewildered Abel at last said, "I guess if you say it happened then I'll take the blame for it." He told Officer Dresker that D.E. had taken his hand and put it to her vagina. Having satisfied the officers, Lopez asked in confusion whether he would have to go to court.

Although D.E. was returned home as promised, the local authorities continued relentlessly to intervene in the family. Ultimately, all five children were placed in foster homes. All five suffered from the separation, some acting out their anger and outrage to the point of self-mutilation.

First D.E. was placed with an unmarried foster parent, Robert Devereaux, who ran a group home for girls. She was unruly and disruptive, and Devereaux was forced to let her go.

D.E. was then placed with Detective Perez. No more than a month before, in January of 1994, Perez had been put in charge of the Crimes Against Persons unit, whose duties included investigating child abuse offenses. So, at the same time



that investigators' speculation about her family began to include allegations of incest, D.E. was turned over to the city's chief child sex crimes investigator. This apparently troubled no one within law enforcement.

Perez, a cop with twelve years of experience on the Wenatchee police force, was, critics claim, singularly ill-suited for the responsibilities of his job. In a 1989 performance evaluation,

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*Perez dominated the conversation with ribald humor and stories that, according to Glassen, were "extremely pre-occupied with sexual content."*

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Wenatchee Police Chief Kenneth Badgley and five other evaluators described Perez as "pompous" and "arrogant," a cop who appeared to "pick out people and target them." According to the evaluation, Perez "[p]resents an image of looking down on people, badgering them. . . . Gives the impression of wanting to trip triggers, likes confrontation and likes having power over people. . . . Is like a wound up wire ready to spring. . . . Is developing the reputation of being a hothead in the community." Strong stuff. But in the years that followed, Perez's evaluations improved.

And he had his allies. According to Garcia, Vasquez, and Glassen, Perez went to daily Division of Child and Family Services (DCFS) staff meetings, scanned confidential files and daily intake referrals, and aggressively marched into marginal cases that didn't meet CPS standards for family intervention. He worked closely with a small group of CPS caseworkers, including CPS Supervisor Tim Abbey, Dean Reiman, Pat Boggess, Laurie Alexander, and Katie Carrow. Carrow often joined Perez while he interviewed children. She later reflected to the *Seattle Times*, "I know without our intervention these children would be leading lives of abuse and mental illness. I've had some time to think about it, and I'm real comfortable with what we did — all of it."

Perez agreed, saying with pride

and modesty, "I'm no better than any other investigator. I just asked the next question."

Actually, it was a series of questions. Perez soon learned the value of pitting one person against another, be they child or adult. According to many sources, Perez would confront his subjects (most of them vulnerable because of youth, poverty, minority status, or mental or emotional problems) with what he "knew," intuitively or from the statements of others. Then he would persistently urge them to name witnesses and multiple victims and perpetrators to support his "knowledge." Sources describe Perez's interrogations as a brutal combination of threats (life in prison, never seeing a loved one again) and promises of extreme leniency. Not surprisingly, the list of victims and suspects grew and grew, confirming the expectations of Perez and the caseworkers.

"When I was a child, it was a stranger in the park, maybe an uncle, but never this," Perez told a reporter from the *Seattle Times*. Now husbands and wives were in it together, using their own children as sex toys, swapping them around. "Most of them had nothing to do but collect monthly welfare checks and try to figure out ways to entertain themselves. Unfortunately they decided to entertain themselves by having sex with their children and other people's children."

But Perez was willing to tread where more faint-minded investigators had not. "Nobody ever asked the question about mothers; it was too horrible. Mothers are supposed to protect their children." The crusading detective had no such reservations, and soon asked the big question about Cherie Town.

Following a domestic dispute, Cherie had turned in her husband, Eugene, as a child molester. Perez questioned the Towns' two sons, who described an ongoing pattern of molestation by their father. Then Perez got to wondering what Cherie had been doing all that time. Perez asked Eugene about Cherie, reminding him that she had got him into this mess in the first place. After a time, Eugene acknowledged that Cherie regularly had oral sex and sexual intercourse with the boys.

On April 5, 1994, at 9:00 a.m., Perez

and two CPS caseworkers confronted a confused and alarmed Cherie Town at her home. One of the caseworkers, Juan Garcia, observed part of the interrogation that took place when Perez told Cherie to step out into her yard. According to Garcia, Town was crying and obviously nervous and afraid. Perez paced back and forth, waving his finger at Cherie, swearing and calling her a liar. Garcia had known Town for years and felt that she was extremely vulnerable, because of her poverty, severe mental impairment, and history of losing encounters with authority. She was the type of person, Garcia told me, who would cooperate with authority in any way, particularly if someone raised his voice.

According to Town, Perez told her, "I've heard the stories that you've molested your children. I know they're true. If you don't confess to it, I'll make sure you spend the rest of your life in prison." Perez told her she had had sex of every description with her children. He told her there had been witnesses. When she denied it, Perez snapped at her, "Well, you're lying to me. I have

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*As with all of the cases that followed, Perez's interview wasn't recorded; any notes that might have been made were destroyed.*

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the information and it's from more than one person, so I know you're a liar."

And then, so abruptly that it stunned her, Perez's voice became kind. "I'll tell you what," Town alleges he said. "I know you have a drug or alcohol problem. I'll talk to the judge and we'll get you in a rehab program and shorten your sentence."

After close to an hour of questioning at her home, Perez took Town to the Wenatchee police station, where, according to his report, he questioned her from 11:15 a.m. until 5:00 p.m., then booked her into the Chelan County Regional Jail. As with all of the cases that followed, the interview wasn't recorded; any notes that might have been made were destroyed.

The way Town tells it, Perez barged her with what he "knew" to be true and what would happen to her if she didn't confess. At last she began nodding her head and acceding to his accusations. Perez was typing at his keyboard, according to Town, long before she'd reached the point of "confession."

"You're gonna feel a lot better now," Perez allegedly reassured her.

The statement was unusually graphic — far more graphic, in fact, than anything I ever saw in my long experience as a public defender specializing in sex abuse cases. According to the statement, Cherie made a running commentary on positions, acts, and experiences in language that was, to put it mildly, shocking. As Town's attorney pointed out in an unsuccessful bid to suppress the confession, the words far exceeded Town's level of intellectual functioning. (Indeed, the confessions Perez later extracted from other mentally limited defendants bore astonishing similarities in language and graphic detail.)

Judge T.W. "Chip" Small disregarded evidence that Town's IQ had been tested as 77 and that she had completed only the tenth grade in special education classes. He found that "Cherie Town is a person of at least average intelligence and . . . she was capable and able to understand her constitutional rights . . . and in fact did knowingly and voluntarily waive these rights." At this point, Town's conviction was inevitable.

Many similar confessions were to follow.

### The Season of the Witch Hunt

It was a time ripe for "disclosures." Many of these had their origin in statements from Perez's foster child, D.E. Although Perez would later testify that it took as long as five or six months for D.E. to "bond" with him, even then the course wasn't easy. D.E. would sometimes fly into rages, throwing things and generally disrupting the Perez household. Several times, Perez and his wife Luci threatened to have D.E. removed from the home. Sometimes the threats were carried out and, as Perez would testify, D.E. "was taken away for a short time to help her deal with her anger." The threats and

removals would be followed by more "disclosures."

First to be accused were her parents, Harold and Idella. Idella's IQ has been variously tested to be somewhere between 58 and 68. Harold is totally illiterate. In an interview, Idella said that Perez interrogated her for over four hours, telling her things he "knew" to be true, swearing at her, calling her a liar. On several occasions,

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### *The confessions Perez extracted from mentally limited defendants bore astonishing similarities in language and graphic detail.*

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she expressly asked for her attorney by name. Perez told her that she didn't need an attorney. Idella eventually caved in and signed a statement. In light of her intellectual problems, a Wenatchee judge ordered that Idella undergo a competency evaluation. She did, but before the results became known to the court, she had pled guilty to reduced charges on the advice of her attorney. Harold also pled guilty on his attorney's advice and was sentenced to 23 years, four months.

And then, according to Perez's report, on January 20, 1995, at 7:30 p.m. — nearly D.E.'s bedtime — D.E. approached her foster parents and said she wanted to talk. "We sat there, we sat and listened and I didn't take notes because I was a parent, not a policeman then," Perez said to the *Seattle Times*. "Luci and I comforted her, believed her.

"It was hard for her," he went on. "She was curled up in a ball under the coffee table."

In his report, Perez claims D.E. said that she and several other children had been raped by several adults. The kids would be made to undress and to have sex in groups with the adults, until it was the next group of kids' turn. It happened at her home and the Town home, and at the home of her prior foster parent, Bob Devereaux.

The Devereaux foster home was a particular sore point with Perez. Devereaux had maintained his group

home for girls after he and his wife Maxine divorced. Prior to that point, Devereaux had been considered a paragon of foster parenting. But once he became single, he was suspect in the eyes of Wenatchee government officials. In an interview, Devereaux said that CPS Supervisor Tim Abbey warned him, "It doesn't look right, you, a single guy, around all those girls." Men in that position can give in to their impulses, Abbey stated flatly. Devereaux protested that he had strict rules about modesty and that he had neither the inclination nor the lack of self-control to be a molester, but Abbey was concerned.

So, apparently, was Perez. "My suspicion started with a gut feeling," Perez told the *Seattle Times*. "Devereaux brought a girl into the police station. He wanted me to tell this child she shouldn't have sex with her boyfriend. But the way this came across, it wasn't so much that he was doing it as a concerned foster parent, but that he was jealous." And Perez's suspicions grew. "Then I would see him out driving in his car and it would appear more as a social relationship than a parent-child relationship. . . . Then a child said he'd allow them to sit on his lap and drive the car. And that didn't sound right either."

Whether Perez had in fact heard the last statement or merely surmised it, it grew in his mind. One day at lunch, surrounded by potted plants and plates of half-eaten food and cops and caseworkers, Perez became expansive. Among the caseworkers were Juan Garcia and Paul Glassen. Glassen was surprised that Perez dominated the conversation with ribald humor and stories that, according to Glassen, were "extremely preoccupied with sexual content." Many of the jokes and stories targeted Devereaux.

As Glassen tells it, Perez said, "Some of these children are old enough to drive. I'll bet he teaches them to drive." Perez then allegedly raised his hand toward his crotch in a mocking imitation of Devereaux. "Come on honey, sit here on my lap and grab this stick shift."

Months later, D.E. related that sometimes she had to "sit on his lap and steer the car" while Devereaux fondled her. Her words spoke volumes

about either Perez's perceptiveness or his ability to influence D.E.

In the early months of 1995, the Perez household went through more cycles of tantrums, removals, and "disclosures." D.E. told Perez and his wife about molestations by an ever-growing group of adults and children. The conversations would take place "about every night," Perez later testified, or at least "up to 48 times. . . . She talked and I listened." He added that it was "great" therapy. "We thought it was great she was getting it out."

But it soon became hard for a cop who kept no notes, even one with a prodigious memory, to keep the facts straight. "It got to the point because there were so many that she wanted to talk about as time went on, this was after ten months or eleven months in our home, that I would tell her, 'Look, if you want to tell me about something you tell me about one or two tonight, and then that's it for now,'" Perez told *Dateline NBC*. "'There were just too many,' [D.E.] would say."

On March 13, 1995, Perez found a solution to sort out the confusing facts. It was a Monday, but he kept D.E. home from school. Along with two caseworkers, he took her on a drive. The expedition wound around her old neighborhood to the southern part of town, then across the bridge over the roaring confluence of the Columbia and Wenatchee rivers, to the diminutive but sprawling community of East Wenatchee.

Now and then, D.E. would press her stubby finger to the glass, pointing out locations where she had been raped in orgies between January 1988 and March 23, 1994. D.E. would point to a house, and the adults in the car would jot down the address because, *now and then*, it pays to take notes. All in all, D.E. pointed out 22 locations. Of these, the authorities were most interested in the Devereaux home; the home of Pastor Robert Roberson and his wife, Connie; and Roberson's East Wenatchee Pentecostal Church.

Roberson was another man who had been raising the government's hackles. For months now, he had been conducting his own investigation, resourcefully gathering documents, speaking out in public against Perez's activities, even attending Idella's sen-

tencing and speaking up on her behalf. According to Roberson, when he left the sentencing, Perez said to him, "We warned you, Roberson. We warned you."

On March 24, the day after D.E.'s drive through town, she got to miss school again. In a six-hour marathon session, she sat with Perez, Kate Carrow, and another CPS caseworker and described a history of molestation

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*Now and then, D.E. would press her stubby finger to the glass, pointing out locations where she had been raped in orgies.*

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that would fill 16 pages of Perez's typed Incident Report. The events started when she was but two years old, she said. At first, they involved just her grandparents; then her parents and brothers and sisters joined in. D.E. went on to describe groups of about 15 adults who would meet at various homes and swap kids. Men would do "the wild thing" to the girls and the women would penetrate the girls with their fingers. "Then they would change kids and start over."

It would happen several times a week. "Bob Devereaux would come over in the mornings and a man named Paul Glassen who worked at CPS," D.E. purportedly said. Both would do "the wild thing" to all the children. Roberson would visit often. "He did 'the wild thing' to me. He came lots of times to my house; maybe six times a week."

At the Devereaux home, D.E. related, there were many adults and at least twelve kids. Kids would go upstairs in groups of six, while the rest had to remain downstairs watching pornographic movies. Upstairs, D.E. said, they would go to a bedroom with six beds constructed from bunk-beds that had been taken apart. The adults undressed, got in line, and took turns having intercourse with each child. After every adult had had a turn with every child, the next group of kids would be brought upstairs for the same treatment. "We would keep on

going upstairs and back downstairs. This happened during the day and at night."

The Robersons, according to D.E., would touch children at their home, often after swimming parties. Robert did the "wild thing" with the girls and fondled the boys. Connie did the "wild thing" with the boys and fondled the girls. A lot more kids were molested at the church. "That's all I can remember right now," said D.E., ending the interview.

But not for long. As Perez drove her home, D.E. pointed to a man walking along the sidewalk. "That's Frank," she said, according to Perez's report. "He abused us too."

Perez was outraged. "Child molesters are the lowest form of life," he would later tell *Dateline NBC*. "They prey on little children who cannot defend themselves. I'm not the best investigator in the world but I will take up the cause of these kids and I will believe them and I will defend them. I'll never be able to arrest every child molester. I'll never find out who every child molester in Wenatchee is; I don't have any illusions about that. But what I will do for the time I'm at this desk, I will do my best to see they're all rounded up, the ones that I'm made aware of."

By the time of D.E.'s massive drive-by disclosures, a drive that came to be known among critics of the investigation as the "Parade of Homes," Perez was well on his way. By then, Devereaux had long since been arrested.

On July 30, 1994, Devereaux had allowed his girls to camp out in the back yard. He set his alarm to go off every couple of hours, to check on them. The last time, he found one of the girls in the tent with her boyfriend. It was A.R., a girl with mental disabilities secondary to fetal alcohol syndrome. The party was over.

Also over, Devereaux announced, was A.R.'s relationship with her boyfriend. A.R. was furious and, when she got the opportunity, laced Devereaux's soft drink with iodine. Devereaux noticed it after a tiny sip and A.R. confessed. In accordance with the legal requirements of foster care, Devereaux notified CPS, who, in turn, called the police. A.R. was questioned, made a

statement, was taken to the juvenile detention facility, and was charged with assault. The iodine bottle and some other items were placed into evidence. A.R. was arraigned and appointed an attorney. The case appeared to be closed.

And then Perez heard about it, and decided to test his theories. Although he was assigned to a different police unit, Perez interrogated A.R. at juvenile hall. According to Perez's report, A.R. disclosed that Devereaux had molested her and others. But she later said that Perez "was putting words in my mouth, mixing things up." He questioned her repeatedly, trying to get her to acknowledge these things. According to A.R., the questions "made me feel low about myself." She said that she felt scared and "intimidated," and that Perez was "in my face."

At last, A.R. said, she broke down and started to say the things she knew Perez wanted to hear, hoping that her words would put an end to it, that he would leave her alone. "It didn't feel right in my heart," she said.

Devereaux was arrested that afternoon; Perez hauled him down to the station, leaving the foster children unattended. Paul Glassen, a CWS caseworker with 28 years of experience in

fastly denied that Glassen had coerced her into recanting. Glassen was then charged with obstructing a public servant. When a pro-tem judge dismissed that charge for lack of evidence, Glassen's name started appearing in statements given by children and adults who "confessed" after interrogation by Perez.

Glassen was placed on paid administrative leave as soon as he was accused of witness-tampering. So was his supervisor, Juana Vasquez, who had defended his actions. So was CPS caseworker Juan Garcia, who had frequently and loudly argued that Devereaux had been set up. After around twelve months of leave, they were all fired. Glassen took his young son and his wife, Suzanne, and moved to her homeland, Canada. He believed — with good reason — that his child might otherwise be placed in foster care and forced to undergo the familiar "disclosure"-seeking procedures.

A.R. was later brought down to the CPS offices so that Perez could question her further. Her then-foster parents, the Rutherfords, had researched the law and learned that A.R. had the right to ask that an adult be present while she was interviewed. According to Janet Rutherford, when she asked CPS caseworker Carrow if Janet and her husband or their lawyer could be present, Carrow was silent for a long moment. "It sounds like you have something to hide," she said at last. "Should we be investigating you?"

Perez questioned A.R. alone for over two hours, then threatened her with arrest on charges of false reporting. "I then asked her [if] what she had told me in August was the truth or not," Perez recalled. "She looked down and after a few seconds, said, 'I was lying.'" According to A.R., Perez threatened to put her in juvenile hall immediately unless she went back to her original statement. She refused, and was awarded with a stretch in a facility for children with severe behavioral problems.

To the authorities, such recantations mattered little, now that the circle of accusers had grown. The police routinely urged kids to list multiple victims, perpetrators, and locations. Although dozens of children had been named as victims, Chelan and Douglas

County police and prosecutors didn't bother talking to most of them. Instead, they decided that a small core group of six or seven child witnesses was sufficient to prove their cases. Two, D.E. and her sister M.E., were now living with Detective Perez; another, A.S., had made false allegations of abuse in the past, naming a therapist, a teacher, and her foster parent of that time, among others. (In fact,

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*The stories became increasingly bizarre, including acts suggestive of Satanic rituals and acts defying the limits of human sexual stamina.*

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A.S. admitted in trial testimony that she had made up lies about being molested in the past to "get my own way.") Still other child witnesses were undeniably mentally unstable. All of the "reliable" child witnesses were closely contained — isolated, separated from their extended families, and kept with "helpful" foster parents.

### Cops and Robersons

With the passage of time, the stories became increasingly bizarre, including acts suggestive of Satanic rituals and acts defying the limits of human sexual stamina. In the Devereaux home, C.M. reportedly said, groups of men (some of whom "could have been females dressed up as males") dressed entirely in black and wearing sunglasses took turns having sex with each of the girls. Nobody said anything, and when they were finished, they just left.

D.E. and others interrogated by Perez said that in the Devereaux home, 15 or 20 adults had gone upstairs and stood in line to have sexual intercourse with as many children. Each man would have sex with each child. One proponent of this story was Larry Steinborn, a convicted child molester. Steinborn had been offered a "deal" — or, as a Wenatchee police report delicately put it, an "arrangement" — for his testimony. They would dismiss their charges against him if he agreed to identify and testify against others.

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*A.R. later said that Perez "was putting words in my mouth, mixing things up."*

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dealing with children, came to the home after one of the children called him. In an interview, Glassen said he was aghast that the children were alone. The next day, at the request of a juvenile probation officer, he went to see A.R., who was on his caseload, at the Chelan County juvenile detention facility. After a moment, A.R. blurted out to him, "I told a whole bunch of lies about Dad." She went on to describe how Perez had pressured her. Glassen took notes and, as soon as their meeting was over, reported her words to the authorities.

Within a day, Glassen was arrested for witness-tampering. But A.R. stead-

Not surprisingly, Steinborn agreed and, though never called upon to testify, received the benefit of the bargain.

Many of the more bizarre stories centered around the Robersons and the East Wenatchee Pentecostal Church of God. A.S. told an interviewer for the Douglas County Prosecutor's Office that she had been raped by Roberson and other males, usually in the church office. Women had penetrated her with crayons and pencils and other writing objects in the tiny ladies' bathroom.

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*When Sam kept denying the charges, she was removed permanently from school, strapped onto a gurney, and sent for five weeks to Pine Crest Hospital, a mental institution in Idaho.*

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A.S. produced a list of 19 adult perpetrators and nine child victims, prepared at the urging of — and with the assistance of — her foster parent, who also made certain editorial changes (adding names and details).

The list received a further workout when A.S. was interviewed by the police three weeks later, again at the instigation of her foster mother. This time, A.S. said, most of the names on the list were people who molested her at Devereaux's foster home. Most of the people on the list had "hurt" her and other kids, she explained. "Hurt," Officer Mike Magnotti clarified in his police report, meant that "objects had been inserted into the girls' vaginas, usually writing instruments and/or men's penises."

Among the listed suspects who had "hurt" A.S. were a "black lady"; Jon, who worked at a convenience store; and Bobbie, a former foster parent. After some investigation, Magnotti confronted A.S. at her foster home and "told her that I suspected she had not been truthful to me about some of her disclosures." A.S. quickly admitted that she had "made up" the black lady and lied about Jon, "due to the pressure of the case." A.S. said that the rest of what she had said was true but the person she thought was Bobbie could have been "her twin sister."

The Roberson case took on a new dimension when Wenatchee police interviewed Gary Filbeck. Like Larry Steinborn, Filbeck had a prior conviction for child molestation. Like Steinborn, Filbeck accepted a "deal" in exchange for his testimony. Ironically, Steinborn and Filbeck appear to be the only people previously convicted of molestation (or any felony) to be charged in the course of these events.

Perez interviewed Filbeck for several hours; at the end of that time, Filbeck, who is totally illiterate, signed a statement. According to this statement, Filbeck and his wife had quit the Pentecostal church the previous year, partly because "I wasn't getting nothing out of the Bible" and partly "because of all the stuff that was happening." And amazing stuff it was.

"We used to go in there, in the pews on the main floor and Robbie'd get the Bible out and tell everybody to start praying and Robbie'd call some little girl up and do it to her." ("Do it," Filbeck explained, meant sexual intercourse.) Pastor Roberson, Filbeck continued, would "be kneeling with his hands up like the Pentecostals do and he'd take the girl's clothes off and lay them down and do it to them right on the stage. He said that was the way to get the devil out of them. Everybody got excited and they'd start doing it, taking kids up and doing it." Filbeck said that he personally exercised more restraint than the rest. "I just fondled them, the ones he just got done doing it to."

"Robbie would say, 'Hallelujah, there goes the devil!'" Filbeck claimed. Roberson would then "pull it out," ejaculate on the child, and exclaim, "That's to wash the devil away!"

In a grand display, eleven vehicles from the Douglas County Sheriff's Office, the East Wenatchee Police Department, the Washington State Patrol, and the Washington State Patrol Crime Lab screeched to a halt in front of the Pentecostal church on March 28, 1995. Roberson was handcuffed and arrested in front of several volunteers and hundreds of clients for the food bank he operated out of the church basement. Connie was arrested at a community college she was attending.

Meanwhile, police and lab techni-

cians searched the Roberson house and the Pentecostal church, made a computer map of the church building, confiscated records and phone lists, took swabs of stains, and removed sections of carpeting, drapery, even walls. Police removed over 55 items from the church and conducted an inventory, which exhausted nine pages of the police report. None of the items was overtly sexual, but the police had high hopes for the stains, which "appeared to be body fluids." The eight-hour search was a spectacular, efficient, and thorough team effort — something that, according to all expectations, would do them proud.

Yet a little over a month later, Washington State Patrol serologist Kevin Jones revealed that he had tested all of the submitted evidence for the presence of semen and that all of the tests had come up negative. No incriminating tapes, documents, computer programs, or sex objects were ever recovered.

The police did not reveal Jones' lab results to the defense for several months.

As the Robersons' trial approached, Douglas County prosecutors found a

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*Some clue to Judge Small's opinions might be gleaned from his comment that he wouldn't agree to be interviewed about the trial in progress until "after the sentencing."*

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way to deal with the absence of semen. "The pastor," they explained, "at no time ejaculated." This, of course, contradicted the statement given by one of their key witnesses, but that wasn't a problem, because by then Filbeck's story had changed.

Shifting strategies in light of witness recantations was nothing new to these police and prosecutors. It was with confidence that Chelan County Deputy Prosecutor Roy Fore announced in April of 1995 that "[i]t looks like the circle is growing larger." Douglas County Sheriff Dan LaRoche confirmed that many more arrests were pending, and Wenatchee Police

Sergeant Sherie Smith added that her department was looking at a possible 50 suspects. "We've only reached the tip of the iceberg," Smith told a reporter from the *Seattle Post-Intelligencer*. "Stay tuned."

## Dissent and Retaliation

Critics were urging the media to "stay tuned" as well. Dissenters, some associated with a national organization called VOCAL (Victims Of Child Abuse Laws), had become outspoken in their complaints about police activities in the Wenatchee area. A member of the group spoke with K.A. about a four-hour coercive interrogation by Perez, and captured the interview on videotape. At one point, K.A. recounted, Perez picked up the phone and instructed police to arrest and jail her mother. He then told K.A., "Well, you got ten minutes to speak now. Get it out and I'll stop that phone call."

VOCAL, through its local spokesman, Bob Kinkade, staged protests and rallies, filed a class action suit in U.S. District Court in Spokane, and called for the dismissal — and possible arrest — of Perez and the CPS employees who had assisted in the investigation. Kinkade said that Roberson had been arrested only because he had been critical of the police. And indeed, Roberson had been arrested within days of attending a VOCAL rally and showing the files of his independent investigation to Spokane television reporter Tom Grant.

As if to lend credence to Kinkade's allegations about retaliation, his own name started appearing with regular frequency in statements given by witnesses Perez questioned. When another VOCAL member, Bob Stewart, was named in the *Wenatchee World* newspaper, his name cropped up in police reports as well. Defendants such as Donna Hidalgo, Steinborn, and Filbeck were offered incentives to testify against Kinkade, Stewart, and former Wenatchee caseworker Paul Glassen, who had by then gone to the media with his concerns.

Even children who spoke out against the Wenatchee government risked retaliation. Consider what happened to 16-year-old Sam Doggett. First Perez arrested her parents, Mark and Carol. Then Perez came to

California, where Sam and her younger sister were staying with a family friend. The two girls were then transported back to Wenatchee — apparently without benefit of the legally required Interstate Compact Agreement — and separated from each other, after a terrible struggle at the airport.

When Sam kept denying the charges, she was removed permanently from school, strapped onto a gurney, and sent for five weeks to Pine Crest Hospital, a mental institution in Idaho. In an interview, Sam said that although she was purportedly hospitalized for being suicidal (a diagnosis she vigorously rejects), the subject of

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*When asked to point out his molester, J.T. pointed not to the defendant but to his attorney, Robert Van Siclen.*

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her therapy was victimization and denial. She was denied all the legal rights to counsel and hearing that would have been hers had she been civilly committed to a mental hospital under Washington state law.

After her release, Sam went to the media to tell what happened. Her life then became a hellish game of musical chairs. She was shifted from foster home to foster home, permanently kept out of school, denied contact with all members of her family, and threatened with juvenile hall. A day or two after her interview with me, she ran away.

Ironically, the Doggetts had come to police attention after Mark and Carol reported to CPS and to law enforcement that their son had fondled their daughter. Mark and Carol had wanted some help, believing that Child Protective Services meant what its name implied. Their concern in itself became suspect to the authorities. After their arrest, Mark and Carol Doggett consistently maintained their innocence. Sam's siblings were placed in therapy to help them "overcome" their "denial" and "recover" memories of abuse. Over the weeks, they made several "admissions" — and recanta-

tions. The latter would be followed by isolation: they would be separated, moved to different foster homes, and frequently taken out of school.

At trial, the children testified to Perez's coercive techniques. J.D. said that Perez had pressured him, called him a liar, and asked him the same things over and over. A.D. told a similar story about Perez forcing her to lie: "At first when I was meeting with Bob Perez, I told him no, that nothing happened; and he — he kept on asking me the same question over and over and over again but in different words, and . . . he wouldn't like really believe me that nothing happened, so I had to tell him something."

E.D. acknowledged that she had written a letter saying her parents had molested her. But, she continued, she had done this only because Perez had pressured her into it. Her therapist, Cindy Andrews, reported that E.D. had subsequently written her a letter recanting her statement and saying that Perez had told her "he had all today and all tonight and most of tomorrow to wait" until she told him what he wanted to hear.

M.D. said that she had denied that her parents had molested her for a long time, until Deputy Prosecutor Roy Fore told her "about the treatment thing." But she also testified that she had become convinced her parents had indeed molested her, and that she had lied when she said otherwise "because I was afraid that . . . we wouldn't be a family again."

Both Mark and Carol Doggett were convicted of molesting and raping M.D. and received a sentence at the top of Washington's standard sentencing range for the crimes: eleven years. They had opportunities to plea-bargain, most recently at the very conclusion of the trial testimony, when Chelan County prosecutors offered to reduce the charges to a single count each of child molestation, carrying a six-month sentence with credit for the substantial time they had already served, plus community treatment, if they would plead guilty. Mark and Carol refused, preferring, as they put it, to opt for integrity. Said Mark at his sentencing, "My feeling toward this is at no time has the prosecutor been interested in the truth. They had ample



opportunity but they were interested in conviction. I don't believe there can be justice without the truth."

Chelan County officials would put it otherwise, pointing to statistical mileposts of success as proof of justice done. By the end of 1995, 18 defendants had pled guilty on the advice of their public defender; most of these had confessed upon being interviewed by Perez. Ten more were convicted after trial. Some of them received sentences upwards of 40 years. On the other hand, eleven felony cases had been dismissed, including Devereaux's. Devereaux had been arrested on 670 counts and faced a potential eight life sentences. In the end, he pled to enormously reduced misdemeanor charges carrying no jail sentence: misdemeanor assault for once spanking a foster child, and obstructing justice for warning a man that he might be arrested.

Still, the conviction rate was impressive. "These statistics, I think, speak for themselves," Chelan County Prosecutor Gary Riesen told the *Washington Post*. "As a prosecutor, I'm comfortable with my belief that we had sufficient evidence of probable cause to file these cases and get these kinds of results."

### Meanwhile, in Douglas County. . .

Neighboring Douglas County couldn't make the same claim. Pentecostal Sunday School teacher Hornah Sims was acquitted in half an hour by a jury outraged that she had even been brought to trial. The Robersons' approaching trial looked increasingly shaky. D.E. was now so emotionally disturbed that she was hospitalized, and could no longer be expected to testify. And the other child witnesses and Gary Filbeck had altered their stories, and nearly all church members denied knowing of any abuse. Finally, the county police and prosecutors were becoming uncomfortably aware of the massive national criticism that had by now been directed at Perez.

But the prosecution persisted. Douglas County officials claimed that there were vast differences between their investigations and those pursued by Chelan County. They did this by

disavowing reliance on the huge body of investigative materials and witness statements turned over to them by Perez — and, above all else, by simplifying the cases.

Separating themselves from the confusing mass of improbabilities, inconsistencies, changed stories, and recantations that had become the very fabric of the "sex ring" investigations was no easy task. But try they did. In an interview, Douglas County Prosecutor Steve Clem said that he didn't "view the [Roberson] cases as a

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*In the course of his coverage, reporter Tom Grant was himself accused of molestation.*

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sex ring." Instead, he said, they were "individual acts." He told me that he was "not aware of any group sex," although some of the acts might have been performed "in the presence of each other."

"Let's say you're a prosecutor," Clem put to me. "You have a choice: close your eyes or seek a determination of whether there has been touching." Ultimately, in Clem's view, it was the jury's responsibility to sort this mess out. But Clem tried to narrow the odds of success by amending the charges on the very eve of trial, adding victims and new facts to support the current witnesses and trial theories.

The Robersons' trial took several weeks. A few kids testified against the couple, including C.M., who admitted on cross-examination that she had earlier falsely accused a stepfather of molesting her. In the Robersons' case, she insisted, the molestations *had* occurred, although she had previously denied it because "I pushed it so far down inside of me I didn't remember it at that time." C.M. added that therapy had improved her memories. "I used to be closing doors. Now I'm opening them."

Another prosecution witness was J.T., who said he had been molested at the Pentecostal church. When asked to point out his molester, J.T. pointed not to Robert Roberson but to his attorney, Robert Van Siclen. R.R., the Robersons'

young daughter, soundly denied that either of her parents had molested her. Although D.E. did not testify, her statements were introduced through hearsay testimony. Some of the witnesses' statements were "supported" by disputed or ambiguous medical evidence. Prosecutors displayed a computer chart detailing the police's thorough search of the church — the search that had availed the prosecution of nothing. Filbeck testified in a halting, childlike way; his testimony contradicted his original statement. When asked to define a "lie," he was stymied.

Then it was the defense's turn. Judge Small refused to let defense experts refute the medical evidence or discuss such concepts as "memory" or "suggestibility," because such things were "within the province of the jury." Many other rulings were also unfavorable to the defense. (Some clue to Small's opinions might be gleaned from his comment to *Newsweek* reporter Mark Miller that he wouldn't agree to be interviewed about the trial in progress until "after the sentencing.") Nonetheless, it was soon clear that the state had a problem. The Robersons' attorneys, Van Siclen and William Parker, paraded in members of the Pentecostal church, one after the other, each of whom denied observing any nefarious goings-on. The Robersons staunchly testified that they were innocent.

And then the defense sprung their trump card, calling Robert Perez to the stand over the strenuous objections of the prosecutor and Perez's attorney, Patrick McMahon, who is also Wenatchee's city attorney. Perez testified to a hushed courtroom that on the morning M.E. had testified against the Robersons, he had grabbed her arm, causing a bruise. A few weeks previously, he admitted, he had grabbed M.E.'s arm, twisted it behind her back, forced her to the ground, and straddled her.

Stung, prosecutor Clem got in one last dig in his closing remarks. Although, he acknowledged, semen hadn't been found by the Washington State Patrol forensics team, some of the stains on the church floor were suggestive of organic matter, even bodily fluids. Maybe the church members urinated on the stage, Clem speculated.

Who could say what these people would do?

The jury quickly acquitted the Robersons of all 14 counts of child rape and molestation. Some of the jury later commented that the trial had degenerated into ugly and offensive name-calling. Worse, it was an evidentiary vacuum. Jury foreman David Fruit, an Orondo orchardist, told the *Wenatchee World*, "There were some of us on the jury that were very concerned and disturbed that neither the Douglas County sheriff nor the Douglas County prosecutors had invested any time or effort on determining the truth or falsity of the charges." Fruit added that the jury was offended by the prosecutor's "insulting" closing remarks and by his failure to investigate responsibly. "He said in court it's his responsibility to find the truth that would exonerate the innocent as well as convict the guilty. It seems he didn't do that."

The jury may have achieved some insight into what it is to be wrongly

accused. Said juror Wes Olinger, "when they were standing up and reading the charges, being not guilty, I really felt sorry for those people, for what they had to go through." Roberson, Olinger said, "looked broken. I almost felt like reaching in my pocket to give him money."

So, in early December of 1995, justice was approximated in one small courtroom, in one large and carefully scrutinized trial. The media folded up their notebooks and tripods and headed back to the distant cities whence they had come. But the story is far from over.

More than two dozen people, many of them with severe mental or emotional limitations, may be in jail today as a result of coerced confessions. More than 50 children remain in the limbo of foster care. One original "sex ring" case is still pending trial. An outspoken drug/alcohol counselor who is also an unmarried male foster parent — shades of Devereaux — has recently been charged on multiple victim

counts of communicating with a minor for immoral purposes. Countless defendants who were fortunate enough to escape conviction now face financial, social, and professional ruin. And the spirit of government repression remains intact.

### Against the Grain

In late September of 1995, I completed an approximately 200-page account of my investigation, titled *The Wenatchee Report*, describing alleged civil rights violations by officials involved in the investigation and prosecution of the sex cases. I sent copies to various national civil rights organizations; to a handful of politicians, including Washington Governor Mike Lowry; and to the U.S. Attorney's Office for the Eastern District of Washington State, which forwarded it to the U.S. Department of Justice in Washington, D.C.

On October 3, 1995, Governor Lowry wrote U.S. Attorney General Janet Reno requesting a federal review

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of the Wenatchee-area sex ring prosecutions. Nearly two months after the Roberson trial had ended, Reno announced her decision: that there was insufficient evidence of "prosecutable civil right violations" to merit federal investigation. Although such is not a requirement of the law, Reno explained that, "typically," Justice investigates only allegations involving "physical force," as opposed to "psychological coercion."

The decision disturbed me, but not because I had held out much hope that Reno would decide otherwise, given her history of zealously prosecuting similar cases. I was concerned because I had learned from reliable sources that the most extensive document Reno reviewed — and the sole source of critical concerns — was *The Wenatchee Report*. Although my report was clearly intended to be preliminary, neither Reno nor the Justice Department interviewed any Wenatchee officials, defendants, witnesses, children, or critics.

The Wenatchee government quickly announced that it had been completely and thoroughly vindicated. To be on the safe side, a consultant, Don Van Blaricom, was called in at a cost of \$1,850. Van Blaricom is a retired police chief from Bellevue, Washington who for years has made a substantial living from expert witness consultation on the propriety of police activities. He spent one day interviewing four police officers (Perez, Chief Badgley, and two others) and reading *The Wenatchee Report*. Van Blaricom did not talk to any witnesses, children, or defendants; nor did he review any police reports, transcripts, or other documentation.

Instead, he assessed the relative

credibility of the police and the critics, whose concerns, he claimed, were all neatly set out in *The Wenatchee Report*. At a news conference, Van Blaricom said the report had "no credibility in it" because it relied on "disgruntled employees" and "people who pled guilty or were found guilty in court after all the protections of the criminal justice system." (In fact, many of the witness statements on which *The Wenatchee Report* relied were not from people who had been convicted or even accused, and the report was based in large part on Wenatchee police reports, court transcripts, and other official documentation. Unlike Van Blaricom's investigation, my report took four months to complete.)

Perez and his colleagues, on the other hand, were entirely credible, said Van Blaricom. Van Blaricom acknowledged that police are frequently called upon to lie in order to extract confessions — indeed, that cops have "a duty to lie" because such is a badge of good police work. Yet, he said, cops cannot lie convincingly about themselves and indeed can only lie when it is "for good of God and country." Leading questions, psychological coercion of adults, and destruction of notes are similarly appropriate, even desirable police techniques if they get results, the expert continued. Nor was it a problem that Perez, in his dual role as chief investigative officer and foster parent, lived with key complaining witnesses.

Van Blaricom said that the only problems with the investigation were the result of a media "feeding frenzy," which led public criticism to get "out of hand." The media, he continued, were naive or misguided about the dynamics of group sex abuse. "It's probably happened in their own community as well but it's not been discovered by them."

Van Blaricom's "investigation" found its way to the governor's office in the form of a letter from Wenatchee's mayor and three city commissioners. The letter expressed their satisfaction with Reno's

decision (which they wrongly construed as a finding that no civil rights violations had occurred) and Van Blaricom's conclusions. The writers urged the governor to discourage all requests for a state investigation.

This was communicated to me by one of the governor's lawyers. The governor wouldn't talk to me, he said, because "that would be taking sides." Yet Lowry *had* met with a delegation of prosecutors purporting to represent all prosecutors' offices throughout the state. Their position was simple: *Stay out!* Or, more accurately: *If there's a problem in Wenatchee, let us handle it.*

It was almost *deja vu*. A few weeks before, a delegation of prosecutors purporting to represent their colleagues appeared before state House and Senate committees to oppose legislation designed to safeguard the integrity of the child interview process. Let us police our own, was the message.

If Governor Lowry decides to support a state investigation, his lawyer added, "the battle lines will be drawn." I submitted a proposal for a multi-system investigative task force under the auspices of the governor's office, but I didn't walk away with a realistic hope that it would happen. In any event, I wasn't going to be part of the equation. "I'm gonna take a whole lot of flak for just talking to you," I was told.

And, of course, I knew where the flak was coming from — not only state prosecutors who resented my meddling with their brethren, but Perez and his legal representative, Wenatchee city attorney Pat McMahon, who had already expressed his contempt for me.

On February 2, a few hours after the Reno decision, I was served with a faxed copy of a subpoena to appear at a deposition and produce documents I had gained in the course of my investigations. The subpoena was from Perez, through McMahon, and purported to be in response to civil actions by three of the plaintiffs in lawsuits against Perez, the State of Washington Department of Social and Health Services, and certain named caseworkers and other government officials. (Similar lawsuits totaling around \$90,000,000 have been filed by various criminal defendants.) Also subpoenaed



"Frankly, the colleges are overstocked right now. How about leaving your brain to a high school?"

on that day were Tom Grant, a reporter from Spokane's KREM-TV who had relentlessly covered the investigations, and Bob Kinkade, VOCAL's outspoken spokesman. Working individually, the three of us have probably been most responsible for national awareness of the Wenatchee cases.

Grant's subpoena was quashed as overly broad. And Thurston County Judge Thomas McPhee ruled that my efforts were privileged, as the work of a journalist would be. (Though, interestingly, such privileges have not been applied in Washington to authors of journalistic nonfiction books, such as the one I am now writing for Avon.)

Kinkade was less fortunate. He underwent a deposition and was forced to name the members of Concerned Citizens for Legal Accountability, a grassroots organization that had sprung up in response to the prosecutions. He was also asked about ownership of computers and use of the Internet. Perez, it seemed, wanted to

find out just who were exercising their First Amendment rights to assemble freely and disseminate information.

In April of 1996, Grant was awarded the prestigious Polk Award for courageous journalism, based on his coverage of the Wenatchee sex cases. He most certainly deserved it if the government's response to him is any gauge: in the course of his coverage, he was himself accused of molestation. So, of course, was Kinkade. No doubt there is a police report out there with my name on it right now.

But maybe not because of allegations of child abuse *per se*. Perez claims I am part of a "conspiracy" involving child molesters, former DCFS caseworkers, defense lawyers, and the national media. McMahon told Judge McPhee that I should be placed under oath so that these associations could be explored, and that I didn't deserve to make a claim of privilege because I had been so low as to speak out against a government with its checks and bal-

ances in place.

Officials in Wenatchee have continued to retaliate against their critics. The Wenatchee Police Department closed down an Internet website operated by a grassroots group critical of the prosecutions, because it contained *The Wenatchee Report* and court documents critical of Perez; reopening the site was conditioned on excising certain documents. A woman who assisted the defense during the Roberson trial reports that Perez has "stalked" her for months.

And in March, Perez received Wenatchee's first City Employee of the Month award. He was selected based on several accomplishments, including his work with children. Indeed, according to the award paperwork, he likes to "romp with kids."

Interviewed by the *London Independent*, Perez said, "I'm very satisfied. I've made a major impact on the lives of these children."

There is no doubt about that. □

## Medianotes *continued from page 16*

options, rumors persist that he was tossed out. It seems quite plain that his left-liberal colleagues didn't much care for his conservative, quasi-libertarian perspective, or for his willingness to expand the boundaries of discussion within *TNR*.

Sullivan is adamant that he left voluntarily. "I quit entirely of my own accord," he wrote in London's *Sunday Times*. "I'd been editor longer than either of my two predecessors, and with 250 issues under my belt wanted to leave before I burnt out, not after."

But reports that he was fired persist, spread primarily by those who criticized his tenure at *TNR*, and I suspect there is probably something to this. *TNR* has long been, as Magnus Linklater put it in the *Sunday Times*, the "magazine which is the flagship of intellectual liberalism," so the choice of the young, gay, Roman Catholic, and rather conservative Sullivan was a controversial one.

Prior to his tenure, *TNR* was as dull as you'd expect "the flagship of intellectual liberalism" to be, consisting mostly of predictable pontificating. Sullivan changed that, bringing to *TNR* a variety of thoughtful viewpoints

while maintaining consistently high literary standards. Sullivan's *TNR* continued to serve up the tedious blather of Sidney Blumenthal, Hendrick Hertzberg, Martin Peretz, and Micky Kaus — sometimes it seemed like Michael Kinsley was its only liberal writer who wasn't brain-dead — but it also included occasional features from important and thought-provoking writers like Charles Murray and Elizabeth McCaughey, plus the fresh reporting and analysis of Ruth Shalit.

Shalit rose quickly from intern to featured writer, while reporting the ins and outs of politics in Washington, afflicting establishment liberals along the way. McCaughey wrote a *tour de force* critique of the Clintons' health care plan that may have done as much to defeat it as any single event. So it's not surprising that the writing of these women afflicted the leftist and center-left readers and staff of *TNR*.

But the reaction to Sullivan's choice to publish McCaughey and Shalit was nothing compared to what happened when he proposed to publish an essay by Charles Murray and Richard Herrnstein, adapted from their book *The Bell Curve*. Others at *TNR* were

apparently furious at the notion that it would publish a piece suggesting that there is such a thing as intelligence, that intelligence matters, and that there seem to be differences in the average intelligence levels of different racial groups. Sullivan ultimately prevailed, but Murray's essay appeared only *after* a collection of attacks on it was published.

It would be nice if Andrew Sullivan had emulated Sam Francis, who wrote for *Chronicles* a frank and enlightening account of his departure from the *Washington Times*. Instead he wrote a 2,000-word piece for the *Sunday Times*, consisting of a couple of brief paragraphs asserting that his departure was voluntary, followed by a lengthy defense of his editorial decisions. Its effect was to lend credibility to the reports that he had been fired, or at least had resigned under pressure.

Whatever the case, his resignation was a sad day for American political journalism. Sullivan transformed *TNR* from the "flagship of American liberalism" into America's most intelligent and best-written political magazine. My guess is that it won't take long for *TNR* to get back to its old ways. —RWB

## Report

# Behind These Bars

*by Jesse Walker*

You don't have to go to China to find prison labor.

On March 22, 1996, politicians, businessmen, and prison bureaucrats descended upon Tallahassee to learn about pork and PIE. The PIE is an acronym for Prison Industry Enhancement. The pork is the prisoners whose industry is to be "enhanced."

The occasion was a PIE Program Conference co-sponsored by Florida's Corrections Commission and Department of Corrections. There, attendees learned that over 122,000 inmates in 30 California prisons were now working for private contractors, doing everything from entering data to recycling waste. They listened to reports on similar convict-labor experiments in several other states. They heard Stan Czerniak, assistant secretary for operations at the Florida Department of Corrections, explain some of the advantages to hiring inmates: they arrive on time, aren't distracted by outside social stresses, and don't have any family commitments to keep them away from the job.

The prison-industrial complex has taken off in the last few years, driven on one side by desperate governments trying to cover the costs of an exploding inmate population, on the other by businesses looking for cheaper labor. In Arizona, 10% of the state's convicts now work for private corporations. In Oregon, felons make "Prison Blues," a special line of blue jeans, for the state-owned UniGroup company. In California, prisoners manufacture "Gangsta Blue" jeans

bound for Japan, where, the California Corrections authorities hope, hip-hopping teens will shell out big yen for pants made by honest-to-goodness gangsters. In Washington state, inmates labor for Microsoft, Starbucks, and other big-name companies; in the 1994 election, some found themselves telemarketing for Republican congressional candidate (and now congressman) Jack Metcalf.

Is all this good or bad? The case for "good" can sound compelling. It's absurd, the argument goes, for able-bodied convicts to do nothing but busywork for the state — or, worse yet, to be idle at taxpayers' expense. They should have to pay at least part of their living costs, and to compensate their victims. And work can rehabilitate. It can even teach valuable vocational skills. If American business benefits as well, how can anyone object?

Unfortunately, not much of this stands up to close analysis.

- Sure, it would be nice if prisoners were paying for their own roofs — but they aren't. Most states' convict-labor programs aren't even turning a profit, and those that do make money

aren't taking in near enough cash to cover the costs of imprisonment. Sometimes it's hard to tell whether even these "profit-making" prison enterprises are anything of the sort. They are often kept in the black only by sales at above-market prices to government agencies — a "profit" for the prison, but a net loss for the taxpayer.

- Restitution is a fine idea, but the current system doesn't deliver it. Instead of directly garnishing inmates' wages to aid their victims, most states put a percentage of *every* worker's pay — even those in jail for victimless crimes — into a general compensation fund that makes no effort to link one prisoner's labor to his particular victim's redress.

Of course, it's good that *some* restitution is taking place. But as we'll see, it's possible to make convicts pay for what they've done without getting tangled up in the extra problems the current model of prison labor creates.

- Work can rehabilitate, but a job's profitability doesn't necessarily correlate to its practical value beyond prison walls. The salient comparison here is to "workfare," the brand of

welfare reform in which the government requires people on the dole to work — and, if necessary, pays all or part of their wages. The employers get subsidized labor, the welfare bureaucracies stay in business, and the bureaucrats' "clients" rarely receive training of any use in the real marketplace.

Writing in *The American Spectator*, David Frum — a prison-labor supporter — acknowledges some more problems with the rehabilitation argument. "[I]t's possible," he writes, "that the cause-and-effect runs the other way round: that the prisoners most eager to mend their ways are the ones who sign up for work. And it's also possible, as one high-ranking California corrections official fears,

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*Thomas' frankness is refreshing. Rare is the politician willing to admit he dreams of a day in which the best way to find work is to kill somebody.*

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that the work most conducive to individual rehabilitation (he cites gardening) is the least remunerative for the state."<sup>1</sup>

- Convict labor is essentially a gigantic corporate welfare scheme: costs are socialized and only companies tied into the prison-industrial complex profit. Competing enterprises and workers lose.

Imprisoned workers have virtually no bargaining power with their employers, ensuring below-market wages.<sup>2</sup> In some cases, employers simply replace their entire workforce with forced labor; in 1994, for example, Lockhart Technologies closed its circuit board assembly plant near Austin, Texas, laying off 150 employees, and moved the entire operation into a nearby prison. Other times, entire firms become victims. The Utah Asbestos Abatement Contractors Association has sued Utah Correctional Industries for muscling private enterprise out of the state's asbestos-removal industry. "We find it ironic that they are putting an industry out of business that they are purportedly training people to

work in," Association attorney Steven Crawley told *Isthmus*, a weekly newspaper in Wisconsin.<sup>3</sup>

Not surprisingly, neither small business nor organized labor has much affection for convict-employment programs. But some politicians have decided that, if framed properly, prison labor could be a winning issue. Senator Phil Gramm endorsed it during his aborted presidential campaign. "I'd like to turn our prisons into industrial parks," he told the Heritage Foundation in May of 1995. "Every year since I've been in Congress, Jesse Helms, my dear friend, has offered an amendment to ban Chinese goods produced by prison labor. And every year I wonder why we can't make our own prisoners work." Americans were thus treated to the unsightly spectacle of a prominent Republican politician holding up Communist internment camps as a model for the U.S. economy. More recently, former Delaware governor Pete du Pont called for removing restrictions on prison labor in a brief essay published last November by the National Center for Policy Analysis.

### The Road to Industrial Policy

Once upon a time, it was practically unheard-of for prisoners *not* to work. In the nineteenth century, most American penitentiaries, state and federal, were virtually self-sufficient. Three-quarters of the inmate population was employed, largely by private contractors. Free workers objected to having to compete with "slave labor," and the government eventually responded. From 1895 to 1923, state legislatures steadily restricted the private use of prison labor. In 1929, the federal government chimed in with the Hawes-Cooper Act, which allowed states to ban intrastate commerce in prison-made goods. In 1936, the Walsh-Healy Act put limits on which government contracts could use convict labor. And in 1940, the Sumners-Ashurt Act banned the transport of prison-made products within a state for private use. After that, American prisoners manufactured goods for government buyers only, making license plates and the like. Only in the last two decades have these restraints been loosened at all.

Some analysts, such as Arizona

Assistant Attorney General Adam Peyton Thomas, argue that these laws were no more than protectionism. In *Crime and the Sacking of America*, Thomas describes historic opposition to prison labor as "grumbling from those in the lesser-skilled classes wishing to keep their wages artificially high."<sup>4</sup> That's an odd way to put it — when your competitors can't quit, can't organize, and are subsidized by the government, *they're* keeping *your* wages artificially *low*. Nonetheless, these laws did generally take a protectionist form, and may, as we'll see, restrict some more justifiable varieties of convict labor as well.

The political climate has changed dramatically since those laws were passed. The prison population has drastically expanded, increasing by well over 200% since 1980; today, with 565 out of every 100,000 citizens locked away, the U.S. has the highest incarceration rate in the world. One reason for this is new tough-on-crime measures, such as mandatory minimum sentencing and "three strikes, you're out"; another is the war on drugs. By the

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most recent counts, about 61% of federal prisoners and 21% of state prisoners are in jail on drug charges, figures that do not include those incarcerated for murders, thefts, and other crimes that would not have occurred in the absence of drug prohibition.<sup>5</sup> While it is popularly believed that the Clinton administration has cut back on drug enforcement, drug arrests have in fact reached record heights under the

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*Prison authorities hope hip-hopping Japanese teens will shell out big yen for pants made by honest-to-goodness gangsters.*

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Arkansas Democrat's watch. Bob Dole, Newt Gingrich, and other leading Republicans are calling for an even more severe crackdown; while they opposed much of the pork in the president's crime bill, their version of the law included many of the same features: expanded prison construction, mandatory minimum sentencing for nonviolent offenders, further federalization of law enforcement.

Not surprisingly, the burgeoning prison population has strained prison budgets, leading a growing number of states — 30 since 1990 — to legalize contracting out prison labor. While this hasn't made much of a dent in the cost of corrections, it has turned crime control into a perverse sort of industrial policy. Now, when politicians decide to mete out harsher punishments to nonviolent criminals, they aren't just wasting resources better spent stopping murders or rapes; they're recruiting workers for the prison-industrial complex.

There are those who both understand and welcome what is happening. Thomas, for one, offers a familiar-sounding, if grotesque, industrial-policy argument: "Prison labor today represents America's brightest, and perhaps final, opportunity to rebuild its industrial base. Prison labor would make available a pool of low-wage workers to the American capital that today is being sent to foreign markets. Entire industries could return to the

United States. . . . Prison labor thus stands to do much more than engage prisoners in activities that are more ennobling than weight lifting and sodomy. Prisoners can be the workforce for revitalized industries, bringing jobs back to America."<sup>6</sup>

Thomas' frankness is refreshing. Rare is the politician willing to admit he dreams of a day in which the best way to find work is to kill somebody.

### Labor That Works

None of this has any bearing, of course, on whether prisoners should work at all. A strong case can be made for allowing them to participate in the general economy — just not as they do now.

If one accepts that a criminal justice system should be based, to whatever extent is possible, on restitution, it makes sense to ask convicts unable to compensate their victims to work for the money they should owe. How can one do this without running into the problems just outlined? By letting inmates act, as much as possible, like any other participants in the labor market. Instead of companies leasing hordes of toilers from the penitentiaries, competing businesses would be able to hire individual convicts. A portion of their wages could help pay for the roofs over their heads, and a portion would go to their particular victims or their victims' families.

Obviously, this would be limited by practical considerations: no inmate is going to be allowed a position with the merchant marine. But there's no reason why security-conscious companies could not construct facilities specifically for prison employees, or why well-guarded convicts who do not pose a threat to other people (nonviolent property offenders, for example) could not work in the outside world. (Indeed, it can be argued that most property criminals needn't be locked up at all, at least as long as they meet their restitution payments. After all, we don't lock up divorced fathers to make sure they pay their child support. Imprisonment is both inefficient and cruel; its only really compelling justification is to keep dangerously violent characters segregated from the rest of society. The average vandal or petty thief is not dangerously violent, and

would be more usefully employed *literally* "paying for his crime" than living in a tax-financed cell.)<sup>7</sup>

Most importantly, prisoners should be able to work for themselves or for each other. The most extensive experiment along these lines took place at Maine State Prison in the late 1970s. For decades, Maine State Prison had had a crafts and novelties program. Originally, the inmates who worked in the state-run industries (license-plate-making, etc.) were allowed to use prison machinery for their own construction projects: lamps, novelty items, and the like. These were then sold to tourists at a popular prison store. Inmates were allowed to hire one another and pay wages in prison canteen coupons.

In 1976, Richard Oliver became warden, and the program was transformed. Oliver lifted limits on inmate entrepreneurship, sparking a boom in the prison's miniature economy. Businesses blossomed; small fortunes were made. One convict, Aaron Harrelson, took over the prison's canteen and started operating it at a profit. When administrators announced that they planned to fund the unprofitable state-run prison industries with a tax on inmates' novelty sales, Harrelson "offered to buy out the state operations

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*Convict labor is essentially a corporate welfare scheme: costs are socialized and only companies tied into the prison-industrial complex profit.*

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and state-owned equipment, to employ inmates to produce prison-industry goods on a profit-sharing basis . . . and even to pay the salaries of the shop's supervisory staff!" The authorities "didn't doubt Harrelson's ability to keep his promise," but rejected the offer.<sup>8</sup> The experiment ended on April 16, 1980, when higher-ups in the state prison system, frightened by the radical new approach to corrections unfolding before them, imposed a lockdown and brought the burgeoning micro-economy to a halt. (The full

*continued on page 42*

## Profile

# The Man With the Plan

*by David Boaz*

It didn't start with Hillary's health care project, and it didn't end there, either.

**Better sell your export stocks. Ira Magaziner's got a new project.**

The architect of Hillary Clinton's health-care debacle is now busily working on increasing American exports. If this project is as successful as his previous endeavors, we'll be importing grain from Russia by Election Day.

Magaziner is one of those baby-boomer idealists, inspired by President Kennedy's soaring rhetoric, who decided that smart young Ivy Leaguers could solve all the world's problems if only people had to obey them. His generational hubris has led him into a string of disastrous attempts to remake the world.

His best-known effort was the 1993 task force to reconstruct the American health care system. It was a heady time for a policy wonk suddenly given a taste of power. He organized 500 bureaucrats into 15 committees and 34 working groups to redesign in 100 days an industry as big as the economy of France. What they came up with was a Rube Goldberg scheme of agencies, alliances, boards, commissions, and gatekeepers that would effectively nationalize one-seventh of the American economy.

Fortunately, Americans retain some of the good sense our Founders had, and the plan was ignominiously

rejected after much national debate.

Magaziner must have been disappointed, but it wasn't his first experience with people who don't have his appreciation for complex, government-run plans. In 1984, he produced a 1,000-page report for a Rhode Island industrial policy to be called the Greenhouse Compact. It proposed a \$250 million, seven-year plan, including a state venture-capital fund, grants for job training, day care, and modernization, and four technology research centers. Brown University economist George Borts pointed out that a \$250 million plan in Rhode Island was the equivalent of \$60 billion on a national level.

The Rhode Island establishment loved it. And why wouldn't they? It promised lots of jobs for the boys. It had to be approved by the voters before it could be put in place, but the politicians were too greedy to restrain themselves before the referendum. Both the two leading Democrats and the two leading Republicans in the legislature appointed themselves to the supposedly nonpolitical oversight commission for the plan.

The national media converged on

Rhode Island, celebrating this concerted revival of activist government. They made Magaziner a minor national hero. Then the voters got their turn, and the Greenhouse Compact got a resounding vote of confidence from 20% of them.

Never one to be discouraged, Magaziner moved on. In March 1989, two Utah scientists announced that they had achieved nuclear fusion at room temperature. Within a month Magaziner was testifying before a congressional committee that it should invest \$25 million of taxpayers' money in cold fusion, because the Japanese were working through the night on it. The committee should gamble with other people's money, Magaziner said, "for the sake of my children and all of America's next generation." The taxpayers were saved four days later, when major newspapers reported that leading scientists called cold fusion "scientific schlock" and "maybe fraud."

The next year he worked with Hillary Rodham Clinton on a report on workforce skills for the National Center for Education and the Economy. The report called for

national performance standards, "a comprehensive system of technical and professional certificates," and federally assisted state centers to guide students. Work permits, contingent on meeting federal standards of workforce preparation, would be required for those up to age 18. All companies would be required to spend at least 1% of their payrolls on certified, accredited, union-approved skills training. On-the-job training would not count. Overseeing the program would be — you guessed it — "a system of employment and training boards."

That plan turned up again in 1992, in Bill Clinton's campaign platform, except he raised the mandated cost to 1.5% of payroll. Economist Larry L. Orr told Jonathan Rauch of *The National Journal* that "it would be a fairly monstrous thing" to monitor business compliance with the mandate. And small businessman David Flowers said that his auto-parts company trained all of its new hires, but in ways that wouldn't qualify for Clinton's mandate. Because of Labor Secretary Robert Reich's opposition, the plan was shelved early in the Clinton administration.

The biggest of Clinton's Magaziner Mandates, though, was one that got little attention. In a little-noted comment during the 1992 campaign, Clinton offered a breathtaking view of government's ability and obligation to plan the economy:

We ought to say right now, we ought to have a national inventory of the capacity of every . . . manufacturing plant in the United States: every airplane plant, every small business subcontractor, everybody working in defense.

We ought to know what the inventory is, what the skills of the work force are and match it against the kind of things we have to produce in the next 20 years and then we have to decide how to get from here to there. From what we have to what we need to do.

Since five-year plans didn't work, Clinton and Magaziner decided to plan more long-term. After the election Magaziner fleshed out this sweeping vision: defense conversion would require a 20-year "detailed organizational plan . . . to lay out how, in specific, a proposal like this could be implemented."

In all of these schemes, Magaziner displays a failure to appreciate the natural working of the market process; he can't see the order that emerges out of its undirected and apparently chaotic workings. He has the mind of an engineer. A GE executive recalls Magaziner, as a business consultant, taking

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*Magaziner organized 500 bureaucrats into 15 committees and 34 working groups to re-design in 100 days an industry as big as the economy of France.*

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"apart a television set, component by component," to understand GE's problems. Magaziner named his consulting firm Telesis, allegedly from the Greek for "well-planned progress."

That sort of planning and attention to detail makes sense for an individual or a firm. What Magaziner and his kind don't understand is that a society is not an enterprise. We're not all working for the same goal; indeed, our plans conflict all the time. They get sorted out in the marketplace. Competing for the hard-earned money of consumers and investors is a better way to find the best firms and the best ways of producing goods and services than having a board of experts spend other people's money.

Just imagine if an older Ira Magaziner had been asked by President McGovern to draw up a 20-year plan for, say, the computer and telephone industries. Could he possibly have envisioned — much less brought about — today's world of personal computers 100 times more powerful than the mainframes of 1975 and telephones that do things we never dreamed of then?

Adam Smith identified Magaziner's problem 200 years ago:

The man of system . . . seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the different pieces upon a chess-board; he does not consider that the pieces upon the chess-board have no other principle of motion besides that which the hand impresses upon

them; but that, in the great chess-board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might choose to impress upon it.

Ivy League intellectuals like Magaziner and the Clintons are so smart, they think they can solve society's problems as they would arrange chess pieces. They're just not smart enough to see the spontaneous order all around them that gives us everything from milk and bread in the morning to the highest-quality health care in the world to computers that bring the world's supply of knowledge to our desktops.

So, following the Washington principle of failing upward, Magaziner's record of disaster qualifies him to take on trade policy. Here he runs into a factual difficulty and a conceptual problem. The annoying fact is that American exports are booming, so why do we need a special export task force headed by a White House planner? Well, the *Washington Post* says it's because "imports are still a great deal higher."

That's a misconception, as a real understanding of economics would tell you. In the first place, exports are a cost; they're what we have to give other people to get imports. Sadly, firms in other countries will not ship us oil, cars, or fresh fruit in the winter without getting something in return. And not for long will they settle for those green pieces of paper that we can churn out on demand. "Balance-of-trade" figures often leave out services, where the United States has a surplus, and suffer from other conceptual difficulties. The fact that both exports and imports are booming means that more of our economy is devoted to foreign trade, which is generally a good thing, because it means more specialization in the world marketplace.

No doubt Rhode Island's economy could have benefited from better public policies, but not what Magaziner proposed. Health care could use some reforms, such as Medical Savings Accounts, but not Magaziner's nationalization. And we could certainly use better trade policies, but somehow it's hard to imagine Magaziner's latest task force proposing to repeal U.S. trade barriers and let international commerce develop. □

## Autopsy

# The Apotheosis of a Crook

by Nathan Crow

The good that men do lives after them. The evil is oft interred with their bones.

Upon the death of Commerce Secretary Ron Brown, Dorothy Gilliam of the *Washington Post* compared the departed to Frederick Douglass and predicted "hundreds of books and articles" examining his "legacy." John Harris declared Brown "a national symbol of personal achievement and racial bridge-building."

Pages of photographs showed Brown's funeral cortege passing through Arlington National, drawn by black horses through a forest of chaste white marble tombstones; Brown's family, heads bowed as they walk away for the last time, his bereaved wife clutching the flag that had draped his coffin; a corpsman standing at attention while a woman in white reads from the Bible; white construction workers and prim black ladies from Washington offices, standing by solemnly or saluting the procession with tears in their eyes; President Clinton at a prayer service, embracing a former Commerce Department official while a stricken Hillary looks on. The mood of hysterical grief reminded me of the funeral of Martin Luther King, or perhaps Charles de Gaulle. One would think that America had lost a kind of secular saint, a symbol of American manhood, a preacher and a dreamer of rare gifts and altruistic passions.

*The New Republic* was a bit more restrained, focusing its congratulations on Brown's mastery of what Tammany Hall used to call *honest graft*. An unsigned editorial celebrates Brown's combination of "loyalty and cunning," which enabled him to

"become interchangeable with his white peers." (Has civil rights come to this?) Such interchangeability, the magazine tells us, was an "achievement with weight," one Brown "wore lightly." Heaving a regretful sigh, they are constrained to note that Brown "evidenced a sad recklessness in his own financial dealings." Perhaps they exaggerate. After all, Brown was not so reckless as to answer investigators' questions about whether his son had passed him any of the \$660,000 in cash and stock the young man received from an Oklahoma gas company seeking favors from Commerce. Such shenanigans are passed off easily by *The New Republic*, which resentfully denies his "detractors'" view of him as a "street hustler." This they call a "caricature." And they are right: never in history has a street hustler hustled as much money as Ron Brown.

For Brown was deeply corrupt. Had he died a year from now, he would have been remembered only as a disgraced bureaucrat with sticky fingers. Special investigator Daniel Pearson had already established that Brown took more than \$300,000 in exchange for his sale of a non-

investment in a money-losing company. He had the ear of President Clinton, whom he enlisted to bully the Saudis into buying American airplanes, so his influence was worth billions, though apparently it sold for less. Brown was a tool of Washington wheelers and dealers, the corrupt corporations whose profits depend on favors from government. They loved Brown, and he repaid their love with — influence. Martin Crutsinger of the Associated Press claimed that with his death, "American capitalism lost its staunchest ally in the Clinton administration."

Maybe, in some sense, that is true — if by "capitalism" we mean what Noam Chomsky calls "state capitalism": large corporations whoring for their paymasters in Washington, with the whole charade of regulation, subsidy, and multilateral "development" proffered to the masses as the work of the "free market."

Consider Brown's 13 corporate companions on his ill-fated mission of mercy to the Balkans. All were major executives: the CEOs of ABB Inc. (which sells power-generating equipment), of Harza Engineering Co. (a builder of dams), of Bridge Housing

Corp. (a developer of "low-income housing"), etc. Some, no doubt, honestly intended to help the people of Bosnia, to do well by doing good. (David Ford of InterGuard Corp. intended to donate 50,000 pounds of glass to a Sarajevo hospital.) But others represented companies looking to get a share of the estimated five billion dollars in development pork that will shortly be funneled into Bosnia, courtesy of the World Bank, the European Bank for Reconstruction and Development, and you. These subsidized agencies pour billions of dollars in patronage ("loans") into poor countries, funding huge "development" projects that entrench the state, despoil the environment, erect vast bureaucracies, and destroy lives and traditions.

Hydroelectric dams like the ones Harza builds are a case in point. Harza is helping build China's Three Gorges dam, a boondoggle of epic proportions. If completed, the dam will destroy 13 cities and hundreds of towns and villages, flood an area the length of Lake Superior, and destroy

the homes and livelihoods of an estimated 1.4 million people. Fortunately for Harza, the Chinese government is committed to this outpost of progress, and has already arrested 179 members of the Democratic Youth Party for organizing opposition to the dam. No doubt Bosnia's government will be

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*Secretary Brown's influence was worth billions, though apparently it sold for less.*

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able to deal just as neatly with any of their own obstacles to the end of history. They will, after all, have the help of the World Bank, which has assisted dozens of poor countries in the expropriation and destruction of the homes of millions of people, men and women whose lives, histories, and hopes stood in the way of planners' Stalinist industrialization schemes.

Men like Ron Brown lived and

worked at the heart of this system. It was his role as a global bully for favored U.S. multinationals that accounts for his reputation as a "friend of capitalism." Brown was ultimately an exalted ward-heeler, one who served his masters well. He worked tirelessly to preserve the Chinese slave-masters' favored trade status, even if this entailed official lies about China's disgraceful human rights record. In Bosnia, he no doubt would have oiled the machinery of "trade" for his state-capitalist pals, who in turn would prop up Balkan national socialism and bear witness to the Clinton administration's pro-business rhetoric.

No man's death is a cause for celebration. But neither is every life. The good that Ron Brown did, if there was any, has been celebrated *ad nauseam*. Since the evil that he did will be quickly shuttered from the public eye with the convenient and entirely unjustified closing of Pearson's investigation, it should be remembered now, even if it hurts, even in the wake of men's tears. Lest we forget. □

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### Walker, "Prisons," continued from page 38

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story is told in Jeffrey Shedd's excellent article "Making Good(s) Behind Bars," published in the March 1982 *Reason*.)

In short, it's not bad in itself for convicts to sweat at something other than writing books or dealing drugs. But anyone who thinks the new prison-industrial complex is the road to inmate entrepreneurship and resti-

tution-based justice is sadly misled.

### The Dystopia Ahead

Many union-inspired laws restraining convict labor remain on the books. Most are far from ideal. Big Labor doesn't care what kind of competition it's pushing out of the way, the semi-slavery Gramm advocates or the big-

house entrepreneurship that briefly flowered in Maine.

But if the old protectionist order could use some reform, the new day of corporate slavery is far worse. The future offered us by Gramm, du Pont, and Thomas — the future on display in Tallahassee last March — is a frightening and authoritarian vision. □

### Notes:

1. David Frum, "Working for the Man," *The American Spectator*, August 1995.
2. Federal law requires prisoners to be paid prevailing wages if their products cross state lines. Such regulations do not exist, however, for goods sold in-state or abroad.
3. Steven Elbow, "Privatization of Prison Labor," *Isthmus*, November 20, 1995.
4. Adam Peyton Thomas, *Crime and the Sacking of America*, Brassey's, 1994, p. 120.
5. The federal data is from 1994, the state data from 1991. While no complete statistics are available for more recent years, the trend has been upward. As far as drug-related crime is concerned, 10% of federal inmates and 17% of state inmates

said in 1991 that they committed their offense to obtain money for drugs.

In California, according to the *Legislative Analyst*, 58% of the inmate population is incarcerated for nonviolent crimes, usually drug offenses.

6. *Ibid.*, p. 121-122. One thinks of the "quicksilver capital" theory recently popular with some libertarians — the idea that global markets inexorably lead to liberalization, since investment-hungry countries will have to compete with one another for capital by cutting taxes, tariffs, and regulations. It is by now obvious that nations are also trying to attract businesses with *anti-market* enticements. The evidence for this stretches from Indonesia to San Quentin.

7. This opens up a Pandora's box of ethical and practical questions about how a society should deal with crime, questions that are outside the scope of this article. For the record, it seems to me that property criminals should be responsible for more than the cost of the damage they inflict on their victims, and that some form of corporal punishment may also be appropriate in some cases. It also seems to me that prisons are both inefficient and unjust, and that a polycentric, restitution-oriented system of justice would evolve away from using them. I'd like to defend these assertions, but that will have to wait for another day.

8. Jeffrey Shedd, "Making Good(s) Behind Bars," *Reason*, March 1982.

## Appreciation

# Half a Century at the Battlements

by R.W. Bradford

They have fought a good fight, they have kept the faith, but they have not finished the course.

The Foundation for Economic Education played an enormous role in the revival of libertarian ideas over the past half century, particularly in the early years of that renaissance. It stood as a beacon, always advocating a radical libertarian view. Like Leonard Read, its founder, FEE was always well-mannered, always intelligent, while never raising its voice in anger and never, never compromising.

I discovered FEE as a teenager as I was coming to grips with my own thinking in the early 1960s. I had figured out that individual liberty was both inherently desirable (for me, anyway) and in general a good thing for humanity, and that the growth of government power over the previous century or so was a bad thing. At the time, I identified myself pretty much with political conservatives, because they seemed to share some of these notions.

The world that surrounded me was awash in what was then generally called "liberalism" or "middle-of-the-road" thought. The boundaries of respectable debate were rather narrow. Yes, people would say, socialism may be a bad thing, but we need to recognize that the welfare state is the best security against Communism. Sure, small government made sense a century ago, but today big business and big labor require big government. If free enterprise is such a good system, why the Great Depression? And on and on.

I countered some of these arguments as best I was able, but some I

even accepted myself. Often I was painted into a rather moderate corner by my lack of intellectual resources and the loneliness of my peculiar beliefs. Then, around 1963 or so, someone gave me a few single-sheet leaflets called *Clichés of Socialism*, published by FEE. Each took a single common belief that supported the status quo or the further growth of state power and presented a short, intelligent criticism of it.

FEE described these flyers modestly: "These are not the only answers or even the best possible answers; but they may help you and others develop better explanations of the ideas of liberty." But *Clichés* did far more than that, at least for me. They helped me remove from my eyes the scales of my middle-of-the-road education, to think critically and for myself, to know that I was not alone in my understanding of how the world worked.

Before long, I subscribed to *The Freeman*, FEE's monthly publication of reflective essays on libertarian themes. It totally eschewed politics and policy, sticking instead to theory and history, providing support, intellectual ammunition, and refuge. It

wrote of morality without moralizing, of economics without pedantry. It didn't tell you what to think — it stimulated you to think for yourself.

*The Freeman* in those days was mailed without charge to all who requested it; once each year I'd receive a polite letter suggesting that if I wanted to contribute an amount sufficient to defray the cost of publication, I should send them \$5.00, and that I might even want to send more to help them in their work. As an indigent student, I usually sent them nothing, but *The Freeman* continued to brighten my life once each month.

### The Forces of History and the History of Force

It is difficult for us to appreciate today the low esteem in which the idea of liberty was held when Leonard Read founded FEE in 1946. The intellectual foundations of the liberal social order had been undermined during the previous three decades, both by the material forces of history and by the decline in the intellectual vigor of liberty's advocates.

As the nineteenth century ended, western countries were raising taxes, instituting economic regulation, and



organizing central banks. In 1914, the West opted for the moral tonic of the Great War, with its attendant opportunities for heroism, self-sacrifice, and nation-building. Large-scale organizations became the order of the day. Even in America, where political traditions had kept the power of government under the strictest controls, the economy was organized into huge cartels, and economic competition was eliminated, along with free speech. In

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*The idea that huge organizations were inherently more viable than small ones had taken root, and it seemed natural to believe that a huge and powerful government was more efficient than the old small, limited government.*

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Europe, the war arrested the nascent liberalization of Russia, and a concatenation of historic accidents placed that emerging economic giant under history's greatest dictatorship.

Elsewhere, the 1920s brought a reaction against the destruction, horror, and futility of war, and the size and power of government was rolled back somewhat, though not to pre-war levels. But the increasing popularity of socialism, economic nationalism, and other forms of statism continued to weaken the West. The old institutions of liberal democracy — limited government, private property, free trade, individual rights, free elections, and an independent judiciary with codified and objective law — seemed impotent against the forces of totalitarianism. Britain and France saw their economies weaken, as pusillanimous governments attempted futilely to maintain overseas empires while increasing control over economic activity. The spectre of revolutionary communism, which proposed to abolish of the very foundations of the old liberal order, seemed especially threatening in Germany, Italy, and eastern Europe; against this threat, people were willing to accept and support governments nearly as totalitarian.

Everywhere, banking remained cartelized, and government, not the marketplace, controlled money and credit. Everywhere, economic nationalism supplanted free trade. Everywhere, the cartelization of labor triumphed. And everywhere, the state's power to control private enterprises was still increasing.

The "Great Depression" was the predictable result of governmental intervention in the credit market and restrictions on trade, but in the popular mind, it was nothing less than the failure of capitalism and the liberal social order. Prior to this time, the major defense of the liberal social order and free economic institutions had been that they delivered prosperity. The Depression destroyed that defense, and as western economies continued to decline, the idea of a free society was left with hardly any intellectual underpinning at all. Dictators took control in central and eastern Europe, while somewhat less fascist regimes took over in Britain and the U.S.

The idea that huge organizations are inherently more viable than small ones had taken root with the large private corporations of the late nineteenth century, and it seemed natural to believe that a huge and powerful government was more efficient than the old small, limited government of the libertarian (or classical liberal) vision. Just as huge industrial organizations in which individuals were small and rather stupid cogs had become the dominant economic organization, now huge government organizations and labor unions took control of political and social life.

The Communists had taken a semi-feudal agricultural society and in a single generation made it into a steel-producing industrial giant. The Nazis had taken a conquered and prostrate nation and made it again into a great power. In the United States, chain stores were replacing individually owned shops, and the hundreds of automobile manufacturers in business in 1905 were reduced to three giant firms and a couple of specialized companies. Even the business of entertainment was now controlled by a handful of huge movie production companies and radio networks. How could an individual, on his own, expect to com-

pete successfully in this new modern world?

Individual responsibility and individual action seemed old-fashioned, reactionary, part of an earlier era. People coming of age during the 1930s began to see their future happiness and security as dependent on their ability to become a cog in one of these giant machines. The educated classes sought employment with great corporations or in the civil service, while the laboring classes sought jobs in industries controlled by powerful unions. Find yourself a position with one of these socioeconomic behemoths, subject yourself to its rules and expectations, stifle your individuality and personality, conform . . . this was the price of economic comfort and security.

### **The Age of the Concentration Camp**

There were problems with this view, of course. Prosperity had not returned to the United States or to Europe, despite the increased cartelization of the economy and the burgeoning power of government. But to those who held positions in the gigantic bureaucracies, corporate or state, and to those who were on the receiving end of government handouts, this didn't seem to matter much. As for others, well, they were reassured that progress was being made and recovery was just around the corner. Everyone knew this was the case; they heard it over the radio and saw it on the newsreels, courtesy of the huge propaganda machines of the government and the corporations.

A much bigger problem, it seemed, was the rise of other dictatorships. Unlike the "progressive" Communist dictatorship in Russia, Germany's Nazi government was quickly identified as "reactionary" and "evil." At first, some intellectuals expressed admiration for Italian fascism, but soon the alleged merit of its vaunted efficiency was overwhelmed by the problem of its alliance with Germany. Meanwhile, when conflicts developed between the nascent imperialism of nationalistic Japan and the established imperialism of the West, Japan too was portrayed as a reactionary, evil dictatorship.

These countries suppressed minorities, both ideological and racial.

Somehow it seemed irrelevant that the United States had burned books and arrested individuals for the crime of having a German surname during the Great War, or that the American government engaged in the systematic legal suppression of African-American and Asiatic minorities, or that Hitler's concentration camps were modeled on the reservations into which the U.S. government had herded Native Americans.

Control of the world's great powers was in the hands of aspiring dictators and power-hungry demagogues, all intent upon increasing their power and all willing to go to war toward that end. And all had popular opinion behind them. Not surprisingly, another Great War broke out, and with it the power of government grew stronger, as taxes were raised, conscription institutionalized, economies re-cartelized, private property seized, civil rights eliminated, racial minorities imprisoned, and political critics persecuted.

In Germany, Hitler was rounding up Jews and forcing them into concentration camps. In Russia, Stalin was rounding up Poles and sending them into concentration camps. In the U.S., Roosevelt was rounding up Japanese immigrants and Americans of Japanese ancestry and forcing them into concentration camps. In the British Empire, Churchill rounded up Germans and imprisoned them.

In 1943, in a single province in China, more than three million people died of starvation; against the worldwide backdrop of death and destruction of the previous quarter century, these three million deaths were hardly noticed. By 1945, a great war with totalitarians and statists on both sides had killed over 40 million human beings and consumed more than \$1.5 trillion for war material alone, whose use had caused incalculable additional damage.

### Into This Cauldron. . .

This was the world in which Leonard E. Read founded FEE. The seeds of the rebirth of libertarian thinking had been planted in the midst of the war, when three American women — Ayn Rand, Isabel Paterson, and Rose Wilder Lane — published path-breaking books proclaiming a new, more radical libertarianism. And an

eminent Austrian economist living in Britain, Friedrich August von Hayek, offered to a state-saturated world a well-mannered but provocative book, *The Road to Serfdom*, which challenged the notion that socialism could somehow avoid degenerating into dictatorship. It became a bestseller in America.

FEE held high the banner of liberty, advancing the notions of private property and limited government in thousands of ways, some great and some small. It rediscovered and published writing by classical liberals (such as Frederic Bastiat) that would otherwise have been forgotten. It published the work of such great contemporary libertarians and liberals as Milton Friedman, Ludwig von Mises, Murray Rothbard, and Henry Hazlitt in books, pamphlets, and (from 1956 onward) *The Freeman*. It conducted seminars for students, academics, and opinion leaders.

FEE was a generous source of encouragement and enlightenment to all who approached it, a bulwark of libertarian thought and idealism, a place of refuge for those tired of what often seemed like a fruitless battle. FEE always remained true to its original principles, quietly advancing liberty, working among intellectuals, teachers, students, clergymen, and ordinary citi-

zens at a time when hardly anyone else was doing so.

As FEE succeeded in its mission, its relative importance naturally began to wane. But it continued to serve a critical function, quietly fulfilling its mission of patiently and politely advancing the cause of liberty.

By 1983, when Leonard Read died, the influence of libertarian ideas was ascendent. Two scholars who had been associated with FEE had won Nobel Prizes, and two others received that same honor in the next decade. Other, more visible institutions — the Cato Institute, the Libertarian Party, the Institute for Humane Studies, *Reason* magazine — were now in the forefront.

Read left a leadership vacuum at FEE that was not filled until Hans Sennholz assumed its presidency in 1992. By this time, the continuing advance of libertarian ideas had made Leonard Read's approach less distinctive and effective, and without his charismatic leadership, FEE had begun to decline. Sennholz immediately took radical action, stemming the flow of red ink and redefining FEE's mission, a process that continues today. It will, I fervently hope, allow FEE once more to play the critical role in the battle of ideas that it had played under Read. □

## Is FEE Turning Conservative?

by Michael Peters

It is unfortunately common for organizations to stray from their founding principles. The Intercollegiate Society of Individualists, founded by the semi-anarchist Frank Chodorov, has turned into the conservative Intercollegiate Studies Institute. Henry Ford would sputter in his grave if he knew what the Ford Foundation is up to these days.

Why does this happen? Basically, because it's tough to get good help. The founder can't find anyone committed to his vision who's also competent

and available to head the organization. So for a successor, he names his son — who, if he isn't quite as devoted to the founding principles, at least has blood ties. Or perhaps he hands over the reigns to his attorney, who then ends up handling the assignment more as an administrative responsibility than as an ideological commitment. The son or attorney has trouble finding good help, too, and turns to a capable employee with many years of service — but who's not particularly devoted to the founding principles. Eventually,

the organization starts to support people and causes that would have horrified the departed founders.

The process can take a generation or two, but some groups have changed their colors within a few years. It might be underway at the most venerable libertarian organization, the Foundation for Economic Education (FEE), which recently celebrated its fiftieth anniversary.

The late Leonard Read — FEE's founder — was proud to call himself a libertarian. He always kept his distance from the conservative movement, centered around William Buckley and *National Review*, with its emphasis on anti-Communism above all else. But this April, FEE celebrated its fiftieth anniversary by having Margaret Thatcher, a politician and a conservative, speak at Manhattan's Waldorf-Astoria Hotel. Thatcher endorsed government schools, defended socialized medicine, and insisted that drug prohibition must never end — all positions that drastically contradict FEE's libertarian creed.

The master of ceremonies was William F. Buckley, Jr. Buckley may be more libertarian now than he was in the 1950s — he's turned against the War on Drugs, for example. But he is not a libertarian. He is a mainline conservative.

One can't blame FEE's current president, Dr. Hans F. Sennholz, for wanting to draw a big crowd — and he did, some 800 people. But his decision to book Thatcher and Buckley led him to promote FEE as a "conservative" organization.

Breaking even, in view of Thatcher's travel expenses and her \$30,000 speaking fee, required selling the event to the large conservative market. FEE did a lot better than breaking even, perhaps netting over \$150,000. But at what cost?

Sure, billing FEE as a conservative organization will attract conservative contributors. But these people are bound to oppose many libertarian positions. FEE might not *intend* to abandon, say, free trade or free immigration, but the pressure will surely

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*FEE might not intend to abandon, say, free trade or free immigration, but the pressure will surely build to do so.*

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build to do so. The idea may be to lure in conservative money and feed it libertarian literature. If so, FEE's fundraisers are sadly deluded. Conservative money wants conservative satisfaction and becomes impatient with anything else. And once you've hired people whose jobs depend on right-wing money, the organization begins to spontaneously self-censor, purely out of self-interest.

Libertarian organizations *can* grow without billing themselves as conservative or taking right-wing positions. Look at the Cato Institute, which displayed rare courage and integrity by opposing the Gulf War, even though its stand meant losing some well-

heeled conservative donors. When Cato president Ed Crane received a promotional letter describing FEE as America's oldest conservative organization, he wrote back that Leonard Read would roll over in his grave at the idea of being called a conservative.

Or look at Laissez Faire Books. Its sales volume has expanded substantially over the past several years. Many of its customers come from advertising in conservative media, but one wouldn't know this from looking at its monthly catalog. It doesn't list any books by such popular right-wingers as Thatcher, Buckley, Russell Kirk, William Bennett, or Rush Limbaugh. The word "conservative" rarely appears, and never as a self-description.

So yes, a libertarian organization *can* grow by forthrightly appealing to people who love liberty — just as FEE originally grew under Leonard Read.

Reportedly, Dr. Sennholz is contemplating retiring next year. That could be make-or-break time for FEE. FEE is no longer the only game in town; there are many other places libertarians can give money to promote freedom. Cato, the Institute for Humane Studies, the Future of Freedom Foundation, the Competitive Enterprise Institute, the Institute for Justice, Citizens for a Sound Economy, the Reason Foundation, the Heartland Institute, the Liberty Foundation — the list goes on and on. Not to mention everything else competing for people's time and money.

To endure, FEE must find a successor with an inspiring vision of liberty — one who can touch people's hearts as well as run the place. □

## Letters, continued from page 6

Otherwise, what's the use in having minor parties at all?

Rycke Brown  
Kingman, Ariz.

## Dragging Dole Down Under

While I disagree as vehemently as Bill Bradford does with the rest of the Australian voting laws ("Plebiscital maniacs," May 1996), their practice of having voters list candidates in order of preference is, I believe, a good one, and helpful to the cause of liberty. If used in this country, it would break the chicken-and-egg problem faced by Libertarian

candidates: they don't get votes because they are viewed as not having a credible chance of winning, which in turn keeps them from becoming credible.

Specifying a list of preferences (I like "A" best, then "B," then "C") allows one to cast one's vote independently of other people's votes — or rather, the *perception* of how other people will vote, based on polls, political ads, and pundits. (This is why so much attention is paid to polls.)

This idea (by no means original to Australia) is equivalent to having the candidates spread themselves out in a

room, and having people vote by physically standing by their choice. After a few minutes the least popular candidate's supporters will shift to their second choice, and so on.

Imagine how many people would vote (first) for Browne rather than Dole if they did not worry about "wasting" their vote (my parents are among them). Even if he does not win, Browne might get 20%, thus commanding much more attention and respect — and possible victory — next time around.

Larry Ruane  
Parker, Col.

## Law

# White Man's Ghost Dance

*by Bob Black*

Constitutionalists may loathe lawyers, but they outdo them in their reverence for Law.

Once upon a time, there was a fair land called England.

All the English were free men and most of them were serfs. All the English were self-governing in counties run by sheriffs appointed by kings, the descendants of a foreign conqueror. England alone enjoyed the Common Law, handed down by Moses, and dating from 1215 A.D. Secured by the Common Law, all men's property was inviolable, and it all belonged to the king. The Common Law, also known as Natural Law and God's Law, only restricted conduct that harmed the person or property of another, such as swearing, fornicating, possessing weapons in the royal forests, converting to Judaism, and dreaming that the king had died. There was complete religious freedom, i.e., Roman Catholicism was the state church, attendance at services was compulsory, and heretics were executed. As perfect, as unchangeable as the Common Law always was, it got even better when free and prosperous Englishmen fleeing persecution and poverty brought it to America. They repaired there, as Garrison Keillor quipped, to enjoy less freedom than they had in England.

As fantasy, this Common Law England would never find a publisher: it's not nearly as believable as Narnia or Never-Never Land. You don't even have to know any real law or history to notice that it's nonsense. But as myth, it appeals to increasingly frustrated conservatives, libertarians, fundamentalists, and conspiracy theo-

rists — "Constitutionalists" — with an urgent transrational need to believe that the world was once the way they want it to be. The deeper allure of Constitutionalism is that it purports to be not only history which explains, but technique which controls. Resentful and suspicious, Constitutionalists are sure that conniving judges, legislators, and lawyers switched their own false law for the *real* law when the people weren't looking. But the real law, the Common Law, lives still, for it is deathless; it is God, Nature, and Reason all rolled up in one. Although Constitutionalists loathe lawyers, they outdo them in their reverence for Law, their solemn obeisance to what Oliver Wendell Holmes mocked as a "brooding omnipresence in the sky."

Constitutionalists look upon law as the word-magic of lawyer-necromancers who draw their wizardly powers from grimoires, from books of magic spells they have selfishly withheld from the people. Constitutionalists have extracted from these books — from judicial opinions, from the Constitution, from legal dictionaries, from the Bible, from what-have-you — white magic with which

to confound the dark powers of legislation, equity, and common sense. Never mind what words like "Sovereign Citizen" or "Lawful Money" mean — what does "abracadabra" mean? — it's what they *do* that counts. Unfortunately, Constitutionalist words don't do anything but lose court cases and invite sanctions. Constitutionalism is the white man's version of the Ghost Dance. Believing you are invulnerable to bullets puts you in more, not less, danger of being shot.

Jutting out of the wreckage called Constitutionalism are a few more elevated piles, such as "Common Law" and "Magna Carta." These are, if in no better repair than the rest of the ruins, at least of respectable antiquity. Back when little was known of English legal history — when history as a discipline scarcely existed — ingenious jurists like Selden, Coke, and Hale manipulated these hoary myths to win some limited victories over royal absolutism and arbitrariness. Even if Constitutionalists were juridical Jack Kennedys and not, as they are, Dan Quayles, the conditions for getting away with pious lying about these parts of the past no longer

obtain. Good history does not necessarily overthrow legal orthodoxy, but by now bad history never does. So unprincipled are judges and lawyers that they will even tell the truth if it serves their interests. Consider, for instance, the unscrupulous way in which they might point out what the Magna Carta actually says and what the Common Law actually is.

Constitutionalists revere the Magna Carta, but if they were to read it, they'd

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*Constitutionalism is the white man's version of the Ghost Dance. Believing you are invulnerable to bullets puts you in more, not less, danger of being shot.*

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be baffled. Expecting to find, as libertarian Constitutionalist Ken Krawchuck says, "many of the rights we still enjoy today,"<sup>1</sup> they'd find themselves adrift in an alien, feudal world of "aids," "wardship," "scutage," "knight service," "reliefs," "wainage," "castle guard," "socage," "burgage," and other arcana even medievalists toil to comprehend.

The Magna Carta — extorted from King John by a few dozen rebellious barons in 1215, a dead letter within three months, voided by England's feudal overlord, the pope — did almost nothing for almost all of England's two million people. It confirmed or created privileges for churchmen and barons, occasionally for knights, and in only two instances for "free men." Most Englishmen were villeins, not freemen. And as historian Sidney Painter has written, "Whenever provisions of the Charter seem to benefit the ordinary man, a close examination will show that it is his lord's pocketbook that is the real cause of concern." It was only a question of who would do the fleeing.

The Great Charter has nothing to say about free speech, unreasonable searches and seizures, self-incrimination, the right to bear arms, free exercise of religion, obligation of contracts, *ex post facto* laws, bills of attainder, petition and assembly, the

obligation of contracts, excessive bail, right to counsel, cruel and unusual punishment, indictment by grand jury, etc., etc. Far from forbidding even involuntary servitude, it presupposes it (chs. 17, 20, 23). Far from forbidding the establishment of religion, it confirms it in its very first provision (ch. 1).

The real Magna Carta was not even remotely libertarian in content. Modern libertarian notions such as self-ownership, *laissez faire*, greatest equal liberty, the nightwatchman (minimal) state, even private property itself would have bewildered the signatories of the Magna Carta. They understood liberties, not liberty; privileges, not property. The free market was a concept of the far future: "markets" were times and places where the government authorized buying and selling. Property rights were derivative and relative — except for the king, nobody owned anything "allodially" (absolutely). Rather, title (ownership) was relative to other claims, and in theory always subordinate to the king. Constitutionlists disparage legislation, but that's all the Magna Carta ever was, amendable and repealable like any other statute. By 1992, only three of its 63 provisions were still on the books.

In the guise of declaring custom, Magna Carta changed the law, violating what Constitutionlists consider the Common Law. They cherish the county, for instance, to which the sheriff was answerable (they suppose), but the Charter forbade sheriffs and other local officials from hearing the pleas of the Crown (ch. 24). It is as if the U.S. president issued an executive order that felonies should be tried only in federal courts!

As for this Common Law (cue the angelic chorus here), just what *is* it anyway? The term has at least a half dozen meanings. It might refer to English law as distinguished from the civil-law systems of Europe. It might be "law" as distinguished from "equity," i.e., the law of the royal courts at Westminster distinguished from certain distinct doctrines and remedies administered by another royal appointee, the Chancellor. It might refer to judge-made rather than statutory law. Perhaps most often it referred to the law "common" to all Englishmen, the national law as

opposed to the varied local law enforced by manor and hundred courts, borough courts, and courts leet. Ironically, if there was ever a trace of truth to the Constitutionalist dogma that the people in juries "judged the facts and the law," it was in the local courts outside the Common Law. And it was the law of these courts with which ordinary Englishmen were most familiar and which, as Julius Goebel has shown, most heavily influenced colonial American law.

As if "Common Law" were not a phrase already overburdened with meanings, Constitutionlists load on even more. They equate Common Law with Natural Law, with Natural Reason, with Christianity, and even with (as Krawchuck says) "common sense." His example is common-law marriage: "If a guy and girl live together for seven years, they're married; it's the common law. It's plain common sense."<sup>2</sup> It's neither. Mere cohabitation never married a couple in England or America. There was apparently no such thing as nonceremonial "common law" marriage in England at all. In America, a "common law" marriage required, not just shacking up, but an agreement to marry and a public reputation as being married. As for "common sense," why seven years?

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*Constitutionalists revere the Magna Carta, but if they were to read it, they'd be baffled.*

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Why not six years and eleven months? Why not five years? A lot of legally solemnized marriages don't last that long these days. Since when was common sense so dogmatic?

Constitutionlists say that the Common Law is based on litigation over property (more precisely, real property — land — although as their generalities go this one is not too far wrong). Under Common Law, real property descended to the oldest male — except in Kent, where partible inheritance among male issue obtained, with the proviso that the *youngest* son inherited the household. Nowhere did it descend to a female if there lived a male heir, however remote the relationship.

*continued on page 68*

## History

# Millennium, Then and Now

by Frank Fox

History is awash with amorous millennial faiths.

The year 2000 beckons many with its "signs," but past millennial expectations suggest that human beings have an infinite capacity to deceive themselves. In 1843, for example, thousands of followers of William Miller donned white "ascension" clothes and climbed trees and rooftops, ready to fly to Jerusalem. They quickly discovered that while Millennium was a wish, gravity was a fact. As Norman Cohn noted in *The Pursuit of Millennium*, rapes and massacres, bad rulers, civil wars, droughts, famines, plagues, comets, sudden deaths of important people, and a general increase in sinning have always been taken as millennial "signs" — so "there was never any difficulty about finding them."

In the long history of millennial anticipations, few parallels are as close as those between the Reverend Sun Myung Moon, the still active Korean leader of the Unification Church, and John Maria Kowalski, a Polish priest who died at Dachau. Both men proclaimed themselves the "Third Adam," the progenitor of a new race. Their religious arithmetic was simple enough. The union of Adam and Eve failed because of the corrupting influence of Satan. Jesus, the Second Adam, had no opportunity to find a mate. Now the Third Adam was ready, willing, and able. Both Kowalski and Moon shared their messianic duties with a female partner and arranged marriages for their followers.

Both men staged large meetings at which confessions (sometimes preceded by public accusations) were

accompanied by a show of loving support from fellow congregants. Both were excommunicated from their churches. Both built personal fortunes. Both spent time in jail, and time in palatial retreats. Kowalski, an outspoken critic of Communism, was imprisoned on morals charges on the eve of World War II; Moon, jailed in Korea for what he has claimed were anti-Communist activities, subsequently served time in the U.S. for tax evasion.

### **The Rise and Fall of John Maria Kowalski**

Father John Maria Kowalski was born on Christmas Eve, 1871. The son of a farmer, he graduated from the Catholic Academy of St. Petersburg and was ordained in 1897. Three years later, a fellow priest introduced him to the Mariavites, an order that venerated the Virgin Mary and was led by Feliksa Kozłowska, the "Little Mother." Kozłowska, following the example of earlier Franciscans, had dedicated herself to helping the poorest parishioners. Kowalski was smitten. He joined her group and quickly emerged as her heir apparent. He was 29. She, 38.

Polish Church officials at first took

little notice of Kozłowska and her little band of enthusiasts. Indeed, the Mariavites' ardent embrace of social work seemed a useful antidote to the lassitude of so many clergy. But the Mariavites became embarrassingly visible when they took to wearing a fashioned habit that featured an embroidered monstace (the chalice of the Eucharist) in the middle of their chests.

In 1903, Father Kowalski was elected to a position of leadership in the Mariavite community. Coinciding as it did with an increase in visions and revelations from the Little Mother, his election finally brought censure from a Church ever suspicious of self-appointed visionaries. Still, the Polish hierarchy was reluctant to act, since the Russian authorities, undoubtedly trying to sow dissension in the ranks of Polish believers, had recognized the Mariavite sect. In Rome, the Church was under no such constraint. In 1904, the Vatican forbade Polish priests to join the Mariavites and directed the Order to disband. Its priests, including Kowalski, were dispersed to distant parishes.

If the strategy was to isolate the Little Mother from her followers, it



failed. The persecuted, as the Church should have expected from its own history, only grew bolder and acquired more believers. In 1906, Pope Pius X, determined to assert his primacy, excommunicated Kowalski, Kozłowska, and 40 priests. The sect responded by forging an alliance with the Old Catholics, a splinter group of Catholic clergy who opposed Pius IX's 1869 proclamation of papal infallibility. They defied the ban on the Mariavites, and in 1909 elevated Kowalski to the rank of bishop.

The Mariavite order now grew quickly. A magnificent house of worship was completed in 1911. World War I drew in still more followers. After the Bolshevik Revolution, Kowalski became an archbishop, a position he used to rail against the dangers of Communism. In a Poland threatened by an emerging USSR, he gained a large audience.

Feliksa Kozłowska did not live to witness these successes. The woman Kowalski described as "The Bride of the Lamb and the Espoused Wife of Christ" succumbed to cancer in 1921. (The cancer had distended her stomach into a grotesque simulation of pregnancy, a condition depicted in a death-bed photograph revered by many of her followers.) Kowalski inherited the Little Mother's mantle, and with it a smoothly run organization that had tripled its membership since the 1906 excommunication. The Mariavites now counted not only 200,000 members, but hundreds of priests and nuns in 70 parishes, a comprehensive school system, summer camps, orphanages, soup kitchens, sanatoria, workshops, banks, businesses, and even fire brigades.

Then came the most bizarre phase of Mariavite history. The death of the Little Mother seemed to release her protégé from all restraints. Before long, Archbishop Kowalski had created a faith that had been only dimly realized during his relationship with Kozłowska — a religion designed to satisfy both his spiritual and sexual needs. He proceeded to arrange supposedly chaste "mystical marriages" for his followers, pairing off priests and nuns in a spirit of whimsy that resulted in the most unlikely partnerships.

Taking a young bride himself, Kowalski acted as matchmaker and

medieval lord, enjoying *jus primae noctis* — the right of first sexual relations — with the younger brides-to-be. The atmosphere soon resembled a hot-house more than a convent, with some of the young sisters named in the manner of garden hybrids: Love, Cherubina, Desideria, Dilecta. Older nuns had to be content with Christian

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*The "mystical marriages" produced real babies. Kowalski insisted that the infants had been born to virgins.*

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names, such as Honorata and Gertrude. The young followers formed an orchestra of mandolin players. Other innovations followed, with Kowalski opening the priesthood to all comers and instituting a People's Mass, celebrated at times by women. Contacts were established with sympathizers in other countries.

The inevitable happened. The "mystical marriages" produced real babies. Kowalski rose to the challenge, insisting the infants had been born to virgins; they were without sin, he proclaimed — the progeny of a new faith. But to non-Mariavites, they were proof of the sect's depravity. Some young Mariavite girls left the compound and told reporters their stories. There were confessions and attempts at what we would now call "deprogramming." By 1928, charges of polygamy could not be avoided. A series of lurid trials ended in Kowalski's conviction; he was imprisoned from 1936 to 1938. Released on the eve of the German invasion, he tried to reassert authority over his movement. After a disgruntled colleague denounced him to the Gestapo, Kowalski wrote Hitler, urging the Nazi leader to accept the Mariavite creed. There is no record of any response. Kowalski was sent to the Dachau concentration camp, where he was put to death as prisoner number 24542 on May 18, 1942.

### Three Adams

More than a century earlier, the Jewish mystic Jacob Frank (1726–1791)

had scandalized the Jewish and Polish communities of his time, and anticipated the ideas of both Kowalski and Moon.

Like the Moonies and Mariavites, the Frankists skillfully acquired both membership and economic power; like the later cults, they emphasized the female as the central figure of their worship. Their secret initiations of "sisters" shocked their contemporaries, much as Kowalski's sexual exploits shocked his. And Frank, like Moon and Kowalski, was eventually imprisoned. He and his followers were forced to convert to Catholicism, with the Polish king and nobility acting as their sponsors. Frankists were found among the leading Polish families, and it is believed that both the mother and the wife of the Polish bard Adam Mickiewicz came of a Frankist background. It is likely that Kowalski knew something of Frankist history, since that "heresy" deeply affected generations of Jews and Poles.

What is especially interesting about the three "Adams" is their use of the female godhead as the central part of their faith — the woman as wife, mother, and symbol of sexual freedom. Ironically, in their efforts to revive the powerful and primal figure of Adam, Jacob Frank, John Maria Kowalski, and Sun Myung Moon — chauvinists all — brought the female down from her traditional pedestal and allowed her to become a near-equal partner.

Our modern age has allowed the Reverend Moon to procreate in a manner undreamt-of by earlier "Adams." Moon and his wife, Hakja Han Moon, have arranged multiple marriages for their followers, on one occasion presiding over simultaneous weddings for 364,000 couples in 160 countries. The couples were matched by a database meant to assure each follower a suitable partner — a technology that probably would not have impressed Father Kowalski.

### The Road to the Millennium

The central puzzles remain. At what point does the pretender come to believe his own pretensions? And why do so many follow blindly? The road to Millennium may be paved with good intentions, but so is another well-traveled highway. □

# Reviews

***Challenging the Secret Government: The Post-Watergate Investigations of the CIA and FBI*, by Kathryn S. Olmsted. University of North Carolina Press, 1996, 272 pp., \$34.95 hc, \$15.95 sc.**

## *The Fourth Estate and the Secret State*

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Ted Galen Carpenter

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America's powerful and pervasive national security state is an especially damaging legacy of the Cold War. Early in the fight against the Soviet Union, the U.S. political elite embraced policies and institutions that would have been anathema to most Americans even a few decades earlier. In particular, the United States developed an extensive intelligence apparatus that did far more than gather information about possible foreign adversaries. The Central Intelligence Agency manipulated elections in Japan and Western Europe, orchestrated coups against democratically elected governments in Iran and Guatemala, funneled slush money to repellent (albeit anti-Soviet) dictators, and plotted the assassination of foreign leaders.

Throughout the first two decades or so of the Cold War, the American people learned little of the CIA's misdeeds. As Kathryn Olmsted points out in her well-researched and eminently readable book, *Challenging the Secret Government*, journalists frequently suppressed, or at least sanitized, stories about the agency's covert operations. A disturbingly incestuous relationship between government and the press developed: "the news media of the

1950s and 1960s had close links with the CIA as an institution and with the Ivy League alumni who ran it. They went to the same colleges, attended the same dinner parties, joined the same country clubs, and shared the same assumptions about the CIA's role in the world" (p. 22).

But the foreign policy consensus that sustained that relationship began to unravel as the Vietnam War turned into a debacle. Even friendly journalists found it increasingly difficult to ignore U.S. policymakers' misjudgments, flawed logic, and outright lies. Perhaps more importantly, the widespread public discontent spawned by the war led to a rebirth of adversarial journalism on international as well as domestic issues. That confrontational trend was reinforced by the discovery of the Nixon administration's egregious abuses of power.

Consequently, when iconoclastic journalist Seymour Hersch uncovered and published evidence in December 1974 that the CIA had not only engaged in odious conduct overseas but had spied on (and perhaps even disrupted) domestic antiwar groups, the end seemed near. Congress, the media, and the public seemed ready to leash the increasingly aggressive "secret government." Congress promptly established special committees to investigate the intelligence community and recom-

mend reforms. The Senate version was chaired by Frank Church (D-Idaho), the House counterpart by Otis Pike (D-N.Y.).

Despite months of hearings, however, the committees achieved few results. The Pike Committee became the victim of a public backlash, engineered by a sophisticated propaganda campaign directed by President Gerald Ford's administration, a network of CIA alumni, and their political allies. The committee ultimately suffered the indignity of a House vote barring the public release of its report. Although the less confrontational Church Committee fared a little better, its principal accomplishment was to pave the way for greater congressional oversight of the intelligence community's covert operations. As the Iran-contra scandal underscored a decade later, that new oversight system was less than effective.

It is difficult to come away from Olmsted's book without the depressing conclusion that in the mid-1970s, we missed a rare, perhaps irreplaceable opportunity to reign in the national security state. Several parties were to blame for that failure, including a

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*We missed a rare, perhaps irreplaceable opportunity to reign in the national security state.*

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Congress that feared the responsibilities that would accompany a restoration of its constitutional foreign policy prerogatives and a public reluctant to confront some ugly truths about America's intelligence agencies. But the principal culprit was a supine journalistic community that once again chose to play lapdog rather than watchdog on national security issues.

Indeed, there were early warning

signals when Hersh published his initial revelations in the *New York Times*. Hersh recalled that he was "reviled" by many of his colleagues, and *Times* correspondent Harrison Salisbury noted that most Washington journalists "did not rush to verify" the charges. Why was the supposedly adversarial post-Watergate press so passive? Olmsted speculates, "Journalists often find it hard to decide whether to publish national security stories. On the one hand, reporters believe that it is their duty to inform the public of official misconduct and policy mistakes; but on the other, the media's pursuit of genuine national security secrets could alienate the public and bring about government censorship" (68).

Such fears had some validity. Even short of outright censorship, the government has a variety of means to retaliate against overly inquisitive newshounds. Instead of curbing CIA abuses at home and abroad, the Ford administration looked for ways to punish Hersh for revealing those abuses. In two secret meetings at the White House, Ford's key aides considered several options, including privately asking the editors of the *New York Times* to spike future stories, launching FBI investigations of both Hersh and the *Times*, and convening a grand jury to indict Hersh for espionage.

Ford's efforts to stop Hersh were no aberration. A long series of administrations — liberal and conservative, Republican and Democrat — have hungered for an American version of Britain's infamous Official Secrets Act, which allows the government to declare any information a state secret and criminally prosecute anyone, including a member of the press, who discloses it. Although Congress has repeatedly refused to enact such a statute, Ronald Reagan's administration may have achieved the functional equivalent through the courts. In the late 1980s, the Justice Department successfully prosecuted a Pentagon employee, Samuel Loring Morison, for espionage, even though Morison had leaked the information (about a Soviet aircraft carrier with which Moscow was undoubtedly familiar) not to a foreign government but to a defense publication. Since the Morison case, there has been a marked increase in threats to

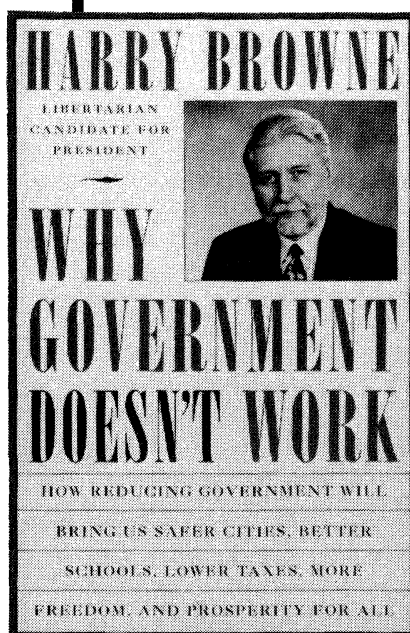
prosecute not only federal employees who make unauthorized disclosures but also journalists who print stories based on those leaks.

But fear of government harassment does not fully explain the media's reluctance to pursue evidence of CIA misconduct. Even less does it explain why so many journalists turned on Hersh, Daniel Schorr, and the handful of their colleagues who sought to shed some badly needed light on the secret government. (Schorr had his career

nearly destroyed for daring to arrange the publication of the Pike Committee report that the House had voted to seal.)

The deeper cause of the media's timidity is the national security state's successful efforts to co-opt the journalistic community — to make journalists view themselves as members of the government's foreign policy team rather than as independent monitors, much less critics. Such co-option long predated the intelligence investigations

## Ideas run the world



And the ideas behind American government today are corrupt and contradictory. Maybe that's why Bill Clinton and Bob Dole want the American people to blindly assume that government is the solution rather than the problem.

But Americans are — finally — beginning to grasp that something is rotten. Sure, they've been told a thousand times by the party pols that it's just a matter of a different party, a new program, one more tax increase. But year after year crime gets worse, schools fall apart, and the net of regulations is drawn more tightly around your life and property.

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of the mid-1970s; it had been a prominent feature of press-government relations since the beginning of World War II. The Vietnam-Watergate era saw only a brief and partial disruption of that relationship, and the pendulum was already swinging back by the time Hersh published his first investigative pieces on the CIA.

Moreover, there is no evidence that the end of the Cold War has prompted reporters to become more adversarial. Indeed, press coverage of the Persian Gulf War and the Balkan conflict suggests that too many journalists are willing cheerleaders for Washington's global crusades and passive conduits for government propaganda. Many dis-

patches from the Gulf and the Balkans might just as well have been produced by the Pentagon or State Department press offices.

*Challenging the Secret Government* is a modest but significant addition to the literature on media-state relations in the Cold War era. It also provides a sobering account of how powerful the national security state had become in barely three decades. The aborted attempt to leash the intelligence agencies in the mid-1970s underscores the inherent difficulty of restraining entrenched institutions. Nevertheless, that malignant system must be curtailed before it destroys what remains of American liberty. □

sive moments of historical change" (xv). Only the novel (or, I would add, the very greatest kind of historical narrative, a narrative enforced with a novelist's imaginative power) can do all this.

What is brought to life in the modern novel is a story of astonishing progress and of startling loss. The novelists whom Moses studies are all, as he puts it, "citizens and beneficiaries of the modern world, but they nonetheless feel compelled to record for posterity the great costs, paid in blood and pain, that peoples around the world have rendered to settle accounts with history" (xvii). You cannot be modern and traditional at the same time; you have to give something up. As a classical liberal, Moses knows that progress is real, but that it has to be paid for, and that different people will find themselves paying for it in different ways.

Moses develops this theme by close analysis of a series of novels, each of which reveals the impact of the tide of modernization as it reaches a particular culture. Every book is a distinguished literary achievement, as interesting in artistic as in political and social terms: Stendhal's *The Red and the Black*, Hardy's *The Mayor of Casterbridge*, Conrad's *Lord Jim*, Achebe's *Things Fall Apart* and *No Longer at Ease*, and Vargas Llosa's *The War of the End of the World*.

Moses' account of each book is judicious, meticulously documented, and

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***The Novel and the Globalization of Culture*, by Michael Valdez Moses. Oxford University Press, 1995, 262 pp., \$35.00 hc, \$17.95 sc.**

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# The Novel Takes on the World

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Stephen Cox

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Current debates about literature are usually driven by political considerations — most notably, by demands that literary judgments become less "Eurocentric," "phallogocentric," or just plain centric. The response to such demands is often as overgeneralized as the demands themselves. The value of the canon of Western literature is often asserted, for example, without much awareness of the fact that "Western" literary forms are now in practice all over the world.

Michael Valdez Moses, a young classical liberal critic, has provided a useful corrective to both sides of the argument. In *The Novel and the Globalization of Culture*, his subject is the important literature that has emerged, during the last two centuries, from confrontations between the ways of the modern West and the ways of

traditional societies.

His idea is that modernization, which is inseparably associated with the capitalist system, is a global and probably irreversible process. No other system has successfully competed against capitalism and the political structures that accommodate it. No other system can be expected to do so. Modern culture is global; it cannot easily be "subdivided" on a regional basis.

The form of culture with which Moses is especially concerned is the novel. This is, of course, a distinctively Western genre, in origin, at least. It is also, as Moses argues, crucially important for our understanding both of the global process of modernization and of its various effects on various societies and individuals. The novel, as he says, "provides a condensation or crystallization of social life that registers both the objective conditions of society and the particular subjective reactions of individuals to those conditions during deci-

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*You cannot be modern and traditional at the same time; you have to give something up.*

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finely sensitive to the individual author's literary craft. Moses is no fool about politics, either. He misses neither the complexities of political conflict nor their connection with fundamental issues and large historical movements. He sees much that other people miss. In discussing Achebe's Nigeria, for instance, he emphasizes the fact that the political difficulties of new African states result, in large part, not from the onslaught of a highly competitive market economy but from the competition for governmental favors among collective groups, the shadows of traditional

collectivities. It's neither capitalism nor traditionalism but an unfortunate attempt to combine the two.

Moses' ability to explain works of literature without reducing or falsifying them shows to particular advantage in his analysis of Achebe and Vargas Llosa, who are concerned with political conflicts that might otherwise appear inaccessibly remote to late-twentieth-century American readers. But one returns with heightened awareness and appreciation to every text that Moses treats. This is a compliment, I am sorry

to say, that current literary criticism very seldom merits.

Classical liberal analysis has made signal contributions to the study of economics, history, and a variety of other disciplines. But although some of the most influential exponents of classical liberalism have been literary people, classical liberal ideas and methods have, at present, a quite limited influence on literary studies. Moses' important contribution to literary criticism will certainly help to resolve that paradox. □

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*We the Living*, by Ayn Rand. Dutton, 1995, 433 pp., \$25.95.

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# *We the Revising*

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R.W. Bradford

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When Leonard Peikoff prepared a new edition of Ayn Rand's novelette *Anthem*, he performed a great service to those who study and admire Rand: in addition to the text of the revised edition of 1946, he included the text of the original 1938 edition, which had long been out of print. This was of tremendous value to those interested in Rand's literary development, for it enabled them to compare the two texts and identify the changes the more mature Rand had made in the novel.

It's too bad he didn't do the same for the new edition of Rand's first book, *We the Living*. Like *Anthem*, *We the Living* was a commercial failure when first published. Like *Anthem*, its second edition included many revisions. And like *Anthem*, copies of its first edition are extraordinarily difficult to locate.

Indeed, a reprint of the first edition of *We the Living* would be far more valuable than the reprint of the first edition of *Anthem*, if only because Rand's changes were much more substantial. Rand matured as a novelist far more in the years between 1936, when the first edition of *We the Living* was

published, and 1958, when its revised edition came out, than in the eight years between the first and second editions of *Anthem*. In addition, *We the Living* is a substantial novel, while *Anthem* is hardly more than a lengthy short story.

According to Stephen Cox, whose essay "Ayn Rand: Theory Versus Creative Life" (*Journal of Libertarian Studies* 8:1, Winter 1986) remains the best analysis of Rand's literary method and contains the first detailed discussion of the differences between the two editions of *We the Living*, Rand's editorial changes are very instructive:

... the majority of Rand's hundreds of revisions are fastidious tinkering with sentence rhythms and images — changes that usually have little to do with her ideology. . . . About her imagery she is minutely conscientious: "dusk" becomes "semi-darkness," an official's "stamp" becomes a "rubber stamp," and "little bridges" become "delicate bridges." If this degree of concern is any indication, it seems clear that Rand devoted a huge proportion of her life as a working novelist to problems of imagery.

Rand's revisions of *We the Living* sometimes changed the book's mean-

ing substantially. In particular, she removed two passages that expressed strong Nietzschean sentiments. In one, the heroine tells a Communist:

I loathe your ideals. I admire your methods. If one believes one's right, one shouldn't wait to convince millions of fools, one might just as well force them. Except that I don't know, however, whether I'd use blood in my methods.

In another, the Communist tells the heroine that "we can't sacrifice millions for the sake of the few." She responds, "You can! You must. When those few are the best. Deny the best its right to the top — and you have no best left." Rand also eliminated a passage describing the hero as "not a lover, but a slave owner" and the heroine as longing to be under his whip.

Peikoff's introduction to the new edition fails to mention these changes. In this, he followed Rand's lead. In the foreword to the 1958 edition, she denied having made any significant editorial alterations:

I want to account for the editorial changes which I have made in the text of this novel for its present reissue: the chief inadequacy of my literary means was grammatical — a particular kind of uncertainty in the use of the English language, which reflected the transitional state of a mind thinking no longer in Russian, but not yet fully in English. I have changed only the most awkward or confusing lapses of this kind. I have reworded the sentences and clarified their meaning, without changing their content. I have not added or eliminated anything to or from the novel. I have cut some sentences and a few paragraphs that were repetitious or so confusing in their implications that to clarify them would have necessitated lengthy additions. In brief, all the changes are merely line-changes. The novel remains what and as it was.

With that, Rand rewrote her own intellectual history. Rumors that she had once been quite Nietzschean would remain only rumors, promulgated by those who located a first edition of *We the Living* and noticed Nietzsche's influence.

Peikoff's introduction also repeats a highly dubious claim about the film version of *We the Living* produced in

### Italy during World War II:

The fascist government had approved the movie on the grounds that it was anti-communist. But the public (like the director) understood at once that the movie was just as anti-fascist as it was anti-communist. . . . Five months after its release, the government figured out what everyone else knew, and banned the movie. (The Nazis, too, were demanding that Italy ban it.)

This story first surfaced in 1961, when Rand told her biographer Barbara Branden that she had been so informed by the film's stars, Alida Valli and Rossano Brazzi, and is supported by a 1986 claim by a lawyer for the company that produced the movie. It is contradicted by virtually all other

sources, including the Italian film archive, Cinematec. One of Rand's alleged sources, Brazzi, emphatically denied the tale in a 1986 interview. Standard histories and reference books about Italian cinema of the period make no mention of it being banned; some flatly assert that no Italian films were ever banned by the Fascists. (See R.W. Bradford, "The Search for *We the Living*," *Liberty*, November 1988.)

Of course, it's good to see that *We the Living* is still in print. I am among the minority of Rand's admirers who believe it to be her best novel. It's too bad that the new edition contains nothing new except Leonard Peikoff's introduction, which only regurgitates old myths. □

*Wall Street Journal*, *Los Angeles Times*, and *Washington Post* for all manner of flaws, including panic-mongering, junk science, and poor writing.

*Our Stolen Future* falls into a trap common to conventional environmentalism: it neglects trade-offs. Abandoning the 100,000-plus chemicals that play a role in 45% of the world's economic activity would be extraordinarily costly. The authors demand "eliminating the use and release of hazardous compounds," setting standards to protect those most vulnerable, reducing the numbers of chemicals on the market and in given products, using only easily detectable and well-understood chemicals, and phasing out synthetic chemical manufacture. Such "broad government action" doesn't come cheap. Mandatory monitoring and disclosure laws for chemical manufacturers, water companies, grocers, and distributors would ultimately impose sizable costs on consumers.

Implementing *Our Stolen Future's* recommendations would close off many valuable opportunities. Immense benefits to food production and delivery systems would be lost. The benefits of plastics, medical drugs, and synthetics would no longer be available. According to Dr. Lorenz Rhomberg of the Harvard Center for Risk Analysis, "a crash program of [hormone disruptor] control and cleanup will divert precious resources from other pressing environmental problems. This could

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***Our Stolen Future*, by Theo Colborn, John Peterson Myers, and Dianne Dumanoski. Viking Books, 1996, 306 pp., \$24.95.**

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# Flying Blind or Running Scared?

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John A. Baden and  
Douglas S. Noonan

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In its foreword, Vice President Al Gore announces that *Our Stolen Future* "raises compelling and urgent questions that must be answered." The book has been promoted as the next *Silent Spring*, Rachel Carson's 1962 book that spawned much of the environmental movement. More likely, it marks the end of an era of gullibility, hysteria, and crisis entrepreneurship. Unlike Al Gore, intellectually honest environmentalists demand factual and logically consistent foundations for reform. Hype and rhetoric are becoming passé.

The book was written by Theo Colborn, John Peterson Myers, and Dianne Dumanoski, two zoologists and a journalist. Their "scientific detective story" — provocatively subtitled "Are

We Threatening Our Fertility, Intelligence, And Survival?" — alleges that synthetic chemicals (found in PVC pipes, Tupperware, Tide, etc.) disrupt hormones. These hormonal disruptors are responsible for all manner of ecological, psychological, and social ills, they claim, ranging from domestic violence to "lesbian seagulls." The cure? Ban them.

The book's timing was perfect. The National Academy of Sciences had just convened to discuss hormone disruptors. It arrived on bookshelves just in time for April 22, Earth Day — and just as Congress was being taken to task over environmental issues. It had a sexy title, a fetus on the cover, and a dramatic detective story inside. It was, and is, a PR masterpiece.

Yet it's flopping. It has been thoroughly trashed by the *New York Times*,

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*It has a sexy title, a fetus on the cover, and a dramatic detective story inside. It is a PR masterpiece.*

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divert regulatory and research attention away from other, true causes of breast cancer, birth defects, and wildlife toxicity." These lost opportunities would be costly indeed.

Costs alone do not invalidate a policy option, of course. The costs and benefits of any policy must be acknowledged and reconciled. We know that reckless proliferation of synthetic chemicals may bring reproductive ruin to affected wildlife.



Conversely, a ban may bring unbearable costs to economies and ecosystems worldwide. Competing interests must be reconciled. But *Our Stolen Future* fails to do this.

Except once. The authors do make an exception to their absolutist position when they acknowledge that breast-feeding is a primary source of contamination. Breast-feeding "exposes infants to disturbing levels of chemical contaminants . . . levels ten to forty times greater than the daily exposure of an adult."

So the prime culprit in "stealing our future" may be the sacred practice of breast-feeding. It is easy, trendy, and politically correct to recommend organically growing one's own foods, avoiding animal fats, and giving babies unpainted toys. It is not acceptable to bash breast-feeding. In a rare instance of prudence, the authors write, "We know too little to judge how the undeniable benefits of breast-feeding balance against the risks of transferring hormonally active contaminants. While we have great concern, it is premature to advise women against breast-feeding." The authors would do well to consider trade-offs in all their recommendations.

### Pseudoscience and Pseudo-Rights

Sifting through the morass of conjecture, innuendo, and propaganda in *Our Stolen Future* is nearly impossible. The book's backwards methodologies and hysterical biases subvert what might be valuable evidence.

*Our Stolen Future* rejects classic ideals of scientific proof for failing to address the alleged hormonal threat. Out with hypothesizing explanations for observations; in with "ecopidemiology." The weight of the evidence now depends on "value judgments," such as "how much risk we are willing to entertain." Of course, value judgments can't be disproven. They are sovereign decrees, not testable hypotheses.

Colborn, a leader in "ecopidemiology," tells us that chemicals, unlike people, must be judged guilty until proven innocent. But basic logic dictates that one cannot prove a negative. Unicorns may well frolic in the forest. We cannot disprove that possi-

bility, because someone can always claim we haven't looked hard enough. Conversely, we could readily prove it if we see them.

Similarly, a presumption of chemical guilt places the burden of proof on chemical manufacturers, even though proving that their chemicals don't disrupt hormones is logically and technically impossible. One could always claim that the manufacturer hasn't looked hard enough. No harm to the

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*The book rejects classic ideals of scientific proof for failing to address the alleged hormonal threat.*

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first generation doesn't prove harmlessness to the second, or third, or tenth. The infinite combination of varying chemicals, circumstances, and levels of susceptibility render the task absurd.

Colborn, Dumanoski, and Myers also offer a declaration of inviolable rights, starting with "children have a right to be born chemical-free." This epitomizes the book's irresponsible and naive rhetoric. The authors do not identify who has the responsibility for guaranteeing those rights. The judicial system is responsible for ensuring a right to due process. Who can have responsibility for "chemical-free births"?

To be born free from synthetic chemicals, the authors tell us, requires that mothers themselves be free from chemicals. This requires "that women minimize the consumption of animal fat from birth until the end of their child-bearing years." They must also avoid exposure to plastics, pesticides, and detergents. Little girls playing with painted or plastic toys as infants, the authors note, may be violating their future children's right to chemical-free nativity.

Obviously, this "right" is for bumper stickers, not serious analysis.

Another unequivocal right advocated in *Our Stolen Future* is the "right to know" what chemicals are in one's food, water, and other consumer goods. This is echoed by Al Gore, who writes,

"All of us have the right to know and the obligation to learn."

In practical terms, this "right to know" is an exceptionally expensive entitlement. Its costs would first be borne by chemical manufacturers and distributors. The costs would then be passed on to consumers in the form of higher prices and burdensome instruction manuals detailing the biochemistry of everything from lettuce to business-wear.

The authors want to pay for this right by imposing a duty on manufacturers and distributors, because they have deeper pockets. In this, they neglect the power of market forces. With proper incentives, competition — not mandated disclosure laws and high transaction costs — will drive the market to satisfy customer preferences. If the public is curious about the composition of its plastics, then firms will provide this information voluntarily. If the consumers really want to know, they can purchase that knowledge like they purchase organic lettuce. And lettuce producers will find ways to communicate that knowledge flexibly, effectively, and inexpensively via certification. The market rewards those who please customers.

To be fair, there is one useful prescription in *Our Stolen Future*: the admonition that we move beyond "the cancer paradigm." Too much research has been driven by the cancer scare of the 1970s, the "War on Cancer," and hype over inflated cancer rates. In a way, our past experience with cancer helps explain why this book takes such a hysterical tone. The politics of funding research pushes research money toward trendy scares. The mysterious role of natural and synthetic estrogens in the development of animals and humans does need explaining, and a prudent, cautious, and scientific response to the important questions raised in *Our Stolen Future* is definitely in order. A "War on Synthetic Chemicals" is most definitely not — but the success of the War on Cancer, in attracting funding if not in curing cancer, speaks volumes about why Colborn and company might call for one.

### Flying Blinded

Modern chemistry has brought benefits to society too numerous to list. But

this better living has had its costs.

DDT and CFCs prove that not all good things go together. When DDT first arrived, Paul Müller won the Nobel Prize for his seemingly miraculous chemical compound. But as *Silent Spring* and recent history have shown, DDT is not unambiguously wondrous. It carries severe consequences for much wildlife and some humans. Chlorofluorocarbons, similarly, were heralded as "one of the safest substances ever invented." Half a century passed before CFCs were blamed for imperiling life on this planet.

So technological progress, while beneficial, is neither free nor without risks. Colborn, Dumanoski, and Myers take this observation much further. They find civilization plunging arrogantly into the future with "dangerous ignorance" and risky "hubris." The risks and realities of progress have always existed, they admit, but the scale of human impact now encompasses the entire Earth. The stakes have become too high. The risks and trade-offs of advancement are now intolerable.

*Our Stolen Future* claims that we are, in essence, "flying blind." What do we do when we see a dark, nebulous shape ahead? Will we race through it, hoping it is a cloud and not a mountainside? Will we slow down? Or will we "land the plane as quickly as possible"? The technophobic authors embrace the last option. Phase-outs, bans on new chemicals, and safer ways to "meet basic human needs" are "the only way to opt out of the experiment."

We are flying blind to the future, and the authors want off the plane as soon as possible. They long for an idyllic past, when synthetic chemicals didn't exist and people satisfied only their basic needs. But renouncing modernity and stifling progress will mean taking away most of the twentieth century's benefits. It takes a much more convincing argument than *Our Stolen Future* to cajole a full plane to land, just because someone with a window seat sees a cloud and feels some turbulence. Responsible analysts will advocate policies based on sound science and the broad interests of the citizenry, not the machinations of crisis entrepreneurs. □

*In 1896, when Herbert Spencer edited his libertarian classic Social Statics, he deleted its most radical chapter, "The Right to the Ignore the State," and toned down several other positions. In this review, written for his two-volume autobiography, the more mature Spencer explains his changes by sketching a critique "as might have been written by a competent critic who had read Social Statics through, and given due thought to its arguments."*

***Social Statics*, by Herbert Spencer. Robert Schalkenbach Foundation, 1995 (1851), 430 pp., \$15.00.**

## A Youthful Work by a Promising Author

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Herbert Spencer

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Nothing in this volume implies that its author accepts the current creed; and though a chapter entitled "The Divine Idea" implies that he is a theist, yet, for anything that appears to the contrary, his theism is nominal only. Immediate divine interposition nowhere enters as a factor into his conception of things; but, contrariwise, things, human as well as other, are conceived as conforming everywhere and always to immutable law. Such being the case, it seems to us that merely putting at the back of immutable law a divine idea, practically amounts to nothing: the immutable law might stand just as well by itself.

*Social Statics*, or, to quote its subtitle, *The Conditions essential to Human Happiness specified, and the first of them developed*, might fitly be characterized as a kind of Natural-History ethics. Its sub-title shows that, assuming happiness as the end to be achieved, it regards achievement of it as dependent on fulfilment of conditions; conformity to which constitutes morality. It considers Man as an organized being subject to the laws of life at large, and considers him as forced by increase of numbers into a social state which necessitates certain limitations to the actions by which he carries on his life; and a cardinal doctrine, much emphasized by Mr. Spencer, is that Man has been, and is, undergoing modifications of nature which fit him for the social

state, by making conformity to these conditions spontaneous. In a chapter entitled "The Evanescence of Evil," he exemplifies the truth that increased use of any power, bodily or mental, is followed by increased strength of it; and conversely. He argues that the implied adaptation of constitution to requirements goes on without limit; and that therefore, in course of time, the adaptation of human nature to the social state will become complete — man will become perfect. Here is one illustration among many of Mr. Spencer's too-little-qualified conclusions. We will not enlarge on the fact which he should have recognized, that as fast as adaptation approaches completeness, it becomes slower and slower — that the forces which produce change become less as the need for change diminishes; so that adaptation must ever remain incomplete. Merely noting this, we go on to point out that, for adaptation to become complete, the conditions must remain constant; which they do not. Astronomic and geologic changes must cause in the future, as they have caused in the past, unceasing alterations in the climatic and other characters of men's habitats; entailing slow migrations of races from regions which have become unfit to fitter regions. Along with such migrations must go modified habits of life, and of industrial arrangements. So that before adaptation to any one set of conditions has been approached, some other set of conditions will have to be met.

Passing now to the ethical part of

his theory, we find Mr. Spencer's first proposition to be that every man is free to do whatsoever he wills provided he does not infringe the equal freedom of any other man — free to do it, that is, in the sense that within this limit, other men have no right to restrain him. This is said to be the primary condition to which men's actions must conform before social life can be harmonious. But Mr. Spencer does not say what he means by men — How about children? If the law is not applicable to them, are they to be regarded in old Roman fashion, as property over which the parent has life-and-death power? If, contrariwise, the law is applicable to them, must they be considered as having the same claims to freedom as their fathers, including political freedom? Clearly Mr. Spencer should at least have limited his doctrine to adults.

After making this needful qualification, we may accept the conclusion that men's claims to life, to personal liberty, to property, to free speech, &c., &c., are corollaries from this first principle: all forms of equity, or equalness, being implied in it. Passing over some chapters in which these corollaries are drawn, we come upon one which again shows our author's way of pushing his doctrines to extremes, without

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*How about children? If the law is not applicable to them, are they to be regarded in old Roman fashion, as property over which the parent has life-and-death power?*

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regarding the limitations necessitated by social conditions. We refer to the chapter on "The Rights of Women." Setting out with the assertion that "equity knows no difference of sex," he argues that the rights previously deduced must be as fully recognized in women as in men; and presently coming face to face with the question of political rights, he boldly claims these as much for the one as for the other. Now as a matter of equity simply, this claim might be valid were the social positions of men and women alike in every other respect. But they are not.

Just noting that certain privileges which men accord to women constitute a kind of social priority, it will suffice to emphasize the fact that along with their citizenship, men have the obligation of defending the country, while women have no such obligation. To give women the same political power as men without joining to it his onerous political duty, would be to give them not equality but supremacy. Only if, while receiving votes, they undertook to furnish to the Army and Navy contingents equal to those which men furnish, could they be said to be politically equal.

In Part III. of his work, Mr. Spencer treats at length of those political applications of his first principle incidentally touched upon in the last paragraph; and here we shortly come upon the strangest and most indefensible doctrine in the book. Unquestionably Mr. Spencer has "the courage of his opinions;" for, in a chapter entitled "The Right to Ignore the State," he actually contends that the citizen may properly refuse to pay taxes, if at the same time he surrenders the advantages which State-aid and State-protection yield him! But how can he surrender them? In whatever way he maintains himself, he must make use of sundry appliances which are indirectly due to governmental organization; and he cannot avoid benefiting by the social order which government maintains. Even if he lives on a moor and makes shoes, he cannot sell his goods or buy the things he wants, without using the road to the neighbouring town, and profiting by the paving and perhaps the lighting when he gets there. And though he may say he does not want police-guardianship, yet, in keeping down footpads and burglars, the police necessarily protect him whether he asks them or not. Surely it is manifest — as indeed Mr. Spencer himself elsewhere implies — that the citizen is so entangled in the organization of his society, that he can neither escape the evils nor relinquish the benefits which come to him from it.

Concerning the succeeding chapter on "The Constitution of the State," little needs be said. In these days of extended franchise and agitations for wider extension of it, Mr. Spencer will find general agreement in his argument

deducing the constitution of the State from the law of equal freedom. Nor need the chapter on "The Duty of the State" detain us, further than to remark that we wish we could see some sign that the State will presently give to each citizen that complete protection against civil, as well as criminal, injuries, which payment of taxes entitles him to. But the next chapter — "The Limit of State Duty" — introduces another of Mr. Spencer's peculiar views, which most readers will

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*The citizen is so entangled in the organization of his society, that he can neither escape the evils nor relinquish the benefits which come to him from it.*

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promptly reject. In it he contends that beyond its function of protector against external and internal enemies, the State has no function; and that when it assumes any other function it becomes an aggressor instead of a protector — partly by unduly restricting men's spheres of action, and partly by taking away their money to support its additional staffs of officials. The remainder of Part III. is devoted to discussing the various forms of legislative aggression, in chapters on "The Regulation of Commerce," "Religious Establishments," "Poor Laws," "National Education," "Government Colonization," "Sanitary Supervision," &c., &c. Each of these chapters begins by deducing from the law of equal freedom, the inequity of the particular kind of State-action treated of; and then proceeds to show the impolicy of such kind of State-action. The conclusion set forth in the first two of these chapters, are conclusions already drawn by many people. Those set forth in the others will be variously regarded — mostly with repugnance. For ourselves we may confess to feeling some sympathy with Mr. Spencer in his protests against the multitudinous mischiefs done by legislation; and think that politicians would do well to inquire more carefully and sceptically than they do, before proposing new regulations. In

defending some of his theses, however, Mr. Spencer enunciates doctrines which will horrify many soft-hearted people. Describing (on p. 322) the ways in which among animals the destroying agencies at work, continually "weed out the sickly, the malformed, and the least fleet or powerful," and saying that by this and kindred processes "all vitiation of the race through the multiplication of its inferior samples is prevented," Mr. Spencer goes on to argue that mankind are, and should be, subjected to this "same beneficent, though severe discipline"; and he holds that when a Government tries to prevent the misery necessitated by the stress of competition and the consequent "struggle for life or death," it eventually creates far more misery by fostering the incapables: saying of the "spurious philanthropists" that "these sigh-wise and groan-foolish people bequeath to posterity a continually increasing curse." So, again, on pp. 378-81, he asserts that "inconvenience, suffering, and death, are the penalties attached by nature to ignorance, as well as to incompetence;" and contends that the State does mischief when it wards off such penalties. Verily this teaching is not meat for babes but for men; and men of strong digestions, too.

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*We wish we could see some sign that the State will presently give to each citizen that protection which payment of taxes entitles him to.*

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However, it is needful to add that Mr. Spencer protests only against interference by the State with the normal connexion between suffering and inferiority: saying, of the natural expurgation of society ever going on, that, "in so far as the severity of this process is mitigated by the spontaneous sympathy of men for each other, it is proper that it should be mitigated."

Part IV. we must pass over; though the chapter entitled "General Considerations" contains matter for comment — mostly approving but partly dissentient. Already points of dissent have been sufficiently emphasized —

perhaps obscuring too much sundry points of agreement of greater importance. We do not deny that, for harmonious social co-operation, there must be recognized the liberty of each limited only by the like liberty of all: the further limitations which morality dictates, not being properly imposed by public agency. That those various claims which we distinguish as "rights" are corollaries from this fundamental requirement, seems also to be a well-grounded proposition. Moreover, the arrangements implied by political justice are deduced by Mr. Spencer from the first principle he lays down, by arguments which seem to us mostly valid. Nor are we concerned to dispute the inference, that when the State undertakes to regulate and aid men in

the carrying on of their lives, it inevitably diminishes their liberties, by controlling either their actions or their purses; while, unquestionably in many cases, it does evil rather than good by its officious meddlings. Though, as pointed out, the absolutely optimistic belief in the perfect adaptation of men to the social state, is untenable, yet there is reason for thinking that an approximate adaptation is being slowly effected. And there may be warrant for the doctrine set forth in a curious section of the "General Considerations," where, saying that we often "speak of the body politic" and "compare a nation to a living organism" (being led, by this collocation of ideas, to use the strange phrase "the social organism"), Mr. Spencer argues

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that there is going on a conciliation between the structure of society and the structures of its units — an action and reaction by which the two are being ever moulded and re-moulded into congruity; so that eventually man will acquire a nature such that he will tend to do spontaneously that which the

welfare of society demands.

It is a pity that Mr. Spencer did not devote some years more of thought to his work before publishing it. He might then have set forth the truths it contains freed from the crude ideas with which they are now mingled, and undisfigured by illegitimate corollaries. □

## Spamming the Spamways: a guide for the perplexed.

# A Very Brady Irony

Matt Asher

In straightforward irony, someone achieves the opposite of his intent. If an actor in a play, sensing an impending flood, completely sandbags his house to save it, but the weight of the sandbags collapse the house, that is ironic. The *post-ironic* actor would save his house by simply torching it to begin with.

Irony is usually serendipitous. Post-irony requires self-consciousness. The post-ironist acts in full awareness that he is being ironic. If, as Nietzsche argued, we become that which we fight against, the post-ironic solution is to embrace that which we do not wish to become. If you believe our cultural nadir was Scooby Doo, what better way to deal with this atrocity than by parading it around on a T-shirt?

Perhaps another example is in order. A friend of mine drifted through school as part of the anti-establishment establishment. He blew up toilets, pierced body parts, and cursed out several administrators. He sneered at all those who would stand up and cheer their school to VIC-TOR-Y! When graduation came, he shaved the number '89 in his head, fully aware of the symbolism involved. But he meant it in a post-ironic way: *Rah, rah, rah, you fucking assholes*. Only those who knew him got

the joke.

Such is the nature of post-ironic humor — it is contextual and often requires inside information to be understood, or even noticed. Often it exists solely for the sake of the teller, who is not upset if no one else catches on. If romantic art strives to express universal human themes, post-irony looks to express particular artistic quirks. The less accessible it is to the general populace, the greater its chances of being deemed worthy. Post-irony is the humor of inside jokes.

Post-ironic action often involves co-opting the symbols of another movement to make the opposite point. The context creates the irony. For example, my friend Cal has a Volkswagen minibus. He plays drum music in woodland circles and shops for food at the local co-op. Cal was looking to make his little statement for peace, love, and harmony with his bus, but he didn't want to go the conventional Dancing Bears or No Nukes! route. So he found a large deer head, complete with twelve-point antlers, and bolted it to the front of his bus. The different context was meant to point out the silliness of stuffed animal heads as trophies of virtue.

Imitation may be the sincerest form

of flattery, but it can also be the most conniving form of blasphemy. Post-irony often involves the conscious choice to display bad taste in order to sneer at it. When people wore bell-bottoms and tacky platform shoes in the '70s, they were following bad fashion. When a post-ironic GenXer dons the same duds, he does so with full knowledge of how bad he looks. He puts these *objets d'(non)art* on to sneer at them. Baby boomers may not fully understand why so many of their children are dressing as they once did, but by and large they know enough not to take it as a compliment. Post-irony becomes a clever, almost insidious way to strike back at your elders. *How could you have been so stupid?* is the implied message. And the boomers are forced to rewitness their less-than-glamorous past.

By digging up or making reference to past examples of bad art or pop culture, post-ironists require the viewer to understand the reference. The more obscure the reference, the more kudos you get: wearing a Brady Bunch T-shirt scores fewer points than reciting lyrics from an old T. Rex song.

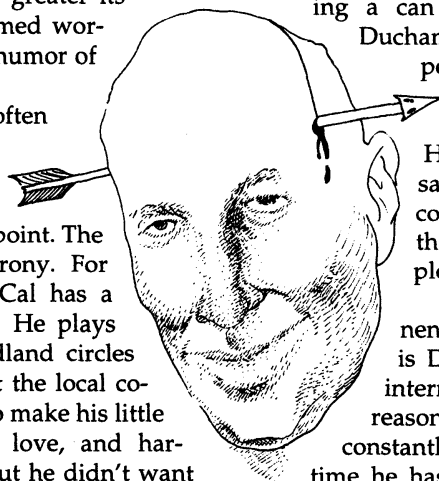
## It's Everywhere

Marcel Duchamp may have been the first artist to recognize the power of post-irony. His cans of "*merde*" are a good example. By packaging and selling a can of his own feces,

Duchamp pointed out that people will buy any shit that had been neatly packaged.

He distilled what he saw as the worst of commercial art and threw it back into people's faces.

The most prominent post-ironist today is David Letterman. He interrupts guests for no reason, makes silly faces, constantly asks how much time he has left, and does bad impressions. The underlying theme of his show is, "Hey, isn't it a good joke that I ended up on national TV?" Letterman goes on to confirm how much he doesn't belong on network TV by pulling stunts like "stupid pet tricks" and giving airtime to The Artist Formerly Known As Larry "Bud"



Melman. He proves TV is indeed a "vast cultural wasteland" by making his show into a vast cultural wasteland. Letterman pulls off a tremendous post-ironic feat: we are laughing neither at him nor with him, but at what put him on TV, and at the very institution.

In perfect post-ironic fashion, Letterman creates good TV by setting out to do bad TV. As one critic put it, watching the Letterman show on a good night is like watching an orchestrated train wreck.

In politics, post-irony is rare but on the ascendancy. Some mock the political process by voting for Mickey Mouse or Bozo. The message is upfront and satirical. The voter is saying, in essence, "This is how much respect I have for the state of democracy." Or, "As long as the candidates are clowns, I might as well vote for a real clown." Post-irony is a more subtle and sophisticated way to be condescending.

The most prominent post-ironic political movement I know of is Canada's Alligator Party. Its candidates all wear suits and carry skateboards. Its platform has only one

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*Imitation may be the sincerest form of flattery, but it can also be the most conniving form of blasphemy.*

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plank: Canada should build an underwater tunnel connecting it with Japan. A vote for the Alligator Party sends this post-ironic message: "This is the kind of stupidity we have come to expect of politicians."

### Post-Irony and Other Genres

Post-irony should not be confused with the other ways people denigrate things. It is not deconstruction, which takes a work apart piece by piece until it becomes absurd. (This is anti-contextual, and can be viewed as the inverse of post-irony.) Nor is it satire, which works by exaggerating or caricaturing its target's weaknesses.

Post-irony should also be distinguished from an equally insidious method of trashing things: the Warhol way. Andy Warhol sneered at the

extraordinary by exalting the ordinary. What he did was the spiritual equivalent of entering a gallery that contains Michelangelo's David — and spending 20 minutes singing the praises of some pop artist. This is a more sophisticated, more underhanded way of drawing a mustache on the Mona Lisa. But the end effect is the same: to laugh at what others see as great art.

Post-irony is closely related to, but should not be confused with, camp. In camp, the goal is not to mock bad art *per se*; it is to make art so lousy that it once again regains its appeal. Camp is not satirical of anything but itself. The artist who makes camp cannot take himself seriously, whereas the artist who uses post-irony takes only himself seriously.

It is hard to take a post-ironic look at camp art: it set out to be bad, so there is no enlightenment to be had in showing how bad it is. Watching a lousy B-movie is so tortuous that it becomes uplifting. Viewers take open pleasure in witnessing such unnatural disasters.

Few artists have undertaken the task of mocking camp. Most notable is the band the Cramps, who took it on with their song "Bikini Girls With Machine Guns." But even this is hard to classify as post-irony, despite the fact that it thrusts the essence of camp back at us. After all, we already know how stupid movies like *Bikini Girls With Machine Guns* are. So the Cramps could be seen as enshrining the inane for its purity, a decidedly campy thing to do.

### Post-Ironic Pop

Post-irony puts a new twist on the old "bad is good and good is bad" paradigm. Bad returns to being bad, while good consists of showing how very bad bad is. The post-ironist uses his talents of discrimination to pick out the tackiest examples of pop culture, then parades them around with a sneer. In this way, post-irony could be seen as a lazy man's way of showing he has good taste. After all, it is easier to pick out examples of really poor taste than to exhibit exceptionally good taste yourself.

Post-irony can be a shortcut to demonstrating your own artistic value. For example, the use of post-irony can

spare "alternative" bands the daunting task of proving their "authenticity" and "realness." Instead of creating their own style, they need merely appropriate a past style they find particularly loathsome, and that identity becomes their antithesis. This is definition by negation — I am not my clothes, my image, etc.

The desire to transcend one's image with post-irony leads to the creation of an anti-image. "This is not for you," Pearl Jam wails. Each listener can

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*In perfect post-ironic fashion, Letterman creates good TV by setting out to do bad TV.*

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imagine that Eddie Vedder is speaking to them about everyone else.

Simply listening to music can be a post-ironic act. The Monkees semi-revival of a few years ago was no doubt inspired, at least in part, by a desire to laugh at what some once thought of as good music. Some buy the albums to sneer at their former selves. However, post-ironic art must be enjoyed in a certain way. The listener must fully understand the lameness of what he is hearing and the context in which it first emerged.

Because post-irony can easily dissolve into the sea of an otherwise mediocre work, it has caused much angst for the grunge set. The presumed goal of post-irony is to get people to understand the folly of their ways by shoving it back in their face. But it doesn't always work that way. The band R.E.M. mocks mindless Top 40 music with the song "Pop Song '89." They sing with moronic smiles the generic lyrics, "Should we talk about the weather? Should we talk about the government? I, I, I . . ." The song is a jab at those who bounce to the beat of bland Top 40, and at those who profit from making such music. But what if some people don't get it? What if they buy the album because they like those upbeat pop songs and they think R.E.M. has provided a good example? Well, the joke's on them, I suppose.

Or imagine Kurt Cobain singing, "He's the one, who likes all our pretty



songs, and he likes to sing along, but he don't know what it means," while looking out over a crowd of stoned fans somnambulistically mouthing his words. Why, it's enough to drive a man to suicide.

### The Perils of P.I.

Bands like Dee-Lite and the B-52s tread the thin line between post-ironic sneering and earnest emulation of past styles. The lyrical stylings and exaggerated dress of Lady Miss Kier could be an honest glorification of psychedelia and spandex, or the joke could be on those who take her seriously. Post-irony often treads this thin line between indulgence and castigation. Because the only real difference between post-irony and simple bad taste is the artist's sneer, the two can easily become confused.

Take John Updike's short story, "Tomorrow and Tomorrow and Tomorrow." Taken on its face, this is an abominable science-fiction story. It embodies all that is bad in the genre, presenting the full litany of sci-fi clichés: In The Future we are all eating tasteless food out of tubes and trying to get imprisoned so we can have more space to ourselves. The story comes off

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*Because the only real difference between post-irony and simple bad taste is the artist's sneer, the two can become easily confused.*

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as an example of what happens when good authors go bad: they go *really* bad.

But could a good author have gone bad intentionally? I am told that Updike is an excellent writer, but "Tomorrow" seems so lame that I wonder if I'll ever read anything else of his to see if this is true. If "Tomorrow" was a post-ironic jab at bad SF, it was an exceptionally good example. Unfortunately, I suspect it was just trash.

Besides the risk of being mistaken for ordinary banality, post-irony has another pitfall. Recently, a hopelessly left-wing colleague of mine hosted an awards ceremony in which the trophy was a can of Spam. This was a post-

ironic ceremony, done with full knowledge that the prize was less than worthless; it was an inside joke for those who shared the same cultural sensibilities. However, problems arose when it was pointed out that Hormel (Spam's parent company) was being boycotted for committing some left-liberal *faux pas*. So was it right to put on the ceremony if it meant supporting Hormel by buying their product to belittle what it stood for?

These post-ironists came face-to-face with the inherent contradictions in practicing post-irony: they were supporting the very icons they were sneer-

ing at. I call this the Preacher's Dilemma, after those self-righteous sermonizers who wish to destroy cultural manifestations of what they see as evil, but have to buy the books they burn.

This whole essay can be regarded as a post-ironic look at post-irony. It mocks post-irony by picking out its silliest elements and thrusting them at you. And it provides no aesthetic alternative. So the next time you witness a blunt act of post-irony, feel free to give the perpetrator a little high-and-mighty smirk that says, "I am mocking your mockery." □

# Resurrecting the Novel

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Timothy Virkkala

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"Even if Silicon Valley manages to plant a virtual-reality helmet in every American household, even if serious reading dwindles to near nothingness, there remains a hungry world beyond our borders, a national debt that government-by-television can do little more than wring its hands over, and the good old apocalyptic horsemen of war, disease, and environmental degradation." This is the upside of modern life, as judged by novelist Jonathan Franzen, and as revealed in a long, very long — perhaps too long — essay, "Perchance To Dream: In the Age of Images, a Reason To Write Novels." Printed in a special "folio" midsection on different paper stock in the April *Harper's*, this, the editors of *Harper's* materially suggest, is an important work.

Franzen spends most of the essay regaling us with his loss of faith in the pertinence of his favorite type of novel, the "tragic realist" one. Such books are novels of social concern, if not criti-

cism, and, apparently, are suffused by the tragic sense of life. Comedy and wit seem to play almost no role in this art; or, at least, Franzen does not deign to discuss either comedy or satire. In any case, by the end of his essay *Our Noble Author* finds a bright spot in his vision of the hopelessness of modern life. "Tragic realism has the perverse effect of making its adherents into qualified optimists."

Though I enjoyed every self-indulgent phrase of his essay — even its neo-Marxist sections — enjoying Franzen's *Harper's* essay is unlikely to engender long nights curled up with his novels *The Twenty-Seventh City* or *Strong Motion*. Perhaps to echo his subject — the sprawling novel of social relevance — Franzen's essay meanders about the point, mixing opinion with story, whining self-confession with statistical analysis, somber understatement with the occasional gauchery. (The tragic realist, Franzen tells us, cannot help but "reflect" the society he lives in. Maybe this is why he, too, misuses the word "too": "Novelists don't like to poke too deeply into the question of

who their audiences are." I commend to all talkers and readers and writers that most excellent word "very.") But even now I am affected by Franzen: I have yet to come to the point.

The novel has been "in crisis" for a very long time; the death of the novel has been proclaimed over and over since the beginning of the century. Yet, more novels today get published than ever before. I suppose this fact cannot help but make the "crisis" loom especially large today: when supply exceeds demand, the value of a good tends to drop. And on the supply side, strange forces are at play: the romance of *being* a novelist is so alluring to so many intelligent people that this in and of itself pressures part of the industry into vanity publishing. But the persistence of readers (as Franzen points out, mostly *women* readers) will probably continue to offset the supply-driven devaluation of the novel — despite the Web, Virtual Reality, and films.

One effect of Franzen's essay may be to tarnish, somewhat, the allure of novel-writing. Novel-reading, thankfully, is immune to this kind of

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*It is unlikely that the novel could die: it too easily offers average people the thrill of performance without the agony of critique.*

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influence. Like music and dance, reading is a performing art. Readers perform a book — a collection of signs and sign-sets, in semiotic jargon — just as musicians read a score or dancers read the choreographer's chart. The difference is, *the performance is private*. Bad performances can offend only the performer herself. For this reason alone it seems unlikely that the novel could die: it too easily offers average people the thrill of performance without the agony of critique.

The novel has been pronounced dead so many times that its persistence no longer shocks. It has, I hazard, been reduxed to absurdity. Which is pretty much the condition of Franzen's Tragic Realist: living on the edge of fantasy, condemned to be funny. □

## Booknotes

### *Liberty for What Century?* —

Many thinkers, both eminent and obscure, have claimed that ideas are the critical moving force in history. If this is true, libertarians will want to look closely at *Liberty for the 21st Century* (Rowman & Littlefield, 1995, 386 pp., \$67.50 hc, \$26.95 sc), the latest in a line of not-gone-but-forgotten compilations of libertarian thought edited by Tibor Machan (joined here by Douglas Rasmussen).

But are ideas alone enough? It's easy to be distracted from the ideas in this book by the authors' professorial peculiarities, from their boring and laborious prose to their incessant citing of one another's work. (Some of these thinkers have been patting each others' backs for years.) Eric Mack's "Moral Individualism and Libertarian Theory" exemplifies the dreadful writing in this book. If there is a simple way to say something, Mack wants nothing to do with it. This is how he argues that the right to property is as important as and extends from the right to self-ownership:

People must have moral immunity against the destruction, disruption, or seizure of extrapersonal objects incorporated into their ongoing projects that is comparable to the immunity they have against the destruction, disruption, or seizure of their persons. This means that people must be able to acquire, by appropriately defined procedures, entitlements over particular extrapersonal items — entitlements that provide individuals with the same sort of exclusive, discretionary, and stable control over extrapersonal items as they rightfully have over themselves.

Happily, a few essays, such as Aeon Skoble's "The Anarchism Controversy," express their interesting arguments with enjoyable prose. And as part two ventures a bit away from the theoretical, it becomes more readable. But no lightning bolts hit the reader. The promised "novel" and "up to date" arguments never materialize. Much of this is old hat — or irrelevant. Rasmussen's examination of Jurgen Habermas' work is insightful and straightforward

enough. But Rasmussen isn't a joy to read and who really cares about Habermas anyway? —Mina Greb

### *Analysis Terminated* —

In 1993 and 1994, Frederick Crews raised a storm of controversy with three *New York Review of Books* articles exposing the pretensions of both psychoanalysis and its bizarre stepchild, "Recovered Memory Therapy" (RMT). The "fear and rage" that the articles roused in the Freudian and RMT communities spawned a host of angry letters to the editor, as well as Crews-hating eruptions in publications sympathetic to Freud and his legacy. Crews, wrote the bedeviled analysts, did not understand psychoanalysis today; he was mentally ill, "trapped in a transference"; he was driven, the amused Crews recalls, like "a jilted lover" to "an irrational vendetta against [his] erstwhile soulmate, Freud."

Now Crews' essays, along with the letters to the editor and Crews' crushingly eloquent responses, have been gathered into a splendid book, *The Memory Wars* (New York Review of Books, 1995, 299 pp., \$22.95). A witty and forceful writer who knows Freud, his followers, and his critics backwards and forwards, Crews takes no prisoners in his assault on "repressed memory," the basis of Freud's theory and therapy. Freud, he writes, generalized "from an inadequate or even imaginary base of observation and [ruled] his international movement more like a petty generalissimo than a discoverer of replicable knowledge." His followers uphold clinical experience as the *sine qua non* of psychological judgment, but invoke that experience to support mutually contradictory theories, failing to realize that "clinical experience, standing alone, is not a probative tool but an inducement to complacency and tunnel vision."

Perhaps such inconsistencies are best viewed as a private matter, embarrassingly peculiar to the dying cult of psychoanalysis and irrelevant to the larger society — rather like the golden tablets on which were engraved the original Book of Mormon. But now the

cult has birthed a flourishing new sect: RMT, whose more than 50,000 licensed believers are enriched "by countless untrained operators who use the yellow pages and flea market ads to solicit 'incest work.'" The strained but supportive relations between the two movements, as documented by numerous letters to NYRB, are both amusing and frightening.

The weird comedy of Freud's life and inventions has of course been covered by previous authors, but *The Memory Wars* does a superb job of summarizing and integrating their systematic debunking of Freudian pseudoscience. Equally satisfying is Crews' drumming of RMT, an intellectual mess that has wrecked thousands of lives. The RMT adherents' letters amply support Crews' view of the movement as a mystical belief system — one that, like its Freudian parent, is numb to scientific method, actively hostile to demands for empirical support, and addicted to *ad hominem* attacks and misrepresentations of research.

One study, for example, cited in a letter co-signed by 29 supporters of RMT, allegedly showed that 38% of a group of girls hospitalized for sexual abuse later lost their memory of that abuse. Crews notes — but the authors of the letter do not — that "nearly all of [the] women who failed to remember one target incident did recall others." Furthermore, the study failed to distinguish between "*second-hand knowledge about abuse and purported memory of abuse*," leaving no doubt about the status of its pretensions to science. One wonders about the motives of those who would so deliberately mislead the public.

Psychoanalysis continues to be treated with respect in our more backward intellectual provinces (notably those ruled by Martin Peretz, Norman Podhoretz, or the Modern Language Association). So it's time to ring psychoanalysis' knell. Crews has done it, and even his enemies know it. Hence the "yes, but" tone of so many of their letters — showing, as Crews writes, that psychoanalysis "appears destined to end not with a bang but with a queulous whine." —Nathan Crow

### Thoughts on Being Canonized

— What a surprise to find an entry on myself in *A Reader's Guide to*

*Twentieth-Century Writers* (Oxford, 1996, 825 pp., \$35.00) — to be one of the thousand or so authors, living and dead, honored with several hundred words. There have been entries on me in more specialized encyclopedias devoted to Contemporary Poets or Contemporary Novelists, but never before has my name been featured in a general compendium devoted to the entire century. This is big league ball, thank you, not minor league. What a surprise it is for a writer whose work has been published mostly by small presses, not established houses, and in literary magazines rather than slicks or weeklies.

A bigger surprise is that I don't know anyone connected with the production of the book. The editor is identified as Peter Parker; the general editor is Frank Kermode, who probably just oversaw and prefaced. On page vi are the names of 41 "contributors," none of whom are known to me in any way. (Customarily, in my experience, if your name appears in a book of this kind, you can tell from looking at the list of advisors who got you there.) Credit whomever with courage, yes, because there are risks, as I know from experience, in drafting entries on people who aren't already in similar books.

The *Guide* identifies me as "probably the world's most experimental writer, or at least he represents the farthest extreme of the formalist approach within the broader field of 'experimental writing.'" Though the superlative might be questionable, the characterization of my aims is not. To be fair, I should also quote the only snotty comment: "His uncompromising extremeness has left him as perhaps the foremost critic of his own work, and certainly one of the most appreciative." (Neither claim is true. Just check the book *Ecce Kosti*, a collection of encomia for my work, though it was necessarily self-published.)

As far as I can tell, the only other American small-press writers here are Allen Ginsburg and the late Charles Bukowski. Most of the other Americans are commercial writers, which is to say that their publishers think their work must be heavily advertised and promoted if it is to be sold at all.

Having a taste for cultural encyclopedias, I read this one from cover to

cover — and began to feel uncomfortable. There was clearly a double standard, with far more British Empire writers included than Americans, and thus far more unfamiliar Brits. Consider, from the book's initial letter, Rodney Ackland (1908–1991), Peter Ackroyd (1949–), Gilbert Adair (1944–), Robert Aickman (1914–1981), Kenneth Allott (1912–1973), A. Alvarez (1929–), Mulk Raj Anand (1905–), Simon Armitage (1963–), Elizabeth von Arnim (1866–1941), Daisy Ashford (1881–1972), and Alan Ayckborn (1939–). This is not a major league club I'd gladly join.

What distinguishes this *Reader's Guide* from most other contemporary encyclopedias is that the entries are not credited to individuals. I suppose they were composed by a committee drawn from the 41 unfamiliar names acknowledged at the beginning of the book. Group authorship probably accounts for why too many entries are pedestrian, avoiding both the superlatives and the personal snideness of the entry on me; it is hard to make mediocre writers seem distinctive.

Among the prominent Americans not included here are Galway Kinnell, W.D. Snodgrass, Richard Foreman, Samuel R. Delany, Donald Hall, Mark Strand, Rita Dove, Robert Hass, and Joseph Brodsky (perhaps deservedly, since his English-language poetry is awful; or maybe the Brits are justifiably dubious of those named Poet Laureate). *A Reader's Guide* includes George Steiner, Lionel Trilling, Harriet Munroe (!), William Empson, and Edmund Wilson but omits other prominent North American critics whose fiction and poetry are slight — R.P. Blackmur, Kenneth Burke, Eric Bentley, Susan Sontag, Northrop Frye, Harold Bloom, Jerome Klinkowitz, and Albert L. Murray, all of whom were slighted in favor of those unfamiliar Brits.

The individual entries are mostly biography, which is easier to do than criticism. Jewish writers are frequently identified as such, even if they don't customarily parade that affiliation. One virtue that marks the book as up-to-date is acknowledging same-sex relationships, even to the point of identifying long-term lovers by name. A second virtue is an apparent obliviousness to American political correctness.

Pleased to be included, I wish — for my sake and for that of my unidentified admirers — that *A Reader's Guide to Twentieth-Century Writers* were a stronger book. —Richard Kostelanetz

**Learning to Gawk** — Adam Parfrey is the kind of journalist who wouldn't just cover a serial killer — he'd hire the murderer as his crime correspondent. As an author and as a publisher, Parfrey takes the voyeurism beneath the surface of mainstream journalism, magnifies it, and thrusts it into the reader's face. So you're interested in cultists, criminals, and crazies, he says. So you're curious about the fringe. Well, *here it is*. Take a good look at it. *Don't turn away!* Are you satisfied?

His most recent book, *Cult Rapture* (Feral House, 1995, 371 pp., \$14.95), covers everything from the mail-order bride business (which "confirmed feminist tracts pillorying the male's dehumanizing regard of the female as commodity") to James Shelby Downard, the undisputed king of the conspiracy theorists. There are also several chapters on the militia movement, with which Parfrey betrays some sympathies. Then there's I CAN ("a cult of sex-obsessed cripples"), a rather cruel attack on Andrea Dworkin (whose theories he initially equates with the feminist mainstream, "a lazy, misogynist assumption for which I apologize"), and a report on a fan club devoted to one of Elvis Presley's girlfriends. This last item is prefaced by another apology: "The following article, which originally appeared in the *San Diego Reader*, ostensibly contains insights on the sociological bizarre of fandom. A little hindsight has filled me with shame over the article's laconic sadism. Little did I realize that the vicarious pleasures of fandom exist so that its practitioners can face impossibly bleak lives. . . . Although I fully admit my culpability in the following article's sneering condescension, I offer it here uncut as an object lesson to unfeeling sadists. Those who laugh *with* the article, who share in my joy at clubbing easy targets, should consider themselves implicated in the crime . . . joy at other people's expense is the necessary first step in dehumanizing the 'other,' the psychological precondition for genocide."

So why read about this kind of thing at all? Parfrey's answer comes at the conclusion to my favorite chapter, "The Endangered Freak": "We must relearn to gawk without shame, to admit our fascination with deformity, the biologic expression of the *fin-de-siècle*. If we aren't allowed to know the 'other,' we sure as hell will never understand ourselves." —Jesse Walker

### **Libertarian Chrestomathy** —

"Libertarianism" originally meant a belief in free will, with no political implications at all. The construction "civil libertarian" seems to date from the latter half of the nineteenth century; the word "libertarian," alone and naked, was taken over by the anarchists as a euphemism a little later. (The anarchists needed a new label, as the bomb-throwers and assassins in their midst had sullied the name even beyond its original meaning, "a supporter of social or political chaos" — which was pejorative enough.)

If Charles Sprading's *Liberty and the Great Libertarians*, published in 1913, is any indication, the word was also used as an attempt to cast the net outside the small world of die-hard anarchists. Sprading's book includes aphorisms ("Laconics of Liberty") and essays from a great diversity of individuals. The anti-slavery, anti-Constitution constitutional lawyer Lysander Spooner is preceded in these pages by the American president Abraham Lincoln; the single-tax theoretician Henry George is followed by the Christian anarchist Leo Tolstoy, the individualist-anarchist Benjamin Tucker, and the communist-anarchist Prince Peter Kropotkin. Oscar Wilde and George Bernard Shaw snuggle between the covers with Robert Ingersoll, John Stuart Mill, Emma Goldman, and Edmund Burke. Max Stirner is excerpted, as are Herbert Spencer, Thomas Paine, Auberon Herbert, and . . . Mr. Dooley!

The charm of this volume is the juxtaposition of the American individualist anarchists (Josiah Warren, Stephen Pearl

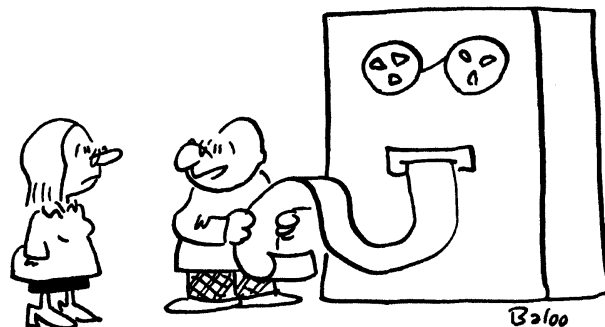
Andrews, Tucker, Spooner, et al.) with those outside the tradition. Sprading's idea was an interesting one, but he doesn't really convince. Everybody knows just how different these people were.

The biggest problem, for me at least, is all the nutball economics (the selections from William B. Greene are especially embarrassing). Most of these writers fell prey to money-crankism, odd land-reform schemes, and idiotic anti-capitalist blather. In the few pages of his introduction to the new edition (Fox & Wilkes, 1995, xiv + 362 pp., \$24.95 hc, \$14.95 sc), Carl Watner tries to set this into some perspective. But he needs more space, and a lot more willingness to criticize the American individualists.

But for all their errors, these thinkers also have their charms. Theodore Hertzka, an Austrian economist (though not of the "Austrian school"), makes sense occasionally, even as he advocates ideas I find dubious (he opposes land ownership). Any radical who demolishes the labor theory of value can't be all bad.

It is apparent that the term "libertarian" has evolved since Sprading's time. Mencken used it on occasion, and Mencken was more a Sumnerian Social Darwinist than anything else. About mid-century, the Georgist radicals Albert Jay Nock and Frank Chodorov, along with thinkers and promoters such as Leonard Read and Robert LeFevre, began using the term to defend their pro-capitalist, anti-socialist philosophies. This usage was solidified as admirers of Ayn Rand's thought (and refugees from it) also adopted the term to describe their thinking.

Anarchists of the old-fashioned,



"We shouldn't have left it running over the weekend — it came up with a doctrine of free will."

anti-capitalist variety find this appropriation maddening. Perhaps when the word "liberal" once more denotes support for individual freedom, we can give "libertarian" back to the "real" anarchists. But right now a book like

Spradling's, geared to contemporary individualists and titled *Liberty and the Great Liberals*, would simply not fly. Or, it would fly in the face of everyday usage.

Too bad. —Timothy Virkkala

**Warning: O.J.-Related Paragraph** — After a year's intrusion of O.J. into my life, I didn't think it possible for anyone to write a book about his case that would be remotely interesting. M.L. Rantala has proven me wrong with *O.J. Unmasked* (Catfeet Press, 1996, 272 pp, \$16.95). Rantala reviews

the crime and the evidence, focusing most of her attention on the most arcane, namely the DNA evidence, which *mirabile dictu* she renders intelligible. She concludes with a postscript consisting of 28 propositions ranging from unlikely to preposterous that one would have to accept as true if O.J. were actually innocent. She adds several appendices, ranging from the informative (a directory of all witnesses) to the merely funny (a directory of O.J. websites on Internet). Somehow, she manages to be both informative and amusing on a weary subject. —R.W. Bradford

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## Filmnotes

**Stupidity Kills** — The films of writers Joel and Ethan Coen show just how "in sync" two artists can be. Their latest, *Fargo* (Joel Coen, dir.; 1996), is one of their best. The last five minutes transform the film's dark comedy by adding a profound moral argument for bourgeois virtue. And the argument is made cinematically, not verbally: to get the message, you have to read between the actors' spoken lines.

Earlier movies, such as *Raising Arizona* and *Miller's Crossing*, proved that the Coen brothers are masters of film style. *Blood Simple*, their first picture, showed their talent for shock. *Fargo* shows that their talents have blossomed. It also carries on their tradition of telling tales about *stupid criminals*. While Hollywood regales audiences with fantasies of Moriartyesque super-criminals and evil geniuses — the Bond films, *The Silence of the Lambs*, just about any technothriller — the brothers Coen offer viewers a more realistic picture of the world. Research does not offer much evidence that criminals tend to be smarter than their victims. Hollywood's army of unrealistically intelligent villains thus displays a rather twisted romanticism.

Joel and Ethan Coen may be a little twisted, but they are not romantics. They are capable of irony and understatement and a hundred other subtleties that romantics rarely master. But they are not quite satirists.

So, while you scurry to the local

video rental library to find the collected works of the Coens, you might want to expand your search for stylish films about stupid criminals to include satire. I will recommend one: last year's brilliant send-up of the television age, *To Die For* (Gus Vant Sant, dir.). Starring Nicole Kidman in her best role (and performance) ever, this film takes the premise of a vapid, stupid, ambitious woman and carries it to its logical conclusion. As with *Fargo*, it is based on a real event — though Van Sant's film takes, I think, greater liberties with the basic story.

Written by Buck Henry (who also has a small acting role in the film), *To Die For* takes an arch view of media consciousness. It is very funny, flawlessly acted, artfully directed, and tightly edited. Is there an argument in the film? Sort of. The viewer is made to see how media-obsession scuttles the play of actual thought and cultivated virtue. And I confess: if the criminals in the story had any claim to intelligence, I might turn away in disgust and see modern media as a corrupting influence. I might even turn away and read a book or something. But the criminals are so stupid that the proper reaction is to laugh, and to gloat in their undoing. And to scour the video racks for more intelligent movies like this.

—Timothy Virkkala

**Don't Look Back** — Neglected in his day, rediscovered in the late '70s as "the worst director of all time," Ed

Wood has been reassessed again. The new Wood is a misunderstood *auteur*, a filmmaking primitive whose best movies were dada masterpieces — all the more so because he had no idea what he was doing. Though best known for *Plan 9 From Outer Space*, Wood's greatest picture was his first, *Glen or Glenda*, a gender-bending sub-version of American sex roles that deserves comparison to the best work of the Spanish surrealist Luis Buñuel.

I'm serious. Well, half-serious. Wood was comically incompetent, an alcoholic transvestite who started out making Grade-Z exploitation flicks and ended up directing extremely-low-budget porn. His pictures featured bizarrely inappropriate dialogue, laughably cheap special effects, and no sense of continuity whatsoever. But the result could be greater than the sum of its parts. You've all heard of movies that are "so bad, they're good"; *Glen or Glenda* is so bad, it's a work of genius. Like schizophrenic writing, Wood's films exude a giddy originality that few "real" artists can beat. So if you don't think Wood and Buñuel are lost soul-mates, a primitive and a genius who wound up at strikingly similar destinations, try putting them on a video double-bill — *Glen or Glenda* and *The Exterminating Angel*, or *Plan 9* and *Un Chien Andalou*.

But don't rent *Ed Wood: Look Back in Angora* (Ted Newsom, dir.; 1994), a Rhino Home Video documentary released right after Tim Burton's excellent film *Ed Wood*. Wood connoisseurs may enjoy seeing clips from the director's late, hard-to-find skin flicks, but other than that, this video is next to useless. You hardly ever know which Wood picture it is you're seeing clips from, and when you do, you're still likely to be puzzled. (Why, for example, are some *Glen* clips colorized and others black-and-white?) Worst of all are narrator Gary Owens' smarmy voice-overs. Owens seems capable only of making unfunny jokes about how inept Wood's movies are. He's right, of course, but he's also superfluous. We can see how bad these movies are; the clips are right in front of us. Owens' sarcastic tone and dumb wisecracks only insult our intelligence. And when he makes fun of Wood's human failings — his poverty and alcoholism — he

becomes a living paradigm of bad taste.

Far better to watch Burton's movie, or to pick up one of Wood's own gems.

—Jesse Walker

***Heads Down, Thumbs Up*** — It was inevitable that a documentary like *28 Up* (Michael Apted, dir.; 1985) would be made. In 1963, a group of seven-year-old English boys and girls were interviewed for the BBC. Give me a child through seven, goes the cliché, and I'll show you the man. The director decided to put this to a test, returning every seven years to discover how each person evolved. (Since this film came out, *35 Up* has been made, and I am told *42 Up* will be released in the near future.)

Unfortunately, the film is disappointing. It's certainly interesting to watch the subjects' lives develop, but the director relies far too much on sit-down interviews, stunting our insight into how these people interact with their friends, families, communities, and careers. (But then, would *you* let a filmmaker follow you on your daily rounds? The director was already making quite an imposition by returning every seven years, so perhaps he didn't

want to push too much.) The director's agenda against the British class system, however laudatory, also prevents a thorough exploration of the subjects' personal lives. The best moment of the film comes when an exasperated woman exclaims, in reaction to the interviewer pressing for her opinion of her working-class station, "I don't think about it — except every seven years when you ask me!"

There are other problems. My post-feminist sensibilities were disgusted with the emphasis on the men and children in the women subjects' lives. I must also confess to some chauvinism: I found myself wishing the interviewees were American, because we are infinitely more interesting than at least *these* Brits: more outgoing, more optimistic, more idiosyncratic. I hope that this putative "cross-section" of British society isn't anything of the sort.

Nonetheless, these people aren't boring, and I saw enough of their lives to want to see more. Perhaps the filmmaker's ambitious reach thwarted his work's success. Life is just too damn complicated to capture satisfactorily in this format.

—Michael Levine

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## Reflections, *continued from page 15*

Treating women as chattel, as *de facto* slaves to either their fathers or their husbands, can have gruesome results. "Surgical" removal of the clitoris is one. Sewn-up vaginas are another. (The latter is inflicted most commonly on virgins; on wedding day, the vagina is opened with a razor to permit coition. In many African countries, the husband has a right to demand that his wife or wives be sewn up for long stretches of time — usually while he is away traveling, but in theory for any reason whatsoever.) Unfortunately, this short list of genital mutilations is not exhaustive; Africa is full of surprises and culture shocks.

Thankfully, public pressure has led to a review of Kasinga's case. After two years in prison awaiting appeal, Ms. Kasinga was released by the INS (though this took some doing: one INS district director, Scott Blackman,

refused an earlier, non-binding ruling to free her). Her case began in earnest on May 2, before the Board of Immigration Appeals. As I write, no decision has been reached.

It is instructive to note just who in this case the oppressors are: "traditional family values." No, not *our* traditional family values; the traditional family values of some Africans and some Muslims. (It would be easy to expand the list of oppressors, of course: until public pressure was applied, the INS played its role with all the humanity of an East German border guard.)

It is also instructive to note who the heroes are: feminists who have rallied around Ms. Kasinga and pressured the INS into reviewing her case.

Many Americans are, of course, legitimately leery of government interference in family life. Some conserva-

tives and libertarians argue that the family should be kept sacrosanct *no matter what*, simply to allow it to thrive as a "countervailing power" to the welfare state. But the Kasinga/Ferlise story reminds us of such an extreme position's limits. *Laissez faire* does not mean "let them govern"; it means "let them act," with the strong suggestion of "let them act *peacefully*" or "live and let live." Any group can engage in "governance"; families are themselves powers worthy of limits.

Surely we should be able to agree that familial authority should be limited by individual liberty, *at the very least* of the adults within the families. And surely we can agree that clans can be as oppressive as states, and that systematic oppression by clans might constitute a legitimate reason to emigrate. And immigrate to America. You know, the "Land of the Free"? —TWV

## Bob Black, "White Man's Ghost Dance," *continued from page 48*

Why is primogeniture common sense everywhere in England except Kent? Or consider the Common Law doctrine that in marriage, husband and wife become legally one person — and that person is the husband. If this is common sense, so is the Holy Trinity, a kindred doctrine. It implies that wives have no property rights, which was very close to their legal situation in England and colonial America. But libertarian it is not.

Krawchuck has an illustrious predecessor: England's first Stuart king, James I. In 1607, the king announced that he would join his judges on the bench. Common Law, he had heard, was "Natural Reason" — as Krawchuck would say, common sense — and he had as much Natural Reason as anybody! Gently but firmly, Sir Edward Coke corrected His Majesty. It was true that the Common Law was based on Natural Reason, but it was not identical with it. To expound "the Artificial Reason of the Law" required experts: judges.

There was never any such Manichean (or Tolkienesque) war of good with evil — of the Common Law against the equity and the conciliar

courts — as the Constitutionalists believe. Over the centuries there was jurisdictional jostling, ideological antagonism between jurists trained in different legal traditions, and political conflict over the scope of the royal prerogative and thus of the power of the prerogative courts, but these were not battles in a holy war. Some of it was little more than competition for business. Some settled down into a rough division of functions. Litigants did not take sides; they exploited the confusion. Thus a plaintiff might bring an action in equity to take advantage of its "English bill" procedure providing for pre-trial discovery of evidence — and then introduce that evidence in a common-law action where the court could not have secured that evidence itself. The vast majority of Englishmen had nothing to do with these elite machinations.

It's absurd to say, as Constitutionalists do, that equity was a summary proceeding in which defendants had no rights. On the contrary, from at least the Elizabethan period, equity was condemned for being too cumbersome and slow. Instead of oral testimony, for instance, depositions were taken, reduced to writing, and

submitted to the court. Enormous quantities of paperwork piled up. Anybody who thinks equity proceeded summarily should reread *Bleak House*. If Constitutionalists are correct that courts of equity are tyrannical, colonial Americans would never have set them up, and the Constitution would never have countenanced them. In fact, by the eighteenth century, there were home-grown chancery courts in New York, South Carolina, and other colonies; elsewhere, "Common Law" courts exercised equity jurisdiction. And the Constitution the Constitutionalists would rather revere than read expressly assigned equity jurisdiction to the federal judiciary (Art. III, 02(1); Am. XI).

Which brings us up to the Constitutionalist contention that the Constitution is part of the inherited and immemorial Common Law. This poses obvious logical difficulties. If Equity is not Common Law, but the Constitution includes Equity, how can the Constitution be Common Law? If Americans (once rid of British tyranny) enjoyed the Common Law in its plenitude, why did they take the trouble to adopt the Constitution? And then the Bill of Rights? How is it possible to

improve upon perfection — over and over again? In the fairy tale, the king had twelve beautiful daughters, each more lovely than all the rest. Constitutionalism has the Common Law, the Magna Carta, and the Constitution, each replete with every excellence of the others, and then some. The Constitution of 1787 does not even mention the Common Law (although it mentions Equity) — perhaps out of modesty, a virtue the Common Law necessarily possesses, since it possesses them all. And then some.

In Egyptian mythology, the god Osiris was slain by his brother Set, and his dismembered pieces were scattered far and wide. But these parts could no more die than could immortal Osiris, although, dispersed and hidden, they were separately impotent. Once his limbs were retrieved and reassembled, mighty Osiris rose from the dead and vanquished the forces of evil. That's how Constitutionalists regard the Common Law. Now that their treasure-hunt has turned up the missing pieces, all Americans have to do, according to the Oklahoma Freedom Council, is get it all together and "the country would be free overnight." And they all lived happily ever after.

The tragedy of Constitutionalism is that it hopes to evoke by its magic an idealized imagined earlier version of the very form of society — our own — that was the first to banish magic from the world. With growing commerce came calculation, quantification, and the distinction of "is" from "ought." Myth is timeless, but when it comes to the performance of contracts, "time is of the essence." Money is merely a generally accepted medium of exchange, not some sacred "substance"; whether it's gold, silver, tobacco, or paper is a matter of convenience. Law is any application for the official use of coercion that succeeds. The proprietor or trader is indifferent to whether his invocation of the law against a thief, a trespasser, a business rival, or a communist revolutionary owed its effectiveness to immemorial custom, legislation, the Ten Commandments, or a well-placed bribe. Myth and magic are merely tactics to try on those who believe in them. Judges don't believe in Constitutionalism and neither do very many other people.

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Nor ever will. Constitutionalism combines the worst features of superstition and reality without the attractions of either. Like real law, it's dull as dirt; unlike real law, it doesn't work. Like superstition, it's inconsistent, irrational, obscurantist, and ineffectual, but it entirely lacks the poetry and pageantry that often enliven myth and religion. Very few people espouse belief-systems this complicated and crackbrained unless, as with Catholicism or

Mormonism, they grow up in them. We seem to be in prime time, sad to say, for cults both old and new, but not this one. It isn't even tax-deductible. □

### Notes:

1. Ken V. Krawchuck, "Common Law Court Convened in Pennsylvania," 34 R.S.V.P. (1995–1996), p. 22.
2. Ken V. Krawchuck, "Ken-Nection IIIII: Playing with the System and Winning," 32 R.S.V.P. (1995), p. 9.

# Terra Incognita

## Norway

Identity politics in Scandinavia, as reported in *Dagbladet*:

The leader of Norway's 9,115-member organization Justice for Losers — whose particularly strong representation in Lapland leads it to refer to that region as "Loserland" — recently met with King Harald. The group now receives about \$40,000 annually in government support.

## Roanoke, Ind.

Advanced Judaic taxonomy, from *Dispatches from The Last Ditch*:

"I stipulate that by 'the Jews' I do not refer, for purposes of ruling-class analysis, to Sam the deli owner or Isaac the violinist or David the urologist. However, justice demands a qualification: once Sam or Isaac or David sends money to the State of Israel, AIPAC, or the ADL, he does become an Official Jew, albeit of minor standing as a 'domestic servant.'"

## San Francisco

A victory for the Differently Abled, reported in the *San Francisco Chronicle*:

The cost of rebuilding a small footbridge over less than ten feet of water has skyrocketed to \$413,000. The Americans with Disabilities Act requires the new bridge to be wheelchair-accessible — which, in turn, requires a total regrading of the surrounding hills.

## North Carolina

How government regulators protect the public, according to the *Norfolk Virginian Pilot*:

The North Carolina building code requires funeral homes to get permits every time they set up a tent for a service.

## Planet Earth

Culture in the global village, as described in *World Press Review*:

*Baywatch* is seen each week by approximately one billion people — a fifth of the world population.

## Simi Valley, Calif.

New techniques of evaluating student performance, as described in the *Los Angeles Times*:

Simi Valley elementary schools have replaced letter grades with evaluations of 160 academic and social skills, including "holds book upright."

## Denver

Advanced technique in nature documentaries, as reported in the *Denver Post*:

According to former employees of the *Wild America* TV series, some of the show's scenes — including some sequences in which animals were killed — were actually filmed in cages. The cages were edited out so the scenes would appear to be filmed in the wild.

## Germany

The sociology of German laughter, as reported in *The Wall Street Journal*:

A recent cover of *Der Spiegel* featured pictures of TV personality Harald Schmidt, Hitler, and other famous Germans wearing clown noses and asked "How funny are the Germans?" The article invoked Kant and Hegel to explain why so many Germans seem to have trouble laughing.

## Sembach Air Base, Ga.

Postmodern military training, described in *Airman* magazine:

American peacekeeping troops bound for Bosnia are trained in land-mine recognition, winter survival, first aid, and talking to the press.

## United Kingdom

Evidence that government health care doesn't mean rationing, from the *London Times*:

At least 500 people with kidney failure are being allowed to die each year because there are too few facilities to treat them, according to a report commissioned by the British government. And the shortage of facilities will worsen over the next decade.

The National Review of Renal Services was ordered by the Health Department almost two years ago, but publication was delayed by the Treasury because of alarm at its financial implications. The Department eventually slipped it out unannounced.

## Texas

The most pressing problem with government health care, according to a letter to constituents from Rep. Steve Stockman (R.-Tex.):

"Medicaid money is being used to pay for sex change operations! Thousands of taxpayer dollars wasted because some man thinks he's trapped in a woman's body!"

## Oklahoma City

Justice in the Sooner State, as described in the *Chicago Tribune*:

A jury recommended a 30,000-year prison sentence for a convicted child rapist because they didn't want him on the streets again. "By God we can send a message," jury forewoman Laura Bixler said.

He could be up for parole, though, in as little as 15 years.

## Washington, D.C.

The wit and wisdom of Rep. Sonny Bono (R.-Calif.), from an interview in *The American Enterprise*:

Q: Who, so far, is your favorite House Democrat?

A: Barney Frank. He's a tough guy and he's very smart. He's got good humor and he enjoys a good beef. He can become a straight man and know he's a straight man.

(Readers are invited to forward newspaper clippings or other items for publication in *Terra Incognita*.)

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