

Liberty

April 1999

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How Clinton Got Away With It

Victory Over the FDA

by Durk Pearson & Sandy Shaw

Censorship on the Newsstand

by Richard Platte

Ayn Rand's Favorite Novelists

by Bruce Ramsey

How Mandela Rigs Elections

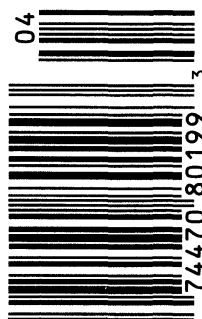
by Jim Peron

Why Harry Browne Doesn't Work

by Jacob G. Hornberger

Also: R.W. Bradford exposes how bureaucrats steal people's legacies, J. Neil Shulman shows what happens when the state has all the power and all you've got is guts, Alan Bock explores the rise of Art and Commerce ...
plus other articles, reviews & humor

"Where the state begins, individual liberty ends." — Bakunin



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Inside Liberty

April 1999

Volume 13, Number 4

"Doing the business of the American people since 1987."

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Letters

No Sympathy for Pinochet

Have you taken leave of your senses? How can you publish, without batting an eye, such a pro-Statist article as the one written by Karen Araujo and John Cobin? ("Pinochet Reconsidered," Karen Araujo & John Cobin, February, 1999)

I have no idea when you sold out your convictions, or if you ever had them, but I think that you should change the name of your magazine because "Liberty" is not a name fit for a magazine where an apology for a murderous state is made.

You have no right to publish anything critical of President Clinton's behavior if you are willing to swallow General Pinochet's deeds. After all, if good economic performance justifies Pinochet in office, why cannot it justify Clinton, too? Clinton was involved in a consensual relationship with an adult. Under Pinochet teenage girls were violated with cattle prods. Sure, Clinton may be guilty of perjury and obstruction of justice. Do you think that this is more serious than having your loved ones taken away, and not know if they are alive or dead, how much they suffered before they died, or even where they are buried?

Adriana I. Pena
State College, Pa.

Note: *Liberty's* editor comments on this letter in Reflections, p 7.

Harding Was No Clinton

While there can be virtually no criticism leveled at Bill Clinton that is not valid, much of the criticism directed at past presidents is quite unfair. In your February 1999 issue, Stephen Cox correctly pointed out the weaknesses of the attacks on the morals of several presidents (Washington, Jefferson, Grant, etc.). It is unfortunate, however, to see him label Warren Harding as a man "whose private morality was demonstrably on a par with Clinton's." That is absolutely untrue.

Harding's reputation suffers from

two main things: the activities of a few members of his administration (most notably Interior Secretary Albert Fall, who was convicted of accepting bribes in the Teapot Dome scandal) and his extramarital affair(s), only one of which was ever proven to have happened. That affair, with a Mrs. Carrie Phillips, took place before Harding became president.

A closer look at Harding's life and presidency shows clearly that he was a man of high morals and integrity. To put him on a par with Bill Clinton really seems a shame.

Floyd Jones
Philadelphia, Pa.

Grant's Surrender at Appomattox

As an unreconstructed Confederate, I must take exception to Stephen Moore's description of the Republicans' transformation from fiscal conservatives to pork barrel politicians (redundant?). Moore compares the capitulation of the Republican majority to Lee's surrender at Appomattox, an insult to the valiant struggle of the outmanned, outgunned secessionists. Rather, the Republican capitulation is as if Grant, having cut Lee off from Richmond, disrupted his supply lines, and maneuvered to certain victory, had surrendered to Lee.

Allen P. Turnage
Tallahassee, Fla.

Size Isn't Everything

I was nonplussed that an erudite publication like *Liberty* would feature a writer who has succumbed to the tired old myth that larger vehicles are safer than smaller ones ("Sport Utility Villians," Jane S. Shaw, Reflections, March, 1999).

The myth of "bigger equals safer" died a well-deserved death in the late 1960s when we suffered the greatest highway carnage ever experienced by this nation as cars became larger, heavier, and more powerful every year. As soon as smaller vehicles began appearing on American highways the death toll decreased dramati-

cally until it reached an all time low in the early 1980s. Currently, as larger and larger vehicles proliferate, the death toll increases in lockstep.

The current infestation of our highways with SUVs clearly displays the perfidy of the "big equals safe" fantasy. A few statistics are illustrative of this point. The largest SUVs are the causative factor in three times as many accidents as smaller vehicles. More than twice as many fatalities occur overall when an SUV is involved in an accident. The dollar value losses when an SUV is involved in an accident are tripled. SUVs are involved in nearly twice as many single vehicle accidents, i.e., rollovers, running off the roadway, etc. More children are killed or injured in SUVs as a result of letting them roam about unbelted in the large interiors. Additionally, SUVs, as a result of their primitive and unsophisticated truck suspensions, excessive weight, high center of gravity and abominable braking, are unable to stop or maneuver properly in order to avoid accidents. They therefore present a major hazard to all other vehicles.

This is the kind of "safety" we can all do without. Real safety lies in the capability of a vehicle to not have an accident in the first place.

August Salemi
Atascadero, Calif.

Objectivist "Benevolence"

I was disappointed by the letter William Thomas wrote to *Liberty* (January) about a review of David Kelley's book on Randian benevolence. The letter begins like this:

"The next time Timothy Virkkala sets out to criticize a Princeton University philosophy Ph.D. [Objectivist philosopher David Kelley] for his use of ethical terminology . . . I suggest that he first consult that remarkable book known as 'the dictionary.'" Thomas crams in one sentence the Argument from Authority and stereotypical Randcult rudeness. Now that's what I call benevolence.

He goes on: "[W]orse [is] when attacks are made in a churlish tone and reveal the reviewer's own sloppiness,"

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Is It Time to End the War on Drugs?

by Jacob G. Hornberger

Hardly a week goes by without some mention in the media of the war on drugs. Record drug busts, money-laundering schemes, increasing drug abuse, gang warfare, thefts and robberies, political corruption, infringements on bank privacy, searches and seizures, confiscation of assets, arrests, convictions, and incarcerations.

If the overall situation — both with drug usage and the drug war — keeps getting worse, shouldn't Americans be asking some fundamental questions: How long is all of this going to continue? How bad do things have to get before people finally recognize that the war on drugs has failed? How many infringements on individual liberty and privacy must still be tolerated?

The policy question is: If the war on drugs has admittedly failed to achieve its objectives after decades of warfare, and if the situation

has continued to worsen over the years, then why shouldn't this government program simply be terminated?

Of course, the basic moral question is: Why shouldn't an individual be free to engage in self-destructive behavior? Isn't that the very essence of human freedom? If a person is not free to do bad, harmful things to himself, then how can he truly be considered free? Under what moral authority does the state regulate and punish an adult for doing something bad to himself?

The true test of a free society is not whether people are free to engage in what the state defines as "responsible" conduct. After all, even the Chinese and North Korean people are "free" by that standard. The real test of a free society is whether an individual is free to engage in irresponsible behavior, so long as it does not interfere, in a direct and forceful way, with the ability of others to do the same. In other words, as long as a person doesn't murder, rape, steal, burglarize, defraud, and the like, freedom entails the right to do anything a person wants, even if it's the most irresponsible and self-destructive thing in the world.

There are also pragmatic reasons for ending the drug

war. For one thing, even if it were capable of succeeding, the price in terms of liberty and privacy would be high. After all, they can't even keep drugs out of prisons. How would they finally keep them out of people's homes — with government cameras and drug-sniffing dogs and children who are taught to rat on their parents?

Moreover, when a person desires or needs some drug, making possession or distribution of the drug illegal is unlikely to achieve its intended result. Since making drugs illegal restricts supply, the price is artificially forced upward. Drug users are usually going to do whatever is necessary to get the money to pay for their drug. Thus, it is not a coincidence that burglaries, robberies, muggings, and thefts increase when drugs are made illegal. When was the last time you saw a wino stealing money to pay for wine?

The most effective way to treat drug addiction is through therapy, not incarceration. That's why Alcoholics Anonymous has been so effective in treating alcohol abuse. But therapy entails an addict's freely talking about his addiction and the underlying reasons for his addiction. By making drug use illegal, the drug war has the

opposite effect — it makes it much more difficult for people to come forward and openly seek treatment.

Ironically, ending the war on drugs would be more likely to achieve the type of society in which most of us would like to live: a peaceful, harmonious, law-abiding one. Does that mean that people wouldn't take drugs? Of course not. But it would mean that prices would drop and that drug users would have less incentive to steal or rob to get the money to pay for the drugs. It would also enable addicts to talk freely about their addictions, openly admit they have a problem, and seek treatment.

Most important, ending the war on drugs would move us in the direction of replacing the paternalistic state, and its massive infringements on liberty and privacy, with a government whose powers are limited to protecting the right of the individual to live his life as he chooses so long as he respects the right of everyone else to do the same. Isn't this the principle on which our nation was founded?

Mr. Hornberger is president of The Future of Freedom Foundation in Fairfax, Va.

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etc. This reminds me of the time Rand got a bad review in *The New Individualist Review* and Nathaniel Branden accused that fine journal of "hooliganism." In Objectivism's 40-year history, it has used knowledge and discussion not as a means for identifying reality but as a club with which to clobber opponents.

It is also unseemly that Thomas did not identify himself. He is a close associate of David Kelley and Kelley's IOS, Institute for Objectivist Studies.

Just as it is ironic that Rand's philosophy of individualism turned into a personality cult, so it is ironic that Kelley's IOS, which publishes whole books about "tolerance" and "benevolence," relies on the same old hatchet work of "the Collective."

Michael McGrath
Madison, Wis.

Bradford Blunders

Bill Bradford's review of *The Ayn Rand Cult* convincingly shows that my book has infuriated him, but it's impossible for a reader to derive from it an accurate view of the book. On the other hand, it is possible for a reader of *The Ayn Rand Cult* to form an accurate view of the Objectivist movement, and it is the first book of which this may plausibly be claimed.

In a book of 400 pages, there will inevitably be some minor factual slips and I thank Bradford for pointing out a few very minor ones, which will be corrected in a future printing. There are, however, far more blunders in his three-page review than there are in my 400-page book! Mostly, he just hastily misconstrues what the book is about and what it asserts. At a later date, in an appropriate forum, I will fully itemize his mistakes within an extended response to the book's critical reception, but knowing that lengthy letters for publication run the risk of being cut, I will keep this letter short.

Bradford objects strenuously to my characterization of Rand's expulsion and shunning of Hospers as "excommunication." This was the word used by Hospers when I interviewed him, and what happened to Hospers, as well as to Rothbard and other non-Objectivists, fits well with the dictionary definition of "excommunication" as "exclusion from fellowship in a group or community."

By ripping three short sentences out of context, and concealing from his readers the fact that *The Ayn Rand Cult* incorporates a sustained comparison of Objectivism with Rajneeshism and other

cults, Bradford conveys the misleading impression that I try to demonstrate, by the quoted three sentences alone, that Nathaniel Branden was a cultist. (This misrepresentation is all the more remarkable because Bradford agrees with the conclusion.)

Bradford attributes to me the view that the indebtedness of *Atlas Shrugged* to earlier works of fiction "somehow detracts from it," a view I explicitly reject on page 299. The relevance of *Atlas's* derivativeness lies mainly in the untruthful claim advanced by Objectivists that this work is stunningly original in many respects, including plot and theme.

On reading Rand, anyone widely read in outstanding works of fiction is quickly struck by the constricted nature of Rand's vocabulary, her obstinate repetition of a handful of emotionally-laden words. As a journalist who likes solid data, I documented this by counting words, finding, among many other examples, that "evil" occurs 220 times in *Atlas Shrugged*. Bradford suggests that for all we know this may be just as true of Hugo, Dostoevsky, or Tolstoy! If Bradford had thought for two seconds about this flight of fancy, would he so rashly have committed it to paper?

Bradford's incredulity notwithstanding, "the Rand," the thing the Boer War was fought over, was marvelled at worldwide as the planet's richest goldfield, and was the stuff of legend and of the boys' adventure stories gobbled up by the young Allisa Rosenbaum. All educated middle-class people of the era of Rand's youth, Jewish or gentile, were indeed "familiar with the term and its relation to gold."

Bradford scoffs at my mention of the fact that "Galt" is "gold" pronounced with a Yiddish inflection. He does not dispute that *Atlas Shrugged* is saturated with the imagery of gold, that Galt himself is identified with gold, nor that Rand could hardly have overlooked the similarity of the words "Galt" and "gold."

Bradford's amusement is provoked by my mention of Yiddish. The fact that Rand did not herself speak Yiddish does not at all dispose of the matter. Yiddish-inflected English was commonplace in Rand's Hollywood, and she even drew upon its speech pattern for the character of Sol Salzer, the Hollywood producer in her play *Ideal*.

In many parts of *The Ayn Rand Cult*, I had far more material than I could use to support a point, and this is especially

true of the influence of Rand's Jewishness, including her choice of the pen-name "Ayn Rand." But Bradford complains that eleven pages on the Jewish influences is already too much.

Bradford asserts falsely that Greenspan "refused to involve himself in" Objectivism's "cultish aspects." Among clear examples of his deep involvement with its cultishness, Greenspan joined three other inner circle members in publicly sanctioning Rand's excommunication of the Brandens, on Rand's say-so, and without any consideration of the Brandens' side of the story.

The concluding paragraph of Bradford's review is very odd. *The Ayn Rand Cult* makes no pretensions to being a scholarly work (see page xi), just as Bradford makes no pretensions to being a scholar, and *Liberty* makes no pretensions to being a scholarly organ. But as it happens, I have already heard from some scholars that they do find the book valuable (i.e., Dr. Michael Shermer, editor of the journal *Skeptical*).

Jeff Walker
Toronto, Ont.

Bradford responds: I admit to being annoyed by Walker's inept and silly book, though not to being infuriated. Still, his letter delights me.

I am delighted, for example, that he is able to find a dictionary which defines the word "excommunication" in a way that makes his characterization of Hospers' expulsion from Rand's company seem less than idiotic. I've checked a half dozen dictionaries on this matter, and all seem pretty certain that to be excommunicated, one must first be a communicant, something Hospers assuredly was not. The fact that Hospers may have used the term in conversation does not make it accurate. I hate to think what Walker would have written if Hospers had said, "Well, I'll be a monkey's uncle."

And I am delighted that Walker intends, if his book sells well enough to justify future printings, to correct the many factual errors I pointed out. I hope he goes to the trouble to hunt out all its other errors as well. Lack of space is a problem for reviewers as well as protesting reviewees.

Walker finds it "remarkable" that I agree that Nathaniel Branden was a cultist, but still find fault with one of Walker's crackpot arguments about Branden's cultishness. I don't find this remarkable at all. Perhaps Walker's dictionary has a peculiar definition of

Reflections

The "Korrek Line" at Liberty— In a letter to the editor (p. 4), Adriana I. Pena concludes from the fact that *Liberty* published John Cobin's and Karen Araujo's article on former Chilean dictator Augusto Pinochet that I (as *Liberty's* editor) have taken leave of my senses and, worse, that I have "sold out" my convictions.

As it happens, I disagree with many of Cobin's and Araujo's conclusions, perhaps as strenuously as does Ms. Pena. But *Liberty* is not now and never has been a magazine devoted to publishing writing that I agree with.

Nor is *Liberty* devoted, as some readers seem to think, to publishing the libertarian position on various subjects. I realize that in the past, some libertarian magazines have taken this approach. The editor-in-chief of one major libertarian magazine once told me that he was convinced that, by virtue of his expertise, he should determine the proper libertarian opinion on all foreign policy questions and other libertarians should adhere to his view. One of *Liberty's* editors once worked at a libertarian magazine whose editor enunciated to the magazine's staff what came to be known as the "korrek line" (or the KL) on every political issue, and expected articles all to adhere to that line. And anyone familiar with Ayn Rand's "Objectivism" knows that the proper position on almost all issues was determined at the top and all good Objectivists, like good Communists, were expected to adhere to the party line.

At *Liberty*, we think this is a bad idea. We are convinced that libertarianism is neither a religion nor a rigid ideology that needs to have a party line on every political subject. Libertarianism is a belief that individual liberty ought to be maximized and that the power of the state ought to be minimized or eliminated altogether. That belief is all that one must agree with to be a libertarian. Thus there is room within the libertarian movement for people who favor abortion rights and for people who believe that human fetuses ought to be protected by law. And room for people who believe that America's vigorous military opposition to the spread of Soviet Communism was a good thing, and for those who believe that American foreign policy should always be isolationist. And for people who believe that libertarians ought to join the Libertarian Party and work to elect its candidates to office, and for those who believe the LP is a waste of time and for those who believe that any involvement in politics is inherently immoral.

And it means that there is room for people who believe, as do Cobin and Araujo, that on balance Pinochet was a force for liberty, as well as people like Ms. Pena who believe the opposite (or like Assistant Publisher Clark Stooksbury, who sharply criticized Cobin and Araujo in the March *Liberty*).

So how do *Liberty's* editors decide what to publish? We seek good writing that is of interest to intelligent libertarians. We seek to inform, to provoke, to entertain, to amuse, to stimulate thought, and even to outrage our readers, as we outraged Ms. Pena.

Ms. Pena isn't the only person who disagrees vehemently

with some of what we publish. At least one of our editors disagrees with some aspect of virtually every article, every reflection and every review that appears in our pages. Every issue of *Liberty* includes articles with which I disagree, and I am editor and publisher. *Liberty's* editors disagree with one another about issues of strategy, of philosophy, of religion — even on the kinds of institutions an optimally free society might take. But we all agree that we ought to try to maximize freedom. And we all agree that *Liberty* ought to be open to the full spectrum of libertarian thinking, and that a political movement that challenges beliefs and is open to controversy and to dialogue is healthier than one that is not.

We think this approach makes *Liberty* a better magazine.

—RWB

Social Insecurity — It's not easy to pick the biggest lie in a Bill Clinton speech, but here's my candidate from the State of the Union address: "Even today, without Social Security, half our nation's elderly would be forced into poverty." Yes, if the government took 10 to 12 percent of your income for 40 years, told you it was being saved for retirement, then refused to pay you anything at retirement, half of us would be forced into poverty. In a real-world alternative, of course, today's elderly would have saved for their own retirements, putting money aside in stocks and bonds — and if they saved as much as Social Security took over the years, they would be much more comfortable today. —DB

Won't you go home, Bill Bennett? — It's no surprise to find Bill Bennett making war on the rights of the American people. That, after all, has been his *métier*, as former head of the National Endowment for the Humanities, Drug Czar, and Secretary of Education (now there's a resume). But what is surprising is to find Nat Hentoff, who's fought some good fights for the First Amendment, joining him. The two appeared at a news conference in Washington announcing a new campaign by the Center for Individual Rights to call to account colleges and universities that practice race-conscious hiring and admissions policies. Such institutions, they hold, violate federal anti-discrimination laws.

The problem is that the campaign makes no distinction between private and public schools. Thus, its targets include the University of Chicago, Dartmouth, Columbia, and Duke, as well as North Carolina, Virginia, and William and Mary.

The Center for Individual Rights, like other neocon groups and publications, does good work in parrying the massive establishment that's in the business of making whites, especially white males, into second-class citizens via government fiat. Too bad that the neocons' final goal is a "color-blind" — rather than a free — society. As privately-owned institutions, Chicago, Dartmouth and the rest have the same right to discriminate on whatever basis they choose, to establish whatever rules of conduct and "speech-codes" they wish, as Grove City College, Brigham Young University, or Bob Jones University. It's up to their students, trustees, and alums to object, and change things if

they can. What else could any coherent concept of freedom mean?

But try to explain that to a former philosophy professor turned political mugger like Bill Bennett. —RR

Agriculture culture — During his speech to the World Economic Forum, Al Gore urged the Euro-socialists and third-world police statisticians in attendance to reduce agriculture subsidies. During the State of the Union address, Gore's boss Bill Clinton boasted of spending billions on farm-aid handouts. Perhaps next time Mr. Gore should offer his advice closer to home. —JB

The emperor's new speech — So that was the business of the American people that was so essential that this president simply must stay in office to carry out? A themeless pudding of a speech, a dreary laundry list of poll-tested applause lines stretching drearily on through almost every line-item in the federal budget? A cynical exercise in buying two more years in office with the people's own money?

If Congress had a scintilla of taste, the House would have reconvened immediately to add another item to the bill of impeachment. Then the Senate would have voted the next day to toss the rascal-in-chief out of office for delivering such a cynical, mind-numbingly terrible speech and trying to pass it off as a serious political agenda, as the essential business the American people elected our leaders to handle.

Shucks, everyone knows Bill Clinton can deliver a terrific speech, but he just mailed this one in. It was delivered with the smarmy smugness of the cleverest kid in class who has mastered the first rule of student-body politics (i.e., the most important thing is sincerity, and if you can fake that, you've got it made) and knows nobody will call him on the utter vapidity of the outline and content. It was like a veteran actor doing the 350th night of a tenth-rate play in Paducah — all the tricks were there but delivered with the passion of a walk-through.

But our standards for political rhetoric keep declining. Heck, all the talking heads thought every single one of the House "managers" and the White House defenders did a brilliant, terrific job, so the speech was judged a marvelous success. And, of course, the poll numbers went up. —AB

Beijing on the Hudson? — Socialism may be discredited, but it still has its sympathizers in the American press. The latest example is a front-page article in the *Wall Street Journal* (January 26) on how the Chinese government has been bilked out of \$25 billion from local grain producers and low-level officials.

You might think that the story would focus on how a gigantic socialist enterprise led to pandemic corruption. Reporter Craig S. Smith, however, was mostly distressed about something else. "China, with its budget deficit swelling and its exports hurt by the recession elsewhere in Asia," he wrote, "can ill afford such a loss, equal to 3 percent of its annual economic output." This is bad news, according to Smith, because the growth of China's economy "is powered in large part by government spending. Beijing needs all the cash it can get."

Well, the Chinese government may need money, but the most likely reason for the growth of China's economy is the lifting of government controls on the economy, not the government spending touted by Smith. And there ought to be at least some recognition on the part of the *Wall Street Journal* reporter that the officials were stealing from thieves. But Smith doesn't have a clue. Instead, he calls the grain thefts "one of this century's great rip-offs." Where has he been?

This story has another interesting aspect. At the root of the grain scam is Lester Brown, the alarmist head of the Worldwatch Institute. It turns out that someone in the Chinese government had read Brown's book *Who Will Feed China?* which forecast such an enormous demand for grain that reserves around the world would dry up by the year 2030.

"Many in China took the book to heart," Smith wrote. "Beijing adopted policies to keep farmers growing grain, including state-guaranteed prices far above market prices." The government poured money into the provinces to make sure they grew grain. Such subsidies led, as they inevitably do, to wasteful spending, misallocation, and corruption like the grain scam.

Brown may still be right about 2030. But so far, grain production is rising, with the 1996 harvest setting a record at 1.87 billion tons. Prices fell, and the government began to notice that it was missing money. In addition to trying to find the culprits, the government is now trying to get back its monopoly over prices. To do so, it prohibits peasants from selling grain to private dealers. In the dead of night, however, private transactions still take place. Worries Smith: "The system is still full of holes." —JSS

He got soul — When it comes to politics, I am basically a cynical guy. I expect politicians to behave like swine: to be rapacious, dishonest, arrogant, and vile. But when the trial of the president began in the Senate, my cynicism slipped a little. I harbored the sneaking hope that many of the senators might actually move above politics and public opinion and take seriously the oath they took as jurors.

What a fool I was to have entertained those thoughts for even a moment. From the very beginning, senators behaved in a way that would cause a juror in an ordinary civil or criminal trial to be imprisoned for contempt of court or worse. Rather than examine the evidence as dispassionately as they could, senators on both sides of the aisle conspired with others of their own party, the prosecution, and the accused to fix the outcome of the trial. Democrat senators were plainly in cahoots with the president and caucused regularly and openly to plan his defense. Republicans were no better: they met with the prosecutors from the House and

caucused regularly to . . . well, some caucused to try to get a conviction and some caucused to try to get the trial over with as soon as possible.

Furthermore, virtually all of these people spoke with the press openly about their thinking, though a few (Republicans, mostly) tried to pretend they hadn't made up their minds. Their lust for camera time was literally astonishing: before and after sessions, you could see them line up to be interviewed by C-SPAN reporters. Once or twice, I

Liberty's Editors Reflect

| | |
|-----|--------------------|
| DB | David Boaz |
| AB | Alan Bock |
| RWB | R.W. Bradford |
| JB | James Buccellato |
| TC | Terrence Campbell |
| SC | Stephen Cox |
| DP | Durk Pearson |
| RR | Ralph Raico |
| BR | Bruce Ramsey |
| JSS | Jane S. Shaw |
| SS | Sandy Shaw |
| FS | Fred L. Smith, Jr. |

thought they might break into fights to get to the camera.

On January 27, Robert Byrd, the "Conscience of the Senate," made a motion to dismiss the charges, on the ground that it was virtually certain that the Senate would not convict, no matter what the evidence showed, since so many of his Democratic colleagues had said as much in public statements. The move was dismissed, with every senator but one voting along party lines.

By that evening, Democrat senator after Democrat senator had made public statements to the effect that the defeat of the measure was actually a victory, since it proved that Democratic solidarity would prevent the two-thirds majority needed to remove the president from office.

That same day by the same vote, the Senate passed a motion to allow the prosecutors, who had hitherto been prevented from presenting any evidence, to interview three of the witnesses in secret, and to present the videotaped testimony to the senators to view in private, so they could decide whether to allow any further testimony. A week later, after some of the senators had viewed some of the videotaped testimony, the Senate voted 70-30 to allow no further testimony and no live testimony at all. Again, the Democrats had shown great solidarity, but this time 15 Republicans showed that they were as vile and dishonorable as the Democrats by voting with them against witnesses in hopes of ending the trial (and its political costs) as quickly as possible.

Can you imagine any of this happening in an ordinary criminal or civil trial with ordinary citizens as jurors? Think about it. During opening statement by the litigants, a quarter of the jurors publicly say they have already made up their mind and oppose hearing any of the evidence. As the opening statements are made, jurors meet with the defendant and the plaintiff (or prosecutor) to help plan strategy. Before any evidence is presented, the jury votes on whether to dismiss the case and its foreman announces to the press that the trial may as well be stopped because enough jurors have already made up their minds and have indicated that no amount of evidence or further argument will change their decisions. And so the "trial" ends with virtually no evidence presented. I put *trial* in quotation marks because a trial with no evidence presented is no more a trial than a baseball game played with no baseball is a baseball game.

I suppose we might expect that most people who love the American Republic would be aghast at this behavior. Well, I love America, and I applaud it. In fact, I think the whole matter has had an entirely salubrious effect on the body politic. Not only has the president perjured himself three times in three different judicial proceedings (in the Paula Jones case, before the Independent Counsel's grand jury, and before the House of Representatives) and obstructed justice by inducing others (Monica Lewinsky, Vernon Jordan and Betty Currie, to name but three) to perjure themselves as well. But the Senate, designed by the Founders to stand above politics in deciding impeachment cases, acted virtually entirely on partisan and electoral motives, and did so completely openly.

Right now, most Americans are happy to be piling up more money and vaguely afraid that getting rid of the president, no matter how criminal his behavior, might hurt their bottom line. But once the dust has cleared, every rational American will understand the fundamental corruption of American politics. It is a system that gives us presidents who

are little better than common confidence men, who flout the very laws they propose and enact, and flout their oath of office — and for an encore, commit perjury and induce others to do so as well. And it is a system that elects to its highest legislative chamber individuals who flout the oaths they take and stage a show trial while openly flaunting any semblance of integrity or honor.

Somewhere among our 260 million fellow citizens are people who will realize that something is fundamentally wrong with such a system. And some of them will inevitably consider the libertarian vision of a radically less-powerful, less-intrusive government.

In the meantime, Americans have dodged the Al Gore bullet. —RWB

The circle of subsidized life — How do you get anti-tax Republicans to support a new spending measure? By calling it a "tax credit," that's how. Consider the president's proposal to give a tax credit to stay-at-home mothers.

Instead of giving them a cash grant, he will give them a tax credit, i.e., allow them to deduct a specified amount from their tax bill. I haven't heard whether the proposal would give an outright cash grant to stay-at-home moms who don't have enough income to pay taxes, but if such a provision is not included in the proposal, it'll likely be added later, as has been done in the past.

The "tax credit" for stay-at-home moms completes the circle of subsidy. If you have kids but both parents work, the government gives you a subsidy for child care. If you have kids but mom stays at home, you get a subsidy anyway. And if you don't have kids, the government will subsidize your use of birth-control drugs or apparatus. If those fail because of your carelessness, it will subsidize an abortion. —RWB

The ennobling functions of the thugocracy — It seems that nowadays everyone, from the Pope on down, is apologizing for past mistakes. This came to mind a few weeks ago as I was watching the Sunday morning political talk show on NBC. George Will used the deliberately ugly phrase, "rancid conservatism." It refers, he explained, to the sort of conservatism that is anti-government on principle ("libertarian" would be a better name for it, but that's not a word Will likes to spread around).

I recalled a book Will wrote in the early 1980s with the priceless title, *Statecraft as Soulcraft*. Here Will argued that, contrary to the cliché, government legislates morality all the time, and it "should do so more often." The state, he argued, should engage in "the enactment of laws and implementation of policies that proscribe, mandate, regulate, or subsidize behavior that will, over time, have the predictable [sic] effect of nurturing, bolstering, or altering habits, dispositions and values on a broad scale." This is what constitutes "the ennobling functions of government," aiming at creating moral excellence among the populace. The "political vocation" is "the collaborative adventure of trying to measure up to the better angels of our nature."

Yet who would be in charge of such soul-crafting? Plato demanded a philosopher-king, and Rousseau proposed a super-human Law-Giver. In modern times, though, we're stuck with our elected representatives, the worthies thrown

up by the sainted "democratic process." In the past few years all of us, and especially Will, whose job it is, have had ample occasion to observe these candidate soul-crafters in action. They have prominently included Newt Gingrich, Trent Lott, and Dick Gephardt, and naturally the Swine-in-Chief himself, together with all the freaks and felons who make up his administration. Now, is it conceivable that Will really believes these people have a mission to shape the souls of Americans? —RR

The prevailing wisdom no longer prevails — Ludwig von Mises pointed out decades ago the fundamental problem of conventional "social sciences": because human action is essentially nonrepeatable, it is impossible to discover cause-effect relationships from mere observation and collection of data.

The point has been nicely demonstrated by the relationship between the impeachment and the economy. In 1973, during the Nixon crisis, virtually all analysts blamed the terrible world economy on the impeachment. When the head of the world's largest national economy is under fire, the theory went, investors will naturally be reluctant to invest in productive enterprises; this results in higher unemployment, lower profits, etc., etc., etc.

But look what happened during the Clinton crisis. The economy boomed, especially in the U.S., with stock prices rising and unemployment falling. Now it looks as if the conventional wisdom of 1973 may have been 100 percent wrong. There's evidence that people don't want Clinton tossed from office because they fear his removal might hurt their prosperity, despite the fact that by any objective standard his crimes are much worse than Nixon's.

Of course, no sensible economist believes that Clinton is responsible for prosperity. After all, Clinton's program — higher taxes, more regulation, a government takeover of the medical industry — would dramatically reduce American prosperity. There's a lot a president can do to reduce prosperity — any intervention at all can do this — but there's little a president can do to increase prosperity.

Clinton has merely had the good fortune to lose both his epic battle to nationalize medicine and his party's majority in Congress, thereby slowing the pace of government growth while entrepreneurs, especially in new fields that the government hasn't figured out how to control (i.e., computer technology, biotechnology, and communications technology), have stimulated prosperity at an incredibly fast rate.

So why was petty criminal Nixon forced from office, while petty criminal Clinton was not? The answer seems to be that Nixon was the victim of a bad economy, much of which was his own doing. After all, only two years before, he had made one of the most massive economic interventions in American history: the imposition of wage and price controls. He'd also raised taxes and instituted all sorts of new regulations. In all likelihood, it wasn't his pending impeachment that caused the economy to falter; it was the faltering economy that enabled the impeachers to force his resignation.

But remember: correlation isn't causation! —RWB

The medium and the mess — On the evening when the Senate somehow voted not to dismiss the case against the president before waiting for any evidence to be

heard, Catherine Crier of Fox News asked Sen. John Kerry of Massachusetts what the vote signified.

"These votes have made it clear," Kerry intoned, "that 44 United States senators believe the president should not be removed and that the Constitution should not be tinkered with or even abused the way it has been over these last months."

But Crier, a former judge, had trouble seeing Kerry's point. "What is the abuse of the Constitution if the House legitimately, even though by a partisan vote, impeached the president [and] offered this up for trial?" she asked. "Shouldn't the Senate at least go through a semblance of a trial?"

"The framers of the Constitution," Kerry pontificated, ignoring the question, "if you read the *Federalist Papers*, Madison 65 and 66 made it very, very clear that this kind of divisiveness would make it very difficult. Henry Hyde began the proceedings in the House laying down the fundamental principle you cannot impeach the president of the United States in a partisan way. They breached that principle in the House, they tried to breach it in the Senate, and now they've reinforced that principle by learning you just can't do it."

"Well, Senator Kerry," persisted Crier, "what about the process itself? Why is it in any way denigrating to the Constitution to follow through a trial procedure?"

Kerry was quick to explain:

Because the constitutional standard for impeachment is so clear. The framers said that it is to protect the nation against a sort of ongoing threat to the country, a kind of corruption level that is so high that it threatens the very system of government. Here you had a private consensual sex act of the president which the police power of the United States was used to investigate and many people feel there was such a fundamental process of partisanship leading all the way to the trap that was set for the president that this is without the kind of moral justification in the Constitution that the framers envisioned.

Strangely, Crier still pressed for an answer to her question. "Well, all of those — and you and I both know [it] — are rhetorical words in that they [are] defending a very solid position. If it weren't for Ken Starr, if it weren't for the Independent Counsel statute and if it weren't for the subject of sex maybe we could be more dispassionate about the notions of perjury and the obstruction of justice."



"A penny for your thoughts?"

Kerry was indignant:

Catherine, I'm not dispassionate. I think there may have been some obstruction. I don't know completely but if there was, though because of what it arose out of and what it is connected to, I still don't feel that it meets the level of constitutional threat that the founding fathers talked about. Now I'm not — you know the president did some terrible things here. There is no question about that. But the Constitution requires something more than just your feeling that he, he, he sort of, you know, violated, ah, some of your notions of the oath or whatever if it arises out of a sexual act. I mean, there are many prosecutors across the country who said they wouldn't even prosecute this case in a court, let alone try to raise it to the level of a high crime or misdemeanor as defined, defined by the Constitution. So I think most people in America know what this is. This has always been politics. The Rutherford Institute involved with Paula Jones, Ken Starr becoming involved with Linda Tripp, Linda Tripp setting a trap, helping the president fall into the trap, all of this smacks of something that most Americans find deeply distasteful and out of that came the lie or the obstruction as you might phrase it that they want to make the fundamental of removal. I'm not buying into that kind of abusive process.

Crier made one more try. "Of course," she observed, "others would say that the lie came out of the president's mouth all by himself."

"You bet he did!" Kerry responded. "And the fact that we don't remove him does not leave him without criminal sanctions. He could still be prosecuted and it may well be that Ken Starr will prosecute him through the court system and he'll be punished. That's different from removing a duly elected president of the United States from office for these kinds of offenses."

What's interesting here isn't the fact that Kerry ignored Crier's question every time she asked it. This is a well-established technique that public figures use to manipulate the media. What's interesting is just how incoherent and, well, stupid the Senator's answers were to those who actually paid attention to what he said.

According to Kerry, right-wingers like Paula Jones, Linda Tripp and the Rutherford Institute set a perjury trap for the president, but his lies came out of his mouth all by themselves. He may have obstructed justice and committed perjury, but these acts grew out of a consensual sex act, which makes them not perjurios or obstructive of justice. Okay. The Democrats are not exonerating him when they refuse to remove him from office for his crimes, since he can still be prosecuted in criminal court, though no prosecutor would ever prosecute a case like this. The constitutional standard for impeachment is patently clear, though Kerry doesn't seem to have any idea what it is. The Founders opposed partisanship in impeachment proceedings, though Kerry failed to mention that the Founders also opposed the very existence of political parties because they feared partisanship would lead to cases exactly like this, where a president's party marches in lockstep to protect him from removal for his obvious crimes. Republican Henry Hyde established the principle in the House that any removal of the president must be done on a bipartisan basis, then the Republicans violated it somehow. (Kerry didn't mention that only 67 percent of Republican congressmen voted the party line on impeachment issues, while 98 percent of their Democratic counter-

parts followed their own party line, or that while 72 percent of Republican senators toed the party line, 98 percent of Democrats proved athletic enough to do so.)

In sum, what the senator served up was a giant gob of take-out food, an inchoate mess of stale defenses cooked up by the president's public relations experts, none of which makes much sense considered singly, much less when tasted in a compote with others.

But I don't think that's how most television viewers saw it. They were distracted by the senator's position, by his expensive clothing, by his air of authority, by the way he delivered his lines. Those who defend the president probably applauded Kerry as an able defender. So probably did most of the president's critics.

The plea of the House Managers for live witnesses so that the Senate jurors could look into the eyes of the witnesses and judge directly when, if ever, the witnesses were telling the truth, sounded pretty plausible. But upon reflection, I'm not so sure. Maybe it would be better to read a transcription, in hard black type on clean white paper. Maybe then it would be easier to see past Monica's coquetry and earnestness, past Vernon Jordan's lawyerly mannerisms, past Sidney Blumenthal's practiced lies.

—RWB

The Disease of Liberty is catching—

Freedom House — a group whose board of trustees includes such luminaries as Zbigniew Brzezinski, Steve Forbes, Lane Kirkland, Jeanne Kirkpatrick, Peggy Noonan, P. J. O'Rourke and Andrew Young — has released its 26th annual survey of freedom around the world. It finds more free countries than ever: 88 rated Free, 53 Partly Free and 50 Not Free.

Countries rated Free include Japan, South Africa and Hungary; Partly Free includes Mexico, Malaysia and Pakistan; Not Free includes Kenya, Egypt and China. The hellholes, rated worst of the worst, are Afghanistan, Burma, Cuba, Equatorial Guinea, Iraq, North Korea, Libya, Saudi Arabia (our war ally!), Somalia, Sudan, Syria, Turkmenistan and Vietnam.

Readers of this magazine would undoubtedly set a higher standard for Free, which would include the tax burden, the regulation of drugs, the control of schools, etc. But they would agree on the core definition of freedom: a life apart from the state. In that respect, humanity's condition improved in 1998. Indonesia's Suharto was ousted and



SACHAMBERS

"André is a Peace Corps volunteer from France. He's here to show us how to cook."

Nigeria's Gen. Abacha died; both countries graduated from Not Free to Partly Free. China is still Not Free, but for the first time it moved up from rock-bottom in civil liberties.

In its report, Freedom House finds some interesting correlations:

- Political democracy and civil liberties go together. Freedom House has been saying this for years, and on good authority. It lists 117 democracies: 75 percent that it rates Free, 25 percent Partly Free, and zero Not Free. Looking at the past 26 years, Freedom House President Adrian Karatnycky writes that the Partly Free democracies (29 of them now) "hold the greatest potential for the expansion of freedom." Since 1995 democracies that have jumped from Partly Free to Free include India, Nicaragua, the Philippines and Taiwan; those that haven't include Colombia, Brazil, Russia and Ukraine.

- Countries in which more than two-thirds of the population belong to the same ethnic group are twice as likely to be rated Free than multi-ethnic countries. Multi-ethnic countries can make the grade — Canada, Belgium, Switzerland, Estonia and South Africa have — but the odds aren't as good.

- Freedom comes more easily with some religions. Of the 88 countries rated Free, 79 have a Christian majority. The remaining countries include Buddhist (Japan, Mongolia, Taiwan, Thailand), Hindu (India, Mauritius, Nepal) and Jewish (Israel.) But among Islamic countries, only one, Mali, is rated Free, 14 are Partly Free and 28 are Not Free. In the Islamic world, the Arab countries remain the most tyrannical. Yet things can change rapidly: 25 years ago, most Catholic countries (Argentina, Chile, Philippines, Poland, etc.) were dictatorships. Not any more.

The report cites its own studies of economic freedom as well as the Heritage Foundation's, and notes "the growing empirical evidence of the links between economic freedom and political freedom." It denies the chamber-of-commerce argument that capitalism comes first, and civil liberty and democracy afterward. "The more careful conclusion," the report says, "is that both trends manifest themselves in close proximity to one another. Opposition to the dominance of the state in economic life is usually accompanied by opposition to the dominance of the state in personal life and in the life of civil society." —BR

The really serious issues— You probably have been alerted to the great celestial peculiarity of 1999: this will be the first year since 1915 to contain a month (January) with two full moons, followed by a month (February) with no full moon, followed by a month (March) with two more full moons.

I don't know what you thought when you first heard this widely heralded news. My own first reaction was, "I wonder who keeps track of stuff like this?" My second reaction was, "Probably people like my father."

My dad, God rest his soul, loved statistics. He was immensely gratified to discover that a given month would have a second full moon in it, or to be told how many months, on average, possessed such an oversupply of moons. That kind of knowledge was really an asset to his life.

In a complex modern society such as ours, we are constantly being made aware of the wealth and diversity of interests that surround us, and of the valued role that per-

sonal and even quite eccentric interests play in the lives of our fellow-citizens. For millions of men and women, baseball statistics are much more important than the numbers that appear in their statements from the bank. Millions find the construction of model railroads more absorbing than the construction of stock portfolios. Millions love dogs more than spouses, at least their own spouses. Millions identify the end (not to mention the purpose) of life with the attempt to improve their golf scores.

These issues are *serious* to people, and thank God we live in a country where they *can* be regarded as serious.

Now, if our elected officials really care about the people's welfare, and believe that it really can be served by taxing and spending and planning and issuing guidelines for every conceivable purpose, why don't we see more government action directed to assisting people with the really important business of their lives?

Why doesn't President Clinton go on record with a promise of 10 million more miles of model railroad track?

Why hasn't Congress taken steps to provide more *Northern Exposure* websites, and to renovate existing ones?

Why isn't more being done to encourage (and of course to regulate) the use of gerbils in the home?

Why, when we dedicate millions of acres to the preservation of frogs and toads and wolves and goats, and of houses where Lawrence Welk once slept, can't we create even one national monument to preserve a roadside Mystery Spot or a threatened drive-in theater?

Why can't my friend Carl get a grant from the NEA (or at least the NEH) to expand and properly display his collection of souvenir shotglasses?

Why isn't Nancy Drew included in that multitude of people whom the president is always thanking in his State of the Union address? Isn't Nancy doing anything to help this country? Isn't she a healthy role model for young women? Or is this merely the politicians' normal, insensate discrimination against literary characters, even characters that have pulled themselves up by their socks and made themselves collectible?

Why are *no* funds appropriated to allow women and minorities to acquire their fair share of celebrity autographs?

Why are no government fellowships provided to assist young men and women from disadvantaged backgrounds to become professional wrestlers or Elvis impersonators — growth professions, both?

Why are so few midnight chess tournaments available to residents of our great inner cities?

And why is so little being done on the Beanie Baby front? Beanie Babies *still* have no regulated marketplace, no national archives or museum, despite the fact that the American people care a great deal more about Beanie Babies than they do about grain futures or the achievements of Dwight David Eisenhower.

Well, you see my point. But on second thought, I'm sorry I brought it up. Some politician might actually be reading this.

— SC

Land grab — There are so many federal actions that are disastrous to freedom that it may be hard to focus on this one, but please try. This is a biggie. You all know what socialism is: the government owns the means of production. Land is a major means of production. The federal government now

owns (or, more correctly, occupies) about 40 percent of the land area of the United States, most of that in the resource-rich West. The Constitution does not authorize large-scale federal land ownership; indeed, it only authorizes federal control of "such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of congress, become the seat of the government of the United States . . . and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. . ."

Thomas Jefferson, when he was president, was uneasy about the Louisiana Purchase because of the questionable constitutional authority for buying it, but authorized the federal government to buy it anyway, with the stated intention of selling lands to pay off U.S. debts and for the creation of future states. Later, new states were required, as a condition for admission to the Union, to agree to exclusive federal disposal of the public lands within the new state. In 1976, Congress passed the Federal Land Policy Management Act, which established the policy of the federal government to retain all unappropriated lands for a permanent federal land estate.

The original system of checks and balances built into the Constitution had not been designed to stand against the power the federal government would acquire as controller of over half the land of the West. Here in Nevada, where we live, the federal government owns 83 percent of the state's land; in Esmeralda County, a Nevada rural county, 98.5 percent of the land is federally occupied.

This is not enough federal control for Bill Clinton, who announced a *billion* dollar per year federal "trust fund" for the feds to buy up private property. Now introduced in the Senate by Senators Mary Landrieu (D-La.), Trent "Vacant" Lott (R-Miss.) and Frank Murkowski (R-Ark.) is S. 25, which sets up such a program at less than a billion a year (but of course the greens can lobby for an increase later after they get it through). It would be an off-budget entitlement (that is, it would be automatically renewed each year without congressional oversight or hearings, and would not "count" as part of the federal budget). Rep. Don Young (R-Ark.), chairman of the resources committee in the House, is preparing his clone of the Murkowski bill to introduce early in February unless he hears a lot of outraged cries against it. And then, of course, there will be a bipartisan effort to pass some version of the "trust fund" legislation.

Most of the land will be "purchased" at the point of a fed's gun from unwilling "sellers," who will do so to escape the legal expenses of a foredoomed condemnation after their property has been rendered commercially worthless by federal land-use regulations. In *Willing Seller Willing Buyer*, author Bo Thott describes how he got a list of names of property owners who had sold property to the National Park Service under FOIA. He had also sent a FOIA request to the U.S. Forest Service and U.S. Fish & Wildlife, both of which refused to send names, claiming the need for "privacy." Thott then sent a survey to the former landowners bought out by the National Park Service. Of 1,110 forms delivered, there were 404 responses. Of the former owners who added comments (207), 74 percent were dissatisfied with their Park Service deals. This puts the lie to any claim in the congress-

sional bills that this federal government billion-dollar a year slush fund will only buy from "willing sellers." —DP & SS

Conflict of Visions — Few events offer a more optimistic view that America might yet regain control of its government than the recent House impeachment debate. The facts aren't really in dispute; almost everyone agreed that President Clinton acted in a highly inappropriate way. The question is what remedy is appropriate. Almost everyone seems to agree that he shouldn't get off free, but that he shouldn't necessarily be removed from office. Given the lopsided nature of the vote — only five Democrats voted for impeachment, only five Republicans against — the popular view has been that this was another example of the collapse of consensus, the bitter divisiveness of partisan politics in America today. Perhaps, but another and far more positive reading can be given to these events. That reading sees the debate as the first (and given the likelihood of a Senate decision to censure rather than convict the president, likely only temporary) reversal of the dominant quantitative view of government. Since the progressive era, the dominant intellectual view of government has shifted from that of a dangerous but necessary institution — one that must be carefully circumscribed and limited if it is to be kept in check — to that of a positive force for social justice. In the former view, government (as George Washington so eloquently warned) is like fire, a necessary but dangerous servant. One does not use fire indiscriminately — one carefully walls off fire from the rest of one's dwelling (the very concept of a "firewall" provides a powerful metaphor for constitutional restrictions). Fire is kept in special locations; not a spark is permitted in much of the house. To use fire safely, separation and controls are essential. That concept views the roles and powers of government as qualitative — there are many good and valuable things that government should not do (lest those powers flame up to threaten other values) and other things that the *federal* government should not do (those activities reserved for the states and localities) and still other acts that one branch of government might do that would be highly inappropriate for another. In all cases, government is viewed as a wanton force that must be kept carefully in check. The Constitution was a highly qualitative document; it did not focus on quantitative goals such as a balanced budget but rather to limit the activities of each branch of government and of the federal government itself vis-a-vis the states and the people. Our Founding Fathers believed that there were many good things that government should not do, many other good things that government might do but that the federal government should not do. The argument was that clear fire-breaks between fields of activity would serve to limit government — to restrict the threat of Leviathan.

That view now seems quaint. The Progressive capture of the American intellectual class at the close of the 19th century persuaded many that government was now an infinitely variable and inherently good thing. Government was no longer viewed as a dangerous threat but as an adjustable tool to advance social justice. The removal of the firewalls — the shift of focus from the areas where government should and should not act to the quantitative issue of whether government should do more or less — on housing, in transportation, to reduce poverty or racism or pollution — was a slow

but relentless shift.

For many years, qualitative restraints checked this quantitative bias. For example, as late as the Eisenhower era, politicians felt that they must justify their expanded efforts in the highway construction and education fields as "national defense" actions, the one qualitative area always viewed as legitimate. That fig leaf has largely today been abandoned as conservatives and liberals alike seek more pork for their districts.

Thus, the debate over Clinton's impeachment and removal from office may be viewed as simply revisiting the older debate between the qualitative and quantitative visions of government. Progressive liberals — largely but not solely Democrats — seem to believe that while what Clinton did was wrong, he certainly shouldn't be driven from office. They favor a punishment carefully calibrated to suit the crime — some form of censure. Liberals here as elsewhere see government as a quantitative device — one wants to do more or less as the situation dictates. There is no question but that government can act — the challenge is to ensure that the act is calibrated to fit the crime. Conservatives — mostly but not solely Republican — seem to believe that what Clinton did was wrong but are unsure whether they should (or given the partisan nature of congress, whether they can) actually remove him from office. Most, however, resist the censure option, seeing the only options open to Congress being the limited choices of acquittal or conviction. To conservatives, government is a qualitative issue, the Constitution separates clearly the two branches of government and censure would blur that distinction, moving the United States decisively toward the parliamentary form of government. To conservatives, the challenge is not the quantitative decision about more or less, but the qualitative question of whether to act or not.

Thus, the impeachment debate brings us back to this neglected argument and may be the indication that America may yet constrain Leviathan. The qualitative argument was made very strongly in the House with the majority (certainly, no pro-Clinton clique) seeming to see censure as a forbidden option; the choice being a highly unlikely removal from office or acquittal. One can only hope (this is written prior to the Senate trial) that this viewpoint gains further strength. Qualitative government may be controllable; quantitative government certainly is not. The outcome remains in doubt, but it would be ironic if the primary item of note that history records in the administration of President William Jefferson Clinton is the re-opening of this most important philosophic debate over the nature and design of government. Certainly, whatever the outcome, America is likely to be the better for resurrecting this long-neglected constitutional issue. —FS

Libertarianism made simple — Here's something I thought you'd like to know while you're meditating on the meaning of this year's income tax return.

A book published in 1935 observes that "out of a population of 125,000,000 or more, there are but about 1,900,000 Federal income taxpayers." One and a half percent. And that wasn't because everybody was out of work. Everybody wasn't. The author, a proponent of limited government, actually regrets that the percentage isn't higher. He thinks that a higher percentage of taxpayers might exert "a political pressure against spending." Sixty-four years later, nearly every-

body is caught up in the federal income tax system, and adequate pressure against spending is yet to be seen. Why?

One reason is the government's habit of using deficits to disguise the extent of its spending. The budget is now said to be "balanced," or nearly "balanced," but only because Social Security taxes are used to "balance" it.

Another reason has to do with the psychology of economic progress. So long as the enormous strength and resilience of the capitalist system allows total income to rise even faster than income taken in taxes (something that has happened in most years between 1935 and the present), the income that people actually notice — their net, after-tax income — may increase quite satisfactorily despite very large increases in taxation. If I earned \$50,000 last year and paid \$10,000 in taxes, but I earn \$70,000 this year and pay \$15,000 in taxes, I may not be inclined to object. I may not even notice; the money will be silently "withheld" at its source.

A third reason is the multiplicity of taxes. Many people pay more than 50 percent of their income to the government (50 percent!), but few of them realize that they do. It's just a trifling 6 percent on that six-pack of doughnuts you bought at the convenience store, 3 percent of the assessed valuation of your house (a whopper, but you only need to pay it once a year), 35 percent to the feds (but what you actually see is your \$100 refund check), 5 percent to the state (ditto), 1.5 percent to the city, that annoying "vehicle license fee" . . . But who's adding?

It seems to me that the business end of libertarianism is a very simple thing. It's all comprehended in these three points. Help people to see them as they are, and you'll have a revolution. —SC

IMF cant — For many years I have considered the International Monetary Fund a harmful institution. Beyond that judgment, made on economic grounds, I have felt a vague distaste for it. Now, suddenly, the reason occurs to me. It is the *cant* that pervades IMF documents and speeches. The ratio of verbiage to substance is high.

Cant is derived from *cantus*, which is related to *chant*. It refers to sing-songy, tedious, and even insincere jargon. Vogue words pervade IMF publications. Current mantras include *transparency* and *architecture*. Repeatedly the IMF calls for greater transparency in government finance, banking, and even its own operations. It trumpets its own indispensable role in shaping a new global financial architecture. Unless you actually read the documents, you wouldn't believe how often and mindlessly these words recur, as do the verbs cited below.

Quirks of style become grating. Repeatedly we read that "directors" (or "ministers" or whatever) did this or that, the formulation obscuring whether most, many, some, or a few directors did so. And just what did Executive Directors, Ministers, participants, or some committee do? They noted, observed, recognized, welcomed, encouraged, endorsed, stressed, cautioned.

They expressed serious concern; they underscored the need for special emphasis; they recognized importance. "Ministers reaffirm their commitment to the principles of good governance . . ." "Ministers are following with interest the ongoing process toward reaching agreement on key principles of fiscal transparency . . ." "Directors were in agree-

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The State of the Applause

by R. W. Bradford

Promise them everything, but let them eat pork.

By all accounts, Bill Clinton's State of the Union address was a masterpiece. It overwhelmed his critics with the good news that the federal government, after decades of spending more than its income, had a surplus last year and would be in the black for the next 25 years, and that this surplus can be spent to cure just about every problem Americans face.

The day before the address, former Clinton aide Dick Morris explained how the president writes his State of the Union address. The first step, as is so often the case with what Clinton does, is to conduct a poll. A sampling of voters was given 300 new spending proposals and asked which they liked best. The top 80 or so proposals are presented to the president, who works the list down to a manageable 30 or so proposals. With the aid of his crack speechwriters, he fashions them into an hour-long speech.

For those of you who missed the State of the Union address, I list below its "applause lines" — the passages where the president planned for (and received) ovations from the Congress, or at least its Democratic members:

1. "the widows of the two brave Capitol Hill police officers who gave their lives to defend freedom's house," i.e., the Capitol
2. the "spirit of civility and bipartisanship"
3. the "largest peacetime economic expansion in our history"
4. the "lowest unemployment since 1957"
5. "for the first time in three decades, the budget is balanced"
6. "we are on course for budget surpluses for the next 25 years"
7. "the state of our union is strong"
8. "we must save Social Security"
9. "I propose that we make the historic decision to invest the surplus to save Social Security"
10. "we should reduce poverty among elderly women"
11. "eliminate limits on what seniors on Social Security can earn"

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12. "We will save Social Security now"
 13. "We shouldn't spend any of [the surplus] . . . until after Social Security is truly saved"
 14. "guarantee the soundness of Medicare until the year 2020"
 15. "affordable prescription drugs"
 16. "Universal Savings Accounts"
 17. "invest in long-term care"
 18. "help our families deal with [aging]"
 19. "lift the burden [of caring for us when we get old] off our children"
 20. "set aside 60 percent of the surplus for Social Security and 16 percent for Medicare"
 21. "open the doors of college to all Americans"
 22. "reduce class size"
 23. "invest \$15 billion in public schools"
 24. "end social promotion [in public schools]"
 25. "[federal funding] for summer schools"
 26. "end social promotion and finance summer schools"
 27. "turn around [our] worst-performing schools or shut them down"
 28. require "teachers to pass performance exams"
 29. "Let us bring excellence to every part of America"
 30. the government should give parents "more choices in selecting their public schools"
 31. create 2,900 new "charter schools"
 32. "all states and school districts must adopt and implement sensible discipline policies"
 33. "modernize 5,000 schools"
 34. "create 21st-century schools"

35. "raise the minimum wage"
36. "strengthening enforcement of equal pay laws"
37. "Let's give [Congress] a hand"
38. "quality child care"
39. "a tax credit for stay-at-home parents"
40. "extend Family Leave to 10 million more Americans working for smaller companies"
41. "Congress should prohibit companies from refusing to hire or promote workers simply because they have children"
42. "a patients' bill of rights for all Americans"
43. "a strong, enforceable patients' bill of rights"

The first step in writing the State of the Union address, as is so often the case with what Clinton does, is to conduct a poll.

44. "protect the privacy of medical records"
45. "allow people with disabilities to keep their health insurance when they go to work"
46. "Tipper Gore is leading our efforts here [with regard to "Mental Health"]"
47. "take the tobacco companies to court — and with the funds we recover, to strengthen Medicare"
48. "training opportunities for all Americans who lose their jobs"
49. "a dramatic increase in federal support for adult literacy"
50. "we have cut the welfare rolls nearly in half"
51. "help another 200,000 people move to the dignity and pride of work"
52. "our greatest untapped markets are . . . right here at home, and we should go after them"
53. "the new American Private Investment Company"
54. "the family farm"
55. "addressing" the "economic problem . . . out there in rural America"
56. "solve the so-called Y2K computer problem"
57. "we've made sure that the Social Security checks will come on time"
58. "make sure the Y2K computer bug will be remembered as the last headache of the 20th century, not the first crisis of the 21st"
59. "freer and fairer trading system for 21st century America"
60. "we must ensure that ordinary citizens in all countries actually benefit from trade"
61. "put a human face on the global economy"
62. "enforce our trade laws when imports unlawfully flood our nation"
63. "If Japan doesn't stop exporting so much steel to the U.S., America will respond"
64. "advance our prosperity in the 21st century"
65. "ban abusive child labor everywhere in the world"
66. "stop [the] brutal repression in Kosovo"
67. "stimulate the Palestinian economy, support our friends in Jordan"
68. "defend our security wherever it is threatened . . . so

- America can continue to lead"
69. "end nuclear testing forever"
70. give "Iraq a government worthy of its people"
71. "Captain Taliaferro!" (a pilot who helped bomb Iraq, presumably to help give it "a government worthy of its people")
72. "reverse the decline in defense spending"
73. "sustained increase [in spending] . . . for readiness, modernization, and for pay and benefits for our troops and their families"
74. "We must come through for [our veterans]"
75. "pay our dues to [the United Nations]"
76. "In China . . . [s]tability can no longer be bought at the expense of liberty"
77. "bring change and freedom to China"
78. "fortify African democracy"
79. bring "the blessings of liberty" to Cuba
80. "Sammy Sosa, you're a hero!"
81. "100,000 community police officers"
82. "the crime rate has dropped for six straight years"
83. imprison parolees who fail to "stay free of drugs"
84. "restore the five-day waiting period for buying a handgun"
85. "prevent juveniles who commit violent crimes from buying a gun"
86. "Suzann Wilson of Jonesboro, Arkansas [one of whose children was killed] . . . is here tonight, with the First Lady"
87. "keep our children safe"
88. "reduce greenhouse gases"
89. "save open space, ease traffic congestion"
90. "preserve places of natural beauty"
91. "the visionary leadership of the vice president"
92. "give more young Americans the chance to . . . serve America in AmeriCorps"
93. "campaign finance reform . . . pass it again, quickly!"
94. "a stronger American democracy in the year 2000"
95. "Rosa Parks . . . We thank her!"
96. "Thank you, Rosa"
97. "make the Employment Non-Discrimination Act and the Hate Crimes Prevention Act the law of the land"
98. "a census that uses modern scientific methods"
99. provide funds to teach English to "our new immigrants"
100. "For leading our Millennium Project, for all she's done for our children, for all she has done in her historic role to serve our nation and our best ideals at home and abroad, I honor her [Hillary]"
101. "A hundred years from tonight, another American president will stand in this place and . . . he — or she! —"

On average, enthusiastic Democratic senators and congresspersons cheered him every 43 seconds, or once every 77 words. No wonder the news media figured the State of the Union address was so wonderful! (Special thanks to the White House website for identifying all the applause lines, and shame on the news services, newspapers and other reference sources whose published text of the speech failed to note them. Incidentally, if you want to log onto the White House website, be sure to enter WhiteHouse.gov. If you accidentally enter WhiteHouse or WhiteHouse.com, you get pornography.)

As you can see, there was no more talk about how "the era of big government is over." Instead, there was proposal

after proposal for more spending, along with lots of self-congratulations, spiced by a few American heroes for the audience to applaud and three opportunities for Democratic congresspeople to give standing ovations to Democratic candidates for office in the year 2000.

When the dust had settled, according to a study by the National Taxpayers Union Foundation, Clinton had proposed increased annual spending of \$288.3 billion, plus another \$39.2 billion each year in spending disguised as tax credits. In all, he proposed new spending totalling \$327.6 billion per year, or about \$42 million for every word in his address. The president proposed a total of 31 new spending proposals, just one more than Morris had predicted.

The reaction of the media and of the American people was just what the president had expected, thanks to the poll testing all of his proposals. They showered the president with love. Sure we can do it, we can have everything we want and it won't really cost us anything to speak of. We'll just spend that surplus. Never mind that the surplus exists because a recalcitrant Congress resisted Clinton's more ridiculous spending proposals during the past years while riding an economy so robust that all Clinton's smarty-pants lawyers and regulators can't figure out how to regulate it. No matter that no one has

On average, enthusiastic Democratic senators and congresspersons cheered Clinton every 43 seconds, or once every 77 words.

ever been able to forecast the coming year's budget surpluses or deficits with any degree of accuracy, let alone the deficits or surpluses for the next 25 years. So let's party!

To me, the most ominous passage came early in the speech:

America's families deserve the world's best medical care. Thanks to bipartisan federal support for medical research, we are now on the verge of new treatments to prevent or delay diseases from Parkinson's to Alzheimer's, to arthritis to cancer. But as we continue our advances in medical science, we can't let our medical system lag behind. Managed care has literally transformed medicine in America — driving down costs, but threatening to drive down quality as well.

I think we ought to say to every American: You should have the right to know all your medical options — not just the cheapest. If you need a specialist, you should have the right to see one. You have a right to the nearest emergency care if you're in an accident. These are things that we ought to say. And I think we ought to say, you should have a right to keep your doctor during a period of treatment, whether it's a pregnancy or a chemotherapy treatment, or anything else. I believe this.

A chill ran down my spine when I heard Clinton utter these 172 words — one of the longest passages in the speech without applause lines. The combination of a federal government subsidy of medical research with a guarantee to all Americans to whatever medical care they need, irrespective of cost, is a recipe for skyrocketing medical costs. Any time you subsidize a service and offer it in infinite supply to people without cost, people will consume more and more.

Skyrocketing medical costs, of course, were the rationale for the government takeover of the entire medical system

that the Clintons proposed in 1993. Clinton's solution, of course, will only make the problem worse: medical spending will rise until we can no longer afford it and it must be brought under control by a bureaucratically-managed rationing system, such as those in use today in Canada, Britain and most of the rest of the industrialized world.

I live only a few miles from the Canadian border, and hospitals in my area are overwhelmed by medical refugees from Canada's socialized medicine system, where the average wait

In all, Clinton proposed new spending totalling \$327.6 billion per year, or about \$42 million for every word in his address.

for an MRI is 13 months, for example. When America's system is socialized, where will we go for decent medical care?

But no matter. These problems will probably not occur until the Clintons are out of the White House, divorced, with Hillary as an earnestly left-wing senator and Bill a professor of government at some university with plenty of compliant coeds. □

Letters, continued from page 6

"remarkable" as well.

Especially amusing is Walker's response to my criticism of his discussion of Rand's "Jewishness." I did not "complain that eleven pages on the Jewish influences is already too much." I complained that he devoted so much of those eleven pages to impertinent information.

I pointed out that insofar as his passage about Rand's last name is comprehensible at all, it is irrelevant. He counters by ignoring his original argument and posing a new one: that "all educated middle-class people of the era of Rand's youth, Jewish or gentile" were familiar with the term "Rand." This is proof of Rand's "Jewishness"!

In fact, Walker has a genius for missing the point. He finds it incomprehensible that I was unimpressed by his observation that Rand's use of the word "evil" 220 times in *Atlas Shrugged* (a work of perhaps 500,000 words) is "staggering," pointing out that he is "journalist who likes solid data." Well, I like solid data too. To cite the number of times the word *evil* appears in a book without any attempt to put that number in context is not to provide "solid data." If we are to know whether the number of uses is "staggering," we have to know how frequently the word appears in other long novels with powerful moral themes. Hence my reference to Tolstoy et alia. Without context, all we have is an unsupported and, again, irrelevant opinion.

There is a limit to the attention that anyone needs to pay to such "data" and opinions, no matter how "amazing" they may, for various reasons, turn out to be. So I will conclude by admitting that one of the most attractive features of Walker's book is, indeed, its modest refusal to consider itself a scholarly work. □

CORRECTIONS

In the January *Liberty* (p. 16), we reported that "a state legislator in Vermont won the Republican primary and chose to be listed on the ballot as a 'Libertarian Republican.'" In fact, a libertarian activist won the primary and chose to be listed on the ballot as a "Libertarian Republican."

In a photo caption in the March *Liberty* (p. 27), the price at which a large quantity of Ayn Rand manuscripts was sold at auction was reported as \$433,000. The actual price was \$442,500.

New and Improved Democracy

by Stephen Cox

There are neither Republicans nor Democrats — just Pollocrats.

Whom would you rather have in the White House — a pathological liar or a crazed environmentalist?

It's a close call, especially when the environmental wacko also has a hard time distinguishing truth from falsehood. On purely practical grounds, therefore, I can't feel too bad about Clinton's ability to escape scot-free from the Lewinsky scandal.

But on other grounds, I do feel bad. The mixture of Democratic scum and Republican treacle served up at the "trial" is not the tastiest concoction I can think of. I'm revolted by the Democrats' habit of responding to every issue by just hauling off and lying, and I'm astonished by the Republicans' total inability to prosecute an open and shut case of perjury without hanging out banners proclaiming their willingness to make a deal with the defense.

I'm especially disgusted by an idea that prevails on both sides of the congressional aisle, the idea that the United States is a plebiscitary democracy, and the most absurd form of one — a government in which questions of truth and justice are decided by instantaneous popular opinion polls.

A plebiscite, a direct vote of the people on a governmental measure or question of policy, is bad enough in almost any form, for almost any purpose. The framers of the Constitution would have none of this nonsense. Their system provided only for popular elections of men, and as few of those as possible; it made no provision for popular elections to settle issues. The Constitution stipulates that even its own ratification is to be by "Conventions of nine States," not by plebiscite, much less by national plebiscite. The idea was to keep immediate decision-making power out of the hands of the populace.

This was partly because the framers had, in general, very little respect for the political astuteness of popular opinion, but mainly because they had enormous respect (respect sometimes amounting to panic and fear) for the political

savvy of popular leaders. They wanted to prevent plausible scoundrels and demagogues like William Jefferson Blythe Clinton from getting the people to vote their self-aggrandizing schemes into law.

It was a prescient policy. In the two centuries that followed the adoption of the United States Constitution, Europeans of every political description discovered how easy it was to institutionalize radical democracy, monarchy, the Empire of Napoleon, fascism, communism, any old thing you wanted, by getting "the people" to approve their leaders' bright ideas. American do-gooders latched on to plebiscites ("initiatives" and "referendums") as means of banning customs that they didn't like (e.g., consumption of alcoholic beverages) and of getting money out of corporations that they couldn't get by going to the courts or legislatures.

So the plebiscite went on its merry course. There was one thing about it that might have surprised the founding fathers: it was commonly used, not as a means of overthrowing the established powers, but of solidifying their control. "The people" proved remarkably suggestible. They tended to grab onto the ideas of whoever happened to be in the saddle. The rider's authority might stem from the formal power of political officials or from the de facto power of a social oligarchy, such as the modern-liberal oligarchy (big media, elite colleges, mainstream religions, corporate and union leaders, Democratic Party operatives) that largely controlled the supply of information in the United States after about 1910. Whatever; the people tended to go along.

By the 1980s, the de facto power of the modern liberals

was so firmly entrenched that even the electoral victory of Ronald Reagan, which placed him in formal and, to a degree, in real power, was insufficient to accomplish his goal of rolling back the modern-liberal establishment and all its works. Outside the compounds of that establishment, its signature programs (e.g., high taxes, affirmative action) were almost universally detested. Republican candidates ritualistically pledged to destroy them, and they often got elected on that pledge. But nothing happened. Taxes remained high; affirmative action remained smugly omnipresent.

At this point, the American ideological right began to contract an intense (though unwonted) passion for plebiscites. In state after state, right-wing forces used the initiative

The idea prevails that the United States is a plebiscitary democracy, and the most absurd form of one — a government in which questions of truth and justice are decided by instantaneous popular opinion polls.

and referendum to circumvent weak or hostile judges and legislators and write their own will into law. It was one of the few times in modern history in which plebiscites have been used to unsettle established power.

So far, however, affirmative action and other highly unpopular modern-liberal institutions have suffered little practical (as opposed to moral) damage. The plebiscite, as it turns out, works much better to preserve than to destroy.

Thus, according to a John Zogby poll released at the end of January, 62 percent of "likely voters" (who are traditionally more favorable to Republican causes than mere "voters") believe that Clinton lied to the grand jury, and 55 percent regard this as "impeachable." But that's not the end of Slick Willy. It's a different story when it comes to throwing him out. Whatever "likely voters" may think about Willy's character, just 25 percent of them want to hurl him from the Oval Office.

Consider another recent poll. People were asked what women they most admire (most admire, mind you!), and Hillary Clinton and Monica Lewinsky ended up tied for first place. Why? Because people have heard of Hillary Clinton and Monica Lewinsky. They're already on the lot. Should they stay? Sure, why not; what's the problem? It's essentially the same answer that the French gave to Bonaparte.

Clinton started out in the Lewinsky scandal with two enormous advantages:

Advantage 1: The Republicans, despite their traditional distrust of popular and democratic rule, had come to believe in plebiscites. Most of them had participated in Reagan's smashing popular victories and in their party's enormous congressional victory in 1994. They had all witnessed the easy adoption of anti-tax and anti-affirmative-action initiatives in the states. Many of them could not imagine life in a situation in which a politician would need to act against a public opinion poll. When such a situation arose, their gestalt just wasn't up to it, not to mention their zen. Once Clinton

got ahead in the polls, their morale was shot. It may stay shot.

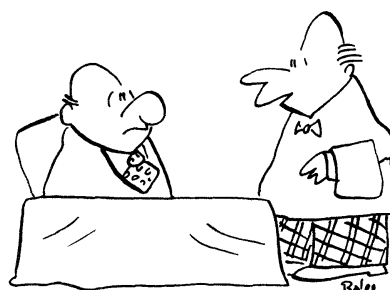
Advantage 2: Clinton's pack of political hacks had had years of practice in the delicate art of massaging the voters and being massaged, in return, by daily and even hourly inputs from focus groups and opinion polls. Clinton and his political prostitutes had learned how to behave as professionally as real prostitutes do. They had learned how to combine the appearance of submission with the reality of domination. They had learned how to lead their customers on, how to manipulate their every wish, how to supply just enough gratification to keep them coming back for more.

Since his Arkansas days, when he lost a gubernatorial race and then "apologized" his way back into the executive mansion, Clinton had understood that a lot of customers don't want sex at all, that what they want is just the laced-up boots and the see-through underwear. He knew that political paramours like to hear feigned confessions whispered with coy little smirks, confessions as void of content as the spanking fetishist's breathy whisper that he's been a bad little boy and deserves to be punished. By punishment he does not mean being fired from his job; he means another episode of "risky" sex. To a good many voters, and certainly to himself, Clinton's ability to get into scrapes merely intensifies his peek-a-boo attractiveness — as revolting as it is to at least 25 percent of the populace.

The results of this PG-rated farce are sad, but they're also funny. If it wasn't so sickeningly stupid, we'd all be laughing our heads off. Here is a president who is completely discredited (except in the public opinion polls), and who seems to be enjoying nearly every minute of his "plight."

And here are his judges — congressmen who spend every waking hour doing things that the Constitution gives them no power whatever to do, responding to questions about the impeachment ceremonies with a timid "I'm not sure this is Constitutional" — followed by pious ejaculations about the importance of getting back to work on the salvation of Social Security, a trillion-dollar toy that they have no Constitutional permission to play with at all. Well, the Constitution looks good in the polls, and so does saving Social Security, so they must have something to do with one another. At least we'll indulge that fantasy.

But the real joke is that these profound scholars and moralists are in fact quite loyal to the Constitution. It may not be the Constitution of 1787, but it's the Constitution of the United States in this the Seventh Year of Clinton; and it's a Constitution that is very easy to understand, because it has only one article: "You can get away with whatever the polls allow." □



"Would you care to change your order to scallops, sir? — Your lobster ran away."

The Rape of Free Speech

by Richard Platte

Free speech isn't secure even in a college town. Fortunately, a brave businessman and a principled lawyer can defeat the forces of censorship.

It was five or six o'clock when Larry Daugert approached me. I was sitting in The Top of The Towers cocktail lounge, in the area reserved for the lawyers who meet there after work to have a drink and look out at downtown Bellingham and the bay from the highest spot in the city. Some of the Towers bar associates follow a "five o'clock rule": no discussion of legal issues and other lawpeak. I'm not one of them. That evening, at least, neither was Daugert: he asked me if I'd consider trying The Newstand Case.

I had read about The Newstand Case in *The Bellingham Herald*, so I knew that some very important somebodies were busting blood vessels over a purportedly pornographic magazine called *Answer Me!*, which was sold at Bellingham's only newsstand. In fact, they raised such a fuss that they had the owner and manager of The Newstand, Ira Stohl and Kristina Hjelsand, arrested and charged with felony offenses. And I knew that most likely there wasn't much else in the *Herald* articles that was accurate.

Brean Beggs, the young attorney who had been representing Stohl and Hjelsand, was working with the American Civil Liberties Union, which had provided legal briefs and other support. Beggs and his clients hoped the charges would be dismissed at the trial court level or in the course of an appeal, thus bypassing a jury trial. But Daugert, a senior partner in Beggs's firm, felt that in the event of a trial, Stohl and Hjelsand should have an experienced trial lawyer (or two) on their team. He knew of someone with trial experience whom he thought would take the case on a pro bono basis. Someone whose libertarian political views he'd heard at The Towers.

Me.

I told him I'd think about it. The next day, Brean Beggs called to invite me to a strategy meeting with Stohl, Hjelsand, Beggs, and three other outside attorneys assisting Beggs.

The Warnings

Gary Rusing, my partner of 23 years, warned me not to take the case. He believed that our practice could suffer from

the sort of negative publicity one is liable to get for defending supposed pornographers. I explained to him that the case presented an obligation to do what my oath of attorney required me to do, and that since I was the only experienced litigator involved, I couldn't justify not helping. He said he understood and would support me.

That same week, I ran into my friend, Randy Watts, chief civil deputy prosecutor for Whatcom County. He warned me that the county prosecutor would never back down, that the magazine was clearly obscene, that it promoted violence against women and children, and that I'd never be paid for my efforts. I told him that although I hadn't yet read the magazine, no one seemed to be suggesting that the contents were defamatory or could lead to panic in the streets.

"Tell your boss I'm taking the case," I said.

"He already knows," Watts replied.

Forming the Dream Team

Although I'd tried many cases before juries since admission to the bar in 1972, I hadn't represented anyone charged with a serious crime in at least 15 years — and I had never represented anyone who had been accused of selling something legally obscene. I figured that the three lawyers assisting Beggs (two of whom would later drop out) knew more about contemporary criminal law and procedure than did I. But they didn't have much experience with juries. I did.

At the time, the only work in progress involved legal briefings (designed to win the case without having to go to trial) and the plea bargain discussions. Although no trial date had been set, I was worried about how much time we had to prepare for trial. We had a lot of ground to cover:

interviews of the state's witnesses, locating our own witnesses (bookstore owners, teachers, librarians, rape victims, and others who could testify to the artistic, educational, and political value of the magazine), and much, much more. If the pre-trial motion to dismiss the charges failed, and if the Washington Court of Appeals and Supreme Court refused to review it, the trial would start within a few months.

If we were going to win at trial, two things had to happen quickly. First, I needed to find another experienced trial lawyer to represent one of the defendants. Someone who would outwork the prosecutor's office whether or not he got paid.

One day in early 1995, a Bellingham Police Department detective showed up at The Newstand in response to a complaint from a customer about an issue of a zine that dealt with rape.

Someone like Doug Shepherd, an Everson lawyer with a strong sense of justice and an admirable work ethic. After talking to the members and staff of his firm, Shepherd agreed to represent Kristina Hjelmsand. We agreed that he would be lead trial counsel for her, I would be lead trial counsel for Ira Stohl. Each of us would be responsible for the makeup of our respective teams.

For my team, I selected two attorneys I'd worked with in other cases, Steve Hager and John Anderson. Steve and John were a couple of closet libertarians who relished any opportunity to expose the emperor's new clothes. John once sat quietly through a court hearing while a probation officer of the Whatcom County District Court testified that John's client had refused to comply with the terms of probation imposed upon conviction of an alcohol-related offense. John's client, he testified, refused to meet with the probation officer, failed to provide urine for analysis, and generally acted in a contemptuous manner. He ought to be put in jail, the probation officer concluded. John's client hadn't even bothered to show up for the hearing, the judge observed — a fact that would result in imposition of additional sanctions for contempt of court, on top of his problems with his probation officer. At last it was John's time to speak. He stood up, and in a deep bass voice slowly and distinctly told the court that his client had no interest in the outcome of the hearing, as he had died — perhaps from the effects of abstinence.

Steve Hager was John Anderson's partner and a long-time friend of mine. He'd been a bright light in the philosophy department at Western Washington University, until the Vietnam War and the draft led to his joining the Merchant Marine. Steve had also worked as a bartender, a chef, a realtor, and an artist. He had become a lawyer the same way Abraham Lincoln did — by "clerking" under a lawyer (his other partner, Frank Atwood). Steve was my "detail man": with him on board, we would make no procedural mistakes.

Pat Lakey, who had been involved in the case from the beginning and who had criminal defense experience, was on Doug's team. Pat assisted with legal briefing and procedural matters. Just before trial, Jill Bernstein, who had considerable

criminal defense experience, also joined Doug's team.

Brean Beggs would not participate in the trial except for the defendants' motion for dismissal and preparation of jury instructions and related briefings.

None of us would ever bill our clients for our services. But all of us would keep time records so that we might recover attorneys' fees from the county or state. If our clients were acquitted and the jury awarded damages in the civil suit Beggs had filed in federal court against the prosecutor and the county for violating our clients' civil rights, we might collect.

Before long, local lawyers dubbed us the "Dream Team."

The second thing we had to do quickly was submit a final plea bargain offer to the county prosecutor, with a deadline. In my mind, we had already spent too much time talking about plea bargains. The prosecutor had repeatedly said that he would not dismiss the charges unless Ira and Kristina promised to not sell that magazine — "or anything like it." The defendants steadfastly refused to let the prosecutor dictate what publications they could sell. The only "plea bargain" Ira and Kristina would accept was dismissal of the criminal charges in exchange for their dismissal of the civil claim. So that became the final plea bargain offer. The deadline for acceptance passed; the prosecutor's only response was a resounding silence.

The Ira Stohl Story

Ira Stohl had been in trouble with the law before. He was arrested in Buffalo in 1969 on a charge of "obstructing governmental administration." His offense? He had been in a house

A few days later, the county prosecutor called Ira and Kristina into his office, where he warned them that if they ever sold another issue of "Answer Me!," "or anything like it," the prosecutor would hit them with felony charges.

where two police detectives busted in, yelling that they wanted someone who didn't live there. The people in the house, including Ira, asked the officers what they were doing and whether they had a warrant. They were all arrested. None of them was subsequently convicted of anything.

Ira was in his mid-40s. He was born in Brooklyn, where his father owned a small printing shop. Ira grew up loving the smell of ink. He had a lifelong love of reading, and when he later moved to California, he became a regular customer of a newsstand in Santa Rosa called Sawyer's News, a community fixture since the 1930s. Ira had become acquainted with the owner, whose grandfather had started the business. It struck Ira that there weren't many newsstands left in the areas where he traveled. So he started talking to owners of newsstands about the business wherever he came across one, learning everything he could about how they were operated, the kinds of things that distinguished a real newsstand from just a place that had a few magazines and newspapers for sale. He educated himself about what he'd have to do to establish the best

newsstand anywhere on the West Coast.

By 1989, Ira was ready. He invested his life savings in a newsstand in Bellingham. It seemed like the sort of community where he'd like to live, and a place that seemed to have the kinds of people who enjoyed reading enough to make his little business prosper. In March of 1990, Ira opened The Newstand, a place where a customer could purchase a magazine or newspaper from thousands of titles.

Ira worked day and night, often seven days a week. Ira's friend Phil had originally been Ira's partner, but Phil was about 15 years older than Ira and Phil had poor health because of a heart condition. He had to have a heart transplant in 1990. Ira told me that Phil actually wrote the computer program for the store while he was in intensive care at the University of Washington Hospital. Phil died in July 1991. Ira, working alone for many months, all day every day, managed to keep the little newsstand's doors open.

The Newstand Inventory

By 1996, The Newstand stocked about 4,000 periodicals, ordered through ten or so major distributors (with some magazines obtained directly from the publishers). Ira explained to me that half of the periodicals (the best-known ones, like *Vogue*) were sold to the store by local or regional distributors.

The Newstand carried a few "adult" titles. Ira explained to me that in the magazine industry, periodicals like *Playboy* are categorized as "sophisticates." "X-rated" magazines (like those sold at adult bookstores) constitute a separate category. The Newstand never sold such publications.

The magazine that got The Newstand in trouble fit into a different category: it was a "zine." Basically, a zine is a home-made, cheaply produced publication that features alternative, offbeat, or radical material. Often, a zine consists of one person's thoughts, diatribes, or rants. Nowadays, anyone with a computer and the right software can publish a zine. I don't remember where I read it, but the notes for my opening statement at the beginning of the trial contain the following quotation:

Fortunately, the citizens of this country do not get news and opinion from the orthodox media alone. Thanks to free enterprise, the nation actually enjoys such fear-inspiring things as desktop publishing, the Internet, videocassettes, shortwave radio . . . and zines.

Ira said there was even a zine on zines called *Fact Sheet 5*, a well-known and nationally distributed zine that contained

capsule summaries of perhaps as many as 2,000 zines. The Newstand had a section for zines, which is where *Answer Me!* was located.

The decision as to which zines to order was made based on customer requests. But Ira and Kristina could not always predict what new titles customers would want. So they would decide which titles they thought

their customers would want to read and stock the shelves accordingly.

There was a wrinkle, though: The distributors often delivered titles that Ira hadn't ordered. That meant more work for Ira and his employees. Dealing with and returning magazines he didn't order involved a lot of work: a store employee had to open the box, check the invoice, scan the magazines into the computer, shelve the magazine and remove any unsold copies of

previous issues for return to the distributor. The procedure varied from one distributor to another, further complicating the process.

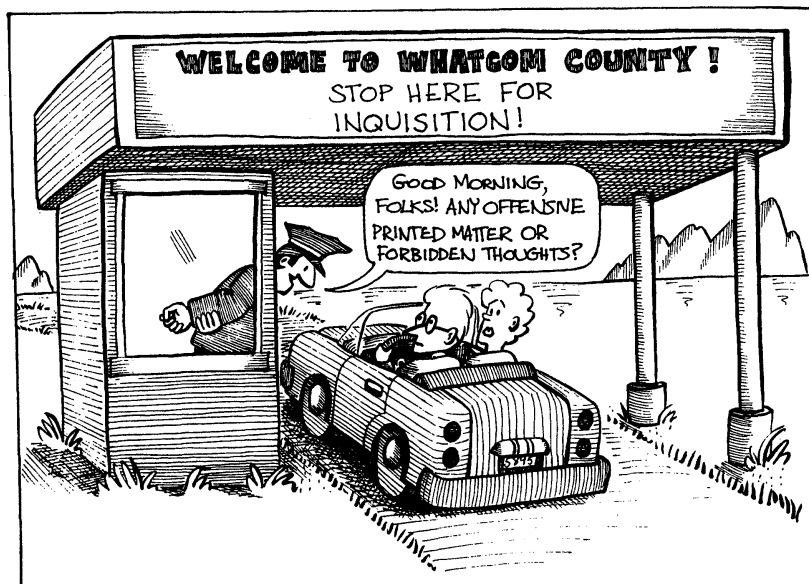
Usually, Ira put the unordered publications on the shelf to see if anyone would buy them. As some zines have very small circulations, the store relied heavily on the distributor to decide which issues to sell.

A Visit With the Prosecutor

One day in early 1995, a Bellingham Police Department detective showed up at Ira's store in response to a complaint from a customer about a publication, *Answer Me! The Rape Issue*, which dealt with rape — date rape, prison rape, the consequences of rape upon its victims, and the thought processes of rapists and child molesters. The detective asked Ira if he was familiar with it. Ira said that he was merely aware of its subject. Ira asked the detective if the magazine was legally "obscene." The detective said that he didn't know.

A few days later, the county prosecutor called Ira and Kristina into his office, where he warned them that if they ever sold another issue of that magazine, "or anything like it," the prosecutor would hit them with felony charges.

But Ira was not about to be cowed by the prosecutor's threats. When he returned to his store, he took all the remaining copies of *Answer Me!*, stacked them on a table, and wrapped a chain and padlock around them. He topped it off with a sign suggesting that the local prosecutor had decided to suspend his customers' First Amendment rights, and consequently the magazines were not for sale. Within a few days, several uniformed police officers arrived and confiscated the store's books, records, and computer disks, as



well as the offending zine. Ira and Kristina were charged with "promoting pornography." And so began this tale of two trials.

Answer Me!, The Rape Issue

Ira explained to me that this zine was sold to the store by a distributor based in New Mexico, which distributed zines, as well as musical magazines, "eco" magazines, and other titles that had smaller markets or involving publishers that worked through numerous distributors. *Answer Me!* was not

When Ira returned to his store, he took all the remaining copies of "Answer Me!," stacked them on a table, and wrapped a chain and padlock around them. He topped it off with a sign suggesting that the local prosecutor had decided to suspend his customers' First Amendment rights.

published on a regular basis, and each issue explored a different topic. Other issues addressed topics like serial murder, suicide, and racism.

Answer Me! The Rape Issue had sold out nationwide. Sales zoomed from 2,000 to 15,000, which was astounding for a zine.

The prose style of the magazine was raw — sometimes referred to as "trauma journalism." I doubt that anyone in the prosecutor's office or, for that matter, anyone on the jury, had or would ever have the time to read carefully the magazine that had created so much officious meddling. I couldn't blame them: it featured 42 articles covering 131 pages of small print, laced with gutter language, a few cartoon-like illustrations, and police investigation photographs of the sort one might find in *True Detective*. Much of the text was so rank as to be unreadable, and I never did understand why anyone would buy the thing, much less read it.

What was interesting was its theme: that the war cry of radical feminists like Andrea Dworkin — all sex is rape and all men rapists — was not just wrong-headed, but evil; that their attempts to deny First Amendment rights to those who disagreed with them were dangerous; that real rapists and child molesters were not "normal" or sympathetic types, but monsters who lived to prey on those who were vulnerable; and that the best defense against rape and child molestation was tactical knowledge and a willingness to exercise one's right to self-defense. "This issue's disclaimer" appeared on the inside cover:

To honestly deal with the topic of rape — particularly when it comes to the rapist's psychic landscape — we felt it necessary to use graphic language and imagery. Performing some of the acts described herein can land your tushie behind bars, so we don't advocate trying any of them. (is that OK, Your Honor?) Dedicated to your mother. Your wife. Your sister. Your daughter . . .

There were articles written from the point of view of rapists and molesters — articles that the state's experts felt were "unfair." There were articles written from the point of view of actual rape victims, one male and one female — both of whom testified at trial for the defense.

The prosecutor pounced on one in particular called "Prey." The article begins with the following statement attributed to "Pedro 'Monster of the Andes' Lopez, who raped and slaughtered at least fifty young females":

"I lost my innocence at age eight, so I decided to do the same to as many young girls as I could. . . I like the girls in Ecuador. They are more gentle and trusting, more innocent. They are not as suspicious of strangers as Colombian girls."

The first two and last paragraphs of the article pretty well say it all (or maybe it's just all I can stand to recount):

To put it kindly, you aren't a ladies' man.

Women have laughed at you since junior high. You're a twenty-six-year-old security guard. You smell like tomato paste. You live with your grandmother and think that wrestling is real. You hang out in pawnshops, comic-book stores, and public parks. You drink beer, watch game shows, and fuck little girls. You collect knives, razors, guns, and cherry bombs, but you've never slept with an adult woman. You're immobilized by shyness. And even if you weren't shy, you're still homely.

Now be quiet and die like a good little woman. Nobody can take you away from me now. That's because there's no longer any "you" left. I've taken it all. First your virginity, then your life. That pussy will get you into trouble every time.

One of our witnesses, Janice Garfield, a public library aide in Beaverton, Oregon, carefully prepared a helpful and accurate synopsis of the zine's contents. Another article that especially offended the prosecutor and his complainants was described by Ms. Garfield as follows:

ARTICLE, PAGE 63: "The RAPE Game!"

Illustrations: Numerous small cut-outs from photos (switchblade, scissors, bullets, photos marked "predator" and "prey"), numerous small sketches which constitute game board markings, four-sheet fold-out of game board marked with numerous small sketches of "bad guy" rapists and "good guy" rescuers and rape victims.

Summary of Text: Instructions on how to play board game, directional cards for playing game.

Analysis: Text of directional cards is very ironic/sarcastic.

Elements classifiable as "prurient": None.

The Whatcom County prosecutor also attacked an article called "Quality Time." In Ms. Garfield's words, the "author dramatizes the interior monologue of a child abuser who assaults and kills a female child" and "utilizes the technique of first person narration to prevent the reader's psychological distancing from this criminal and his crime." For example:

I'm really gonna make you cry. You're going to cry so much more, you'll think your eyes are going to melt. Those cry-baby tears are going to burst open your eyes and rip deep red streaks straight through your face. You are absolutely doomed, my sweet thing. I'm gonna hurt you so much.

The cover of the magazine had particularly infuriated our opponents: it was a cartoon depiction of a cocktail waitress with a black eye, with wolves lurking in the background, and a caption that read "I deserved it." This was, of course, intended as *satire*.

The Criminal Trial

The prosecutor. Whatcom County Prosecutor David S. McEachran would try the case himself. McEachran was

much more than an administrator. He liked to try cases. He knew how to present a case in a way that was credible and understandable to juries. And he seldom lost. I'd known Dave for many years and I liked him. There had been times when I'd questioned his judgment, though, and this was surely one of them.

The judge. There are three superior court judges in Whatcom County. Before I'd signed up as trial counsel, the wife of one of them wrote a letter, published in the local newspaper, condemning Goad's magazine and the folks who sold it. That judge recused himself. The other two judges were eliminated by reason of "affidavits of prejudice" filed by the prosecutor against one of them and by the defendants (via Beggs) against the other. So it was that Skagit County Superior Court Judge Michael Rickert came to serve as our trial judge.

All I knew about Judge Rickert was that he had been a prosecutor, but was considered to be above the puritanical prejudices common to prosecutors. He was "a regular guy" — he drank alcohol, he had a sense of humor, he followed college football, he played golf, and he wasn't prudish. I immediately liked him, and still do.

Early on, it became clear that Judge Rickert would not dismiss the charges against our clients. He felt it was important that our local community apply its standards to decide whether the magazine was obscene, and that a jury trial was the only way to accomplish that.

The setting. At various times during the course of the trial, two or three television news cameras appeared in the courtroom. There were no empty seats. Toward the end of the trial, plainclothes detectives stood shoulder-to-shoulder along the walls, occasionally showing their holstered handguns and badges (a message to the jury?).

The Strategies. There were two ways to win the case: (1) establish that Ira and Kristina had not had the requisite "knowledge" of the contents of the magazine before any issues were sold; and (2) establish that the magazine was not legally obscene.

The "knowledge" strategy was clearly the easiest and the prosecutor knew it: just before charges were filed, he sent an undercover sheriff's deputy (a member of the Northwest Drug Task Force) to The Newstand to attempt to buy the magazine. He failed, although his admission at trial that he told the clerk that it was unfair that people weren't allowed to buy the magazine made for an interesting cross-examination.

Jury Selection. The purpose of the jury selection process, called voir dire, is to reject potential jurors whose attitudes seem at odds with some important aspect of your case. The best approach involves asking open-ended questions that lead to (preferably) honest discussions about perceptions, values, and experiences that disclose a juror's ability to fairly weigh facts (evidence) and apply the law (received from the judge in the form of "instructions"). One seeks to empanel as many "open-minded" people as possible. Attorneys may mount only a limited number of peremptory challenges (six in a criminal case, three in a civil case) which they need not justify to the court. In the end, no attorney ever really selects a jury.

Four of us, and McEachran, participated in voir dire. It seemed to me that the other attorneys, including McEachran, had been thorough and that it was pretty clear which jury

members might pose a problem for us. So I asked rhetorical questions intended to educate and persuade. Questions a libertarian constantly asks. I also had an enjoyable conversation with the only three members of the panel (out of about a hundred) who had read the works of Jonathan Swift — in particular, his essay "A Modest Proposal." None of the three made it onto the jury. So much for satire.

Opening Statements. The purpose of an opening statement is to tell a story — the story of the case and your client. The story must arouse the jurors' interest and sympathy, but it must also tell the truth, as credibility usually determines the outcome. My opening statement covered Ira's background, the operation of the store, and the theme of Jim Goad's zine. I wove into the narrative some ideas from an article by Wendy McElroy from the pages of *Liberty* that echoed Goad's thesis. When I told the jury Ira Stohl's story, and then about the political nature of the magazine and the case, one

Although I'd tried many cases before juries since admission to the bar in 1972, I hadn't represented anyone charged with a serious crime for at least 15 years — and I had never represented anyone who had been accused of selling something legally obscene.

of the Crisis Center supporters exclaimed: "He's trying to turn this into a political debate!"

The Wood Shed. Trials begin with the judge ruling on attorneys' motions that set forth matters the proponent does not want mentioned before a jury, as well as citations to legal authority to support them. The motions seek to prevent any mention before the jury of something considered harmful to a party's position, and thereby avoid objecting to it in court — which frequently takes place after the jury's already heard most or all of it. One of the state's motions called for the jury to remain unaware that Ira and Kristina were accused of felony offenses. The state didn't want the jury to know that such offenses carry a penalty of five years in prison and a \$5,000 fine. We knew that if our clients were found guilty, the prosecutor would ask for prison time and a large fine. Incredibly, the judge granted the motion.

Nonetheless, I managed to refer to "felony" charges twice during my opening statement (unintentionally: the ruling had just been made, the references were in my notes, and as is often the case during a trial, I was in a "zone" — and those tv cameras could've been a nice distraction, too). The judge admonished me, but conceded that my violation of his ruling had no doubt been inadvertent. I assured him that was the case, and that it was the first time I'd ever been in a courtroom when I could say "fuck" but I couldn't say "felony."

The State's First Witness. Marcus Malloy, a young man from California, had come to Bellingham to visit his girlfriend. The girlfriend's roommate was upset by a magazine she saw on a rack at The Newstand. A quick skim of the contents suggested to her that the magazine promoted violence toward women and children (the prosecution's theme of the

case). Malloy went to The Newstand with his girlfriend to look at the magazine himself. He flipped through *Answer Me!*, and was offended by what he saw. Malloy complained to a clerk, then purchased a copy, delivered it to the Whatcom County Crisis Center, and then left town. Just before trial we learned that he'd been convicted of theft in California in the year since he'd been in Bellingham. So I asked him if, during the past year, a year in which he found the time to commit a crime, he ever found the time to read the magazine. He said he hadn't.

The Detective. Following a complaint from the Whatcom County Crisis Center, Detective Mark Green of the Bellingham Police Department interviewed Ira and Kristina. Detective Green previously served on the Crisis Center's board of directors. He testified that Ira and Kristina told him

The purpose of an opening statement is to tell a story — the story of the case and your client.

that they were "generally aware of the contents of the magazine" (a characterization of their statements that sounded uncannily similar to the language of the law).

John Anderson cross-examined the detective on behalf of Ira Stohl. John repeatedly asked him if it was true that Ira and Kristina had specifically told him that neither of them had read the magazine, but were merely aware that the magazine dealt with the subject of rape because that's what they saw on the cover. Green repeatedly answered yes. Then, in response to the prosecutor's questioning, the detective repeated his earlier testimony that the defendants had stated that they were generally aware of the contents of the magazine. Detective Green did not appear to appreciate that there was any difference between what the defendants had actually said and his characterization of what they said (which we assumed had come from his discussions with the prosecutor).

At one point, Green mentioned that he provided a photocopy of the magazine to another state's witness. Anderson asked him if he was aware that it is a federal crime to photocopy magazines. The detective seemed shocked to learn that he might have committed a crime. The courtroom erupted with laughter, and the defense team took pride in exposing the only crime committed in the case.

The State's Expert Witness. Mr. Michael Comte, a counselor for sexual deviants, provided expert testimony on behalf of the state. The state undoubtedly chose him because he had testified before, in the Seattle-Tacoma area, in an obscenity trial. He expressed his opinion that the magazine appealed to the prurient interest of sexual deviants. I asked him if a Sears catalogue would also appeal to the prurient interest of sexual deviants, and he assured me that it would. Curiously, he also agreed with me that the magazine had both artistic and political value.

He was the only witness who was paid to testify.

The Defense Witnesses. All were volunteers, reimbursed only for their transportation and lodging expenses. All had carefully read the entire magazine. None had testified in a trial before. John Halliday was the county's head librarian;

three were rape victims; Annalee Newitz taught English at the University of California at Berkeley; Steven Work was a local computer programmer; Chuck Robinson owned a local bookstore, Village Books; Shirley Feldman-Summers was a clinical psychologist; and Professor Lyle Harris taught journalism at Western Washington University.

One of the articles in the magazine described the prison experiences of one of our witnesses. Following a war protest, "Donny the Punk" had been jailed in the District of Columbia where he was repeatedly raped with the knowledge of the jail personnel. He serves as president of an association he founded called Stop Prison Rape. On the witness stand he affirmed the accuracy of the article about his experiences and said he was pleased that Jim Goad's zine published those experiences. The prosecutor asked him if his position at Stop Prison Rape was salaried. He replied that it was not, that he volunteered his time, "just like all of those defense attorneys."

Molly Kiely, a rape victim, wrote and illustrated her story of rape and its consequences for the zine. Our opponents claimed her story was a fraud and trivialized rape as well. She countered that she'd told her story to Jim Goad and that his article accurately set forth what had happened to her, except for occasional satirical references and an illustration that, like the cover, was satirical in nature.

Janice Garfield testified that the magazine, to her, had "literary value" and that reading it had helped her deal with the effects of her own rape trauma.

Annalee Newitz testified that the magazine had educational value, as she had used it in teaching one of her classes.

Psychologist Shirley Feldman-Summers endorsed the magazine's scientific value, in that it expressed a valid point of view about the nature of rape, the motivations of rapists, and the effects of rape on victims.

Bookstore owner Chuck Robinson knew of the political debate referred to during opening statements. He recalled Andrea Dworkin's visit to Bellingham to lobby for enactment of a local ordinance on "pornography" (which was, indeed, enacted — in violation of our Constitution, saith the state Supreme Court a couple of years later). Anyway, he knew all about Andrea Dworkin and her views that all men are rapists and all sex is rape. He had also carefully read Jim Goad's entire magazine, and had noted a prevailing theme: that Andrea Dworkin and her views were wrong in the extreme.

The Closing Arguments. Most trial lawyers will tell you that cases are won or lost before the closing arguments. I would add that a closing argument provides an opportunity to lose a case you otherwise would have won, by saying something that offends the jurors. We learned later that only one juror was reluctant immediately to acquit Ira and Kristina. That juror's affection for the prosecutor was not diminished by my statement that "it is the prosecution itself that has been shown to be obscene." The statement came from the heart, of course; and, of course, the heart has a single-digit IQ.

Doug Shepherd, on the other hand, provided what the eleven other jurors needed to persuade the hold-out to acquit our clients: a copy of *Hustler*.

The Verdict. On February 1, 1996, following a trial of nearly two weeks and six hours of deliberations, the jury found Ira Stohl and Kristina Hjelmsand not guilty.

When I checked my time records, I saw that I'd spent more than 350 hours on the case, which was less than Doug Shepherd. The grand total of the defense team's efforts was nearly 2,000 hours. We were pleased to receive from Ira Stohl cards that grant the bearer free espresso drinks, for life, from The Newstand's espresso stand.

The Civil Trial

The second trial was the civil suit in federal court brought by Ira and Kristina against Whatcom County and its prosecutor (who was dismissed from the lawsuit by the trial judge before trial). *The Bellingham Herald* had published daily reports on the case, including a photograph of police officers serving a warrant at The Newstand, and letters from very sincere-sounding souls who damned Ira Stohl, his manager, and his store. Ira's business and reputation had suffered as a result of his arrest and trial, and he felt that the state should compensate him for these damages. Beggs's firm recruited a Seattle civil rights attorney, Tim Ford, to try the case.

The judge put narrow boundaries on the case. If the jury decided that the prosecutor had threatened to prosecute Ira and Kristina if they ever again sold "anything like" the *Answer Me!* rape issue, Ira and Kristina would win, and the jury would then decide how much compensation for damages they should receive. On the other hand, if the jury decided that the prosecutor had restricted his threat to "anything exactly like" the *Answer Me!* rape issue, then Ira and Kristina would receive no damages.

Steve Hager, John Anderson, Doug Shepherd and I appeared at the trial as witnesses. Our attorneys' fees had become a critically important part of the damages sought by Ira and Kristina, as it had been hard for them to calculate business losses solely attributable to being accused of a crime. And they had only a few close friends to corroborate their testimony concerning the anguish they experienced. The county's attorney, Randy Watts, asked me if it was true that I had once commented that it did not matter whether I was ever paid for my services, because I would take the case for principle alone. I wondered if I had made that statement when I'd talked to him at the Lakeway Inn lounge, but I couldn't remember. I answered that I didn't specifically recall having made the statement, but that I certainly could have made it, as it accurately represented my attitude about the case. Watts asked me if I ever intended to collect a fee from Ira Stohl, to which I replied that I did not — except insofar as he was able to collect a judgment against those responsible for damages suffered because of the trial.

The jury found in favor of Ira and Kristina, in the approximate amount of \$1,200,000. Then the judge did what judges often do: he gave Ira and Kristina a choice — either accept about \$400,000 (the judge's view of the maximum value of their claim), or try the case again (no appeal of this ruling to the Ninth Circuit Court of Appeals would be possible until after the second trial). Both the verdict and the judge's reduced award included 100 percent of the attorneys' fees submitted by John, Steve, Doug, and me through our testimony. Ira and Kristina rejected the \$400,000. Before the second civil trial was to start, the case was settled for \$720,000.

We who had defended Ira and Kristina (other than Beggs and his firm) did not participate in the civil suit, except as witnesses, nor did we receive any of the attorneys' fees billed in the civil claim on a contingency fee basis. Our time had been "billed" at \$150 per hour, and we accepted \$75 per hour from the settlement funds (which, in my case at least, was less than my overhead).

The trials of Ira and Kristina — both in the courts and in their personal lives — were finally over. The battles they won struck a blow against censorship and governmental intimidation. In Whatcom County, this time at least, freedom prevailed.

Epilogue

The Whatcom County prosecutor, David S. McEachran, was re-elected in the fall of 1998. He ran unopposed.

Judge Rickert is still a judge, and enjoys playing blues guitar. A few months after the trial, he presented an award to me, following a bar-sponsored golf tournament, for having twice hit balls that struck his father's house. Good thing I was out of Mulligans.

Ira Stohl and Kristina Hjelsand still operate The Newstand, although the espresso stand has been removed. No more issues of *Answer Me! (The Rape Issue)* were ever sold in Whatcom County.

Jim Goad, the publisher of *Answer Me!*, is currently residing in the Multnomah County (Oregon) jail, where he awaits trial for kidnaping and assault charges involving an incident

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with a girlfriend. The prosecutors plan to use Goad's writing against him at trial.

Brean Beggs was honored as "young lawyer of the year" by two of our state lawyer associations for his participation in The Newstand case. He was similarly honored by the American Civil Liberties Union. Because of the way the local newspapers reported the case (Beggs was the only defense attorney ever mentioned), most people believe Beggs is the lawyer who "successfully defended Ira Stohl and Kristina Hjelsand" in the criminal trial.

Not long after the criminal trial, John Anderson announced his retirement from the practice of law. He says The Newstand trial was the case of a lifetime, and that for him, at least, there will never be another.

Since John's retirement, Steve Hager is currently deciding how to proceed with another unusual case. Steve and John discovered that the northern border of the state of Washington is, in places, several hundred feet south of the U.S.-Canada border. The implications of this fact to the residents of the area between the two borders cannot be determined without litigation.

Doug Shepherd and I are still trial lawyers. □

Blows Against the Empire

FDA TKO

by Durk Pearson and Sandy Shaw

When two feisty entrepreneurs took on the bureaucracy, the
bureaucracy took it on the nose.

What's better than claiming victory in a lawsuit?

How about winning a lawsuit in which your opponents are none other than Ms. Donna E. Shalala, Secretary of the U.S. Department of Health and Human Services, the Food and Drug Administration (FDA), the United States, and Shalala's interventionist supporters at the American Cancer Society, the American Heart Association, the Center for Science in the Public Interest, Public Citizen, and the Consumer Federation of America?

Better still, how about winning a lawsuit that, among other things, forces the FDA to redesign its unconstitutional restrictions on product labeling? That's what happened to us on January 15 when the U.S. Court of Appeals for the District of Columbia ruled 3-0 in our favor over the FDA. The winner's circle includes the American Preventative Medical Association, Citizens for Health (joined with us by the Court from a separate suit) and Direct AIDS Alternative Information Resources, People Against Cancer, and the Foundation for Advancement of Innovative Medicine (all of whom filed friend of the court briefs on our behalf).

The court's January 15 ruling reversed an earlier one that favored the FDA. The court held that the FDA's requirements for health-claim approval process were unconstitutional under the First Amendment. It also ruled that the FDA's "significant scientific agreement" standard for health claims was "arbitrary and capricious" under the Administrative Procedures Act.

It all started for us in 1992, when we began filing public comments in response to the FDA's proposed rules regulating what health claims they will permit for dietary supplements. As far as we were (and are) concerned, the Constitution's First Amendment makes it clear that the federal government has no authority to regulate truthful speech at all. It seemed to us that the idea that "commercial speech" (what you say when it accompanies a commercial transaction) is somehow less deserving of constitutional protection

than other kinds of speech (though the First Amendment says nothing of the kind) makes those of us involved in commercial transactions — either as buyers or sellers — into second-class citizens. By 1986, we had become aware of this "commercial speech" doctrine and we realized it was allowing government agencies, such as the FDA, unprecedented control over the communication of truthful scientific information accompanying a product.

In 1993, we published a book on this subject, *Freedom of Informed Choice: FDA vs. Nutrient Supplements*, in which we discussed the constitutional and scientific issues of FDA's regulation of the dissemination of scientific information. We explained what a disastrous effect on the public health the FDA was having in drastically slowing the flow of truthful health information concerning dietary supplements, such as antioxidant vitamins. One of our examples was low-dose aspirin; in the "Physician's Health Study" published in 1989¹, it was reported that in previously healthy men over 50, an aspirin every other day reduces the risk of a first heart attack by about 44 percent. Ten years later, the FDA still unconstitutionally prohibits aspirin companies from communicating this information to the general public. During the past decade, hundreds of thousands of people have died from heart attacks unnecessarily because they did not know about and were not taking low-dose aspirin. (The latest evidence places the most protective dose for most people over 50 in the range of 1/4 to 1/2 aspirin a day.)

As a result of publishing our 1993 FDA book, we met

Jonathan Emord, the constitutional attorney who skillfully guided our case from its initial filing in 1994 through the legal mazes to this long-awaited victory. (The FDA may appeal, but we do not expect they will be able to reverse the decision.) We spent a lot of our own money on this case, and also got major help along the way in paying the legal bills from Julian Whitaker, M.D., and the American Preventative Medical Association. Some additional financial help came from the National Health Federation, Life Enhancement Products, Life Extension Foundation, Greg and Michelle

The court held that the FDA's requirements for the health-claim approval process were unconstitutional.

Pryor of Life Priority, Inc., and a few others who wish to remain anonymous.

We began reading U.S. Supreme Court decisions in "commercial speech" cases in 1993 to learn how the Court and how individual justices view the constitutional limits on government regulation of advertisements and product labels. We found a well-developed jurisprudence that provided for an awkward "balancing test" (of free speech *vs.* government interests in regulating speech) that attempted to allow, yet set limits to, government regulations of truthful speech accompanying the sale of a product. We considered the FDA's regulations on truthful health claims to have gone beyond the bounds set by the Court and by statutes and far beyond the bounds set by the First Amendment ("Congress shall make no law . . . abridging the freedom of speech or of the press"). So we filed suit against the FDA in 1994. We thought, in doing so, we might push the envelope on freedom of speech to help restore constitutional restraints in the area of commercial speech.

The D.C. Appeals Court in our case logically developed the policies of prior U.S. Supreme Court decisions concerning First Amendment limitations on governmental censorship, with particular focus on the communication of scientific information as part of commercial speech. In so doing, this decision has enlarged the boundaries of freedom of speech recognized by the courts as being clearly beyond constitutional federal government regulatory power.

In fact, the court did something very unusual. Courts generally examine constitutional challenges to laws after considering nonconstitutional challenges. If a court can throw out a law on another basis, it will almost always do that in preference to taking on a constitutional challenge. Rarely do constitutional questions get a review. In our case, however, the court stated:

Normally we would discuss the nonconstitutional argument first, particularly because we believe it [that an undefined standard is no standard] has merit. We invert the normal order here to discuss first appellants' most powerful constitutional claim, that the government has violated the First Amendment by declining to employ a less draconian method — the use of disclaimers — to serve the government's interests [of protecting the public from misleading information].

Thus, the court said, "even if 'significant scientific agreement' were given a more concrete meaning, appellants might be entitled to make health claims that do not meet that standard — with proper disclaimers." (The court decided this, though it was not one of the issues we raised in this case because we didn't think the courts were ready for it! It looks to us as if they are instructing the FDA — how, if they take the decision seriously, they can thereby avoid both violating the First Amendment's constitutional prohibitions and the otherwise inevitable next FDA First Amendment suit!)

The court discussed the First Amendment implications of the FDA's not permitting disclaimers in response to our complaint that the FDA refused to permit four claims that we wished to make. The agency prohibited all four proposed claims (such as "antioxidant vitamins may reduce the risk of certain cancers") by claiming that there was not "significant scientific agreement" (which they would not define). The FDA would not permit us to qualify the claim by including, for example, information about the limits of the current evidence of cancer risk reduction by antioxidant vitamins and what types of evidence exist (cell cultures, animal, clinical studies, epidemiological studies, etc.). The court established that there is a clear First Amendment preference for more information rather than less, and that the FDA must consider the use of disclaimers to correct potentially (but not inherently) misleading information.

One specific rule the new decision discards is the FDA's purported "significant scientific agreement" standard for health claims. The Court agreed with our argument that the FDA has established no standard because the FDA has refused to define what "significant scientific agreement" means. This is a statutory violation because the Dietary Supplement Health and Education Act requires that the FDA establish a procedure and standard for accepting health claims.²

The FDA will now have to proceed with rulemakings to decide what "significant scientific agreement" means, and they cannot define it simply as whatever the FDA says it is on a case-by-case basis. We think it likely that the FDA will first attempt to propose the same old unconstitutional rules dressed up in new verbiage. You can be sure we would file public comments!

The court considered some of the government's arguments ridiculous. "As best we understand the government," noted the court, "its first argument runs along the following lines: that health claims lacking 'significant scientific agreement,' are inherently misleading because they have such an awesome impact on consumers as to make it virtually impossible for them to exercise any judgment *at the point of sale*. [Emphasis in original.] It would be as if the consumers were asked to buy something while hypnotized, and therefore they are bound to be misled. We think this contention is almost frivolous." Both of us got a good laugh out of that.

The court also said, "The government's general concern that, given the extensiveness of government regulation of the sale of drugs, consumers might assume that a claim or a supplement's label is approved by the government, suggests an obvious answer. The agency could require the label to state that 'The FDA does not approve this claim.'" We had suggested such an approach, which we called a "split

label," in our early public comments to the FDA, but the FDA rejected it. Perhaps they were concerned that people might see "The FDA does not approve this claim" everywhere and wonder why they needed the FDA in the first place. In fact, the FDA has approved only two health claims for dietary supplements during the entire eight year period since the Nutrition Labeling and Education Act required the FDA to review and approve health claims for dietary supplements and foods.

We feel elated about the court's decision. It shows that it is possible, with enough conviction, careful choices of case, court and attorney, plus time and money, to bind the federal government with the chains of the Constitution.

We also have a suit filed with the U.S. District Court for the District of Columbia challenging the federal government's authority under the Constitution to take action against the intrastate prescription and use of medical marijuana in states where that is legal, on the basis of the First, Ninth, and Tenth Amendments, and the limits of the Commerce Clause. This case is not about whether medical marijuana is a good medication or not; it is about whether the federal government has constitutional authority to regulate the intrastate practice of medicine and whether Congress and the "drug czar" can constitutionally grant

themselves general police power over medicine by the simple expedient of decreeing all commerce to be interstate. It is, of course, impossible to predict how this will come out. It will demand considerably more courage on the part of the judge to decide in our favor than the FDA First Amendment suit did. □

Notes

1. "Final Report on the Aspirin Component of the Ongoing Physicians' Health Study," *New England Journal of Medicine* 321 (3):131-135 (July 20, 1989)
2. It is also unconstitutional because the Constitution authorizes only one federal institution to make laws, the Congress. See U.S. Constitution, Article I, Section 1. The federal agencies can carry out the will of Congress pursuant to Congressionally created law, but cannot make rules in the absence of statutory authorization. This constitutional principle is widely flouted by federal agencies. (For one thing, why limit your rulemaking to that authorized by Congressional statute when nobody in a regulatory agency has ever been thrown in jail or lost their job or even been disciplined by the Congress for making a law that went beyond or even defied the explicit will of Congress as expressed in statute?) The time is rapidly approaching when a properly chosen regulatory agency rule or rules should be challenged on the basis of Article I, Section 1 of the Constitution; however, we didn't judge that this case was the right one for such a challenge or that the courts were ready for it.

"Well, That's Not a Scientific Judgment"

You can learn a lot about a court and its judges by studying oral arguments. They usually involve a lively interaction between each side's attorney and the judges, who interrupt frequently to ask questions and make comments, sometimes pointed and humorous. Unfortunately, we couldn't travel to Washington, D.C., to hear oral arguments. So we did the next best thing: we read the transcript. The following short excerpt shows how dubious the judges were of the FDA's position that unapproved health claims are inherently misleading.

The Court: . . . Do you seriously argue that these statements are inherently misleading?

Ms. Kohl [Christine N. Kohl, representing the FDA]: In the FDA's judgment, your honor, yes, they are. There is such power over the consumer in the marketplace at the point of sale . . .

The Court: . . . what if the proposed statement were exactly what your FDA's parent agency [HHS] said, quote, "Fatty acid omega-3 under study because of a possible association with a reduced risk of heart disease in certain people." That was the only thing they wanted to put on the label, and it was word for word what HHS put out. Is

your position that this is inherently deceptive?

Ms. Kohl: Yes, Your Honor, that's the scientific judgment of the FDA that there is not —

The Court (interrupting): So FDA's position is that HHS is making inherently deceptive statements.

Ms. Kohl: . . . These regulations that are being challenged apply only to labeling on the dietary supplement.

The Court: But why does that matter? . . . Why is it inherently deceptive in the label, and not in the brochure?

The Court: Is this [that the statements are inherently misleading in a label] some impression the FDA has? Or maybe they have some study in the back. But I mean, I've got to tell you, I walk to the grocery store all the time . . . I just don't get the impression that people are absolutely terrorized when they approach a dietary supplement.

The Court: It's not like approaching a lawyer.

The Court: Yes. Label, as opposed to reading an article in a magazine. I mean, is this something that you think you have to have a qualitatively different standard when they go into the grocery store?

The Court [a few lines later]: . . . But I

find the argument that this is inherently misleading is absurd. . . .

Ms. Kohl: Well, your honor, again, it is the agency's scientific judgment based on their —

The Court: Well, that's not a scientific judgment. That's legal judgment, isn't it?

The Court: . . . in order to win your case, you have to establish that this is inherently misleading. That's basically what you are arguing, isn't it?

Ms. Kohl: . . . If the court doesn't agree with the FDA's conclusion that these claims have so much potential for abuse that they are inherently misleading —

The Court: Potential? Wait a minute, counsel. You are switching between inherent and potential. I'm trying to take out of the case, obviously, and I think Judge Garland is too, this "inherently misleading" notion.

Ms. Kohl: And my response to that is, if you —

The Court: Is, you hate like hell to give it up, but —

The Court: You can't legally. They're in trouble if they give it up.

The Court: I know, because the agency said "inherently misleading."

—Durk Pearson and Sandy Shaw

No Room for Opposition

by Jim Peron

Nelson Mandela's government prepares for its forthcoming free elections — free of opposition, that is.

Nelson Mandela's African National Congress (ANC) is completing its first term in office, and by virtually every objective standard it has not performed well. Even black voters are starting to shy away from the party of the charismatic Mandela. The ANC has responded by stepping up its anti-white rhetoric, no doubt hoping to solidify its waning black support base for the upcoming election.

As part of its strategy the ANC government has done its best to manipulate the electoral results in advance and to silence critics. One of the many new ANC-created panels, the Human Rights Committee (HRC), was approached by two exclusively black organizations that claimed the somewhat conservative *Sunday Times* and the left-of-center *Weekly Mail & Guardian* practiced hate speech and "subliminal" racism. The "evidence" they furnished consisted of newspaper articles that accurately reported the many instances of ANC corruption and nepotism.

HRC head Barney Pityana, a rabid opponent of "liberal" values in the classical sense, is openly biased and prejudicial. He dismissed the charges against the papers, but in doing so announced that he would broaden the "investigation" to cover the entire media. Pityana declared all media guilty of racism — this before any hearings or investigation took place, thereby announcing the HRC's verdict before hearing any evidence.

No publication in South Africa covered what may well be the main issue in this story. All the media reported how the government launched its investigation of them, but they didn't mention the investigation's timing. And in corrupt politics, timing is everything. The HRC announced the media investigation just a few months before the ANC was to begin a re-election campaign! By firing a warning shot at the press, the ANC made it clear that it wouldn't tolerate critical news stories. As an added reinforcement, the ANC may propose new laws that will directly restrict "ownership" of the media in the name of diversity.

The ANC also moved to restrict the voting rights of opposition voters. It already knows how to manipulate elections. Now the ANC is solidifying its control over major cities by replacing local governments with "mega-cities." But with black support dropping, the ANC is in danger of not gaining a two-thirds majority in parliament. The ANC needs such a supermajority if it is to achieve its stated goal of governing without constitutional restrictions. President Mandela has warned that the ANC needs that power to "ensure that we are not interfered with by Mickey Mouse [i.e. opposition] parties." Opposition parties have a place in South Africa, claims Mandela, but only as long as they don't oppose the government. No wonder he won the Nobel prize.

The ANC pulled off one of its most brilliant acts of blatant political manipulation when it promulgated new election rules. In the last election, any South Africans with valid identification books could vote, provided they were over age 18. But no longer, thanks to the ANC.

First, the government deemed the ID book alone would no longer suffice. Each voter must also register in advance. Then it announced that to register to vote an individual must present an ID book with a bar code in it. Only ID books issued in recent years have the bar codes. Those with perfectly valid ID books issued before the bar code was introduced now must go through a cumbersome process of applying for a new ID book before they can legally register.

This manipulation works to the ANC's advantage. Most black voters got ID books with bar codes when they first voted in 1994, while many whites have older books without

the bar code. A poll by the Institute for Democracy in South Africa found that 82 percent of blacks had IDs with bar codes, compared with only 65 percent of whites.

Polls also found ANC supporters more likely to vote than opposition voters, many of whom are discouraged by the obstacles imposed on them by the government. A turnout of 55 percent would give the ANC a 64-percent majority in the government, leaving it only 2 percent shy of achieving a two-thirds supermajority. A higher turnout would mean more

Opposition parties have a place in South Africa, claims Mandela, but only as long as they don't oppose the government. No wonder he won the Nobel prize.

opposition support, making it unlikely the ANC could gain enough power to abolish the bill of rights.

The final tactic employed by the ANC to establish absolute power is the destruction of the Inkatha Freedom Party (IFP) led by Chief Mangosuthu Buthelezi. For years the ANC and the IFP have been at each other's throats — literally. Now it appears that Buthelezi, who says he is tired of opposing the powers that be, is ready to throw in the towel for the prestige of becoming vice president. If he does, the IFP and the ANC would merge. Robert Mugabe did the same thing in Zimbabwe to establish a one-party Marxist dictatorship.

Africa's Policeman

To some critics, the ANC's foreign policy appears befuddled and unclear. While the ANC fosters loving relationships with the pariah nations of the world — Libya, Cuba, Iraq, and Iran — it looks contemptuously upon the West. The ANC limits the role of western nations to cash cows.

But recently the ANC has moved in another direction: it is becoming the police force for all of Africa. The first move in this direction wasn't even subtle — the invasion of Lesotho by the armed forces of South Africa. The government of Lesotho, an independent nation totally surrounded by South African territory, was re-elected in what many considered a rigged election. Opposition forces in the country felt cheated and they revolted. The Lesotho government secretly asked the ANC for help. Never willing to turn their back on the anti-democratic regimes of the world, the ANC obliged.

But the invasion was bungled in typical ANC fashion. South African forces launched operations while President Mandela was out of the country on another one of his countless junkets in search of Western aid. Vice President Mbeki was also overseas attending a sporting event. South African troops marched into Lesotho, believing that they would be welcomed with open arms. But the arms that welcomed them were carrying weapons. The troops were forced to regroup and use military might against the people of Lesotho. The result: the ANC won the support of Lesotho's government but antagonized the people of Lesotho.

Shortly afterward, the government announced that South Africa would make a major arms purchase worth almost \$5 billion. This purchase would include 60 military helicop-

ters, 38 fighter jets, 108 tanks, 24 jet trainers, and more. This massive expenditure by a country that faces no foreseeable military threat came under sharp criticism. The ANC defended the purchase, hinting at new expanded roles for the defense force. Cabinet Minister Alec Erwin told the press: "It is fairly clear that in one way or another South Africa's defense force will have a role to play in different areas." Vice President Mbeki, when challenged about the purchase during a state visit to Sweden, retorted that someone would have to keep the peace in places like the Congo.

"We are living in an unpredictable world," explained Ronnie Kasrils, a prominent member of the Communist Party and the Deputy Minister of Defense. "We are talking about a world in conflict, a world in turmoil, where you can't predict where a threat will emerge."

These developments suggest the ANC now seeks political control not just in South Africa. It casts its lustful eyes on the rest of the continent as well.

Of course, the massive expenditures might be merely the product of ego. African dictators have long followed a tradition of self-aggrandizement. If Paris has a cathedral, then they order one built at home as well. If President Clinton can have official welcomes when he returns home, so can they — but bigger and more expensive. Many African politicians reward themselves with honors and medals by the dozens. The moment the ANC took power, the party elite got its mansions and government cars. In Africa image is everything and substance irrelevant.

Stephen Ellis and Tsepo Sechaba discussed this proclivity in their exhaustive history of the relationship between the ANC and the Communist Party, *Comrades Against Apartheid*.

Recently the ANC has moved in another direction: it is becoming the police force for all of Africa.

They wrote how ANC "freedom fighters . . . took with them into exile the macho culture of the South African townships, which has become a distinctive part of the ANC style . . . Too often it was easy to pick out an ANC underground man . . . He was the one with the fashionable clothes and the BMW. . . The young men liked to show off their designer clothes and their expensive habits to impress the girls."

While middle-class suburbanites try to keep up with the Joneses, the ANC tries to keep up with first-world nations. If the U.S. can waste billions on arms purchases, then the ANC can waste the money as well. If the U.S. can play world policeman, then the ANC can play Africa's policeman. It would be a shame if South Africa emulates the deadly foreign fiascos committed by the United States, simply because of some macho township culture.

Sadly, it looks like the ANC is headed in that direction. Worse, Nelson Mandela's government continues to build formidable obstacles for those who oppose those trends. And as soon as CNN and other international media decide to tell the truth about Nelson Mandela and the ANC, Westerners are in for a rude awakening about their poster boy for "peace." □

The Demographics of Liberty

In 1988 and again in 1998, *Liberty* conducted a detailed poll of libertarians, asking them more than a hundred questions about their backgrounds, behavior, beliefs and opinions. Taken together these surveys offer portraits of libertarians taken a decade apart, and insight into how libertarians are changing.

In the February *Liberty* we published a summary of the new survey's findings about libertarian opinion and belief, along with an analysis of the results. In this issue, we turn to the demographics of libertarians.

As in 1988, we learned that most libertarians are male, white, heterosexual, monogamous, married, well-educated, with fairly high income. They are mostly first-born. Most were raised in a religious environment, but do not consider themselves to be religious today. They are more likely to work in technical fields or in private business than most Americans, and far less likely to be government employees.

But in almost every way that libertarians varied from the norm for Americans in 1988, they varied less in 1998. In 1988, 100% of respondents were white; in 1998 only 95% were. In 1988, 95% were male; in 1998, only 90% were. In 1988, 59% hadn't attended church in more than 5 years; in 1998, only 41% had eschewed church for that long.

Here are the questions we asked, along with the responses:

What is your age?

| | <u>1988</u> | <u>1998</u> |
|-------|-------------|-------------|
| 65+ | 5% | 13% |
| 60-64 | 3% | 5% |
| 55-59 | 6% | 10% |
| 50-54 | 5% | 13% |
| 45-49 | 5% | 14% |
| 40-44 | 16% | 15% |
| 35-39 | 31% | 10% |
| 30-34 | 18% | 9% |
| 25-29 | 5% | 7% |
| 20-24 | 6% | 4% |

Ages of respondents range from 18 to 83. The mean age is 46.98 years, up from 40.37 in the 1988 poll, indicating that the libertarian movement is aging.

Are you male or female?

| | <u>1988</u> | <u>1998</u> |
|--------|-------------|-------------|
| male | 95% | 90% |
| female | 5% | 10% |

What is your race?

| | <u>1988</u> | <u>1998</u> |
|-------|-------------|-------------|
| white | 100% | 95% |
| other | 0% | 5% |

Are you married?

| | <u>1988</u> | <u>1998</u> |
|-----|-------------|-------------|
| yes | 53% | 60% |
| no | 47% | 40% |

How many divorces have you had?

| | <u>1988</u> | <u>1998</u> |
|----|-------------|-------------|
| 3+ | — | 1% |
| 2 | 2% | 7% |
| 1 | 17% | 26% |
| 0 | 81% | 66% |

How many children have you had?

| | <u>1988</u> | <u>1998</u> |
|----|-------------|-------------|
| 4+ | 2% | 9% |
| 3 | 8% | 11% |
| 2 | 3% | 21% |
| 1 | 14% | 10% |
| 0 | 53% | 49% |

The increasing age of respondents probably explains much of the increase in percentage of respondents who are married, the number of their divorces and number of their children.

Are you first-born in your family, second-born, third-born, or later?

| | <u>1988</u> | <u>1998</u> |
|------------|-------------|-------------|
| first kid | 56% | 60% |
| second kid | 25% | 21% |
| third kid | 12% | 10% |
| later | 7% | 9% |

This is one area where respondents varied considerably from the normal. If the respondents had been chosen at random from families of the same sizes as the families from which the respondents came (average: 2.99 siblings), approximately 45% would have been first-born. In actual fact, 60% were first-born — a variation of more than 33%. This is a substantial variation from the norm — but far less than the variation of 81% in 1988.

Here is the actual distribution of birth rank compared with the distribution that would be predicted by a random sampling of a group of families of the same size:

| | <u>1988</u> | | <u>1998</u> | |
|------------|---------------|------------------|---------------|------------------|
| | <u>actual</u> | <u>predicted</u> | <u>actual</u> | <u>predicted</u> |
| first kid | 56% | 31% | 60% | 45% |
| second kid | 25% | 30% | 21% | 29% |
| third kid | 12% | 19% | 10% | 15% |
| later | 7% | 20% | 9% | 11% |

What is your occupation? (Check as many as apply.)

| | <u>1988</u> | <u>1998</u> | <u>Change</u> |
|-------------------------|-------------|-------------|---------------|
| government employee | 10% | 9% | -10% |
| law | 5% | 5% | +0% |
| non-profit organization | 2% | 1% | -50% |
| farming | 2% | 0% | -100% |
| teaching | 6% | 7% | +17% |
| factory | 2% | 1% | -50% |
| medical | 8% | 10% | +25% |
| investor | 3% | 4% | +33% |
| scientific/technical | 13% | 7% | -46% |
| small business | 15% | 23% | +53% |
| sales | 2% | 4% | +100% |
| managerial | 6% | 10% | +67% |
| engineering | 13% | 10% | -23% |
| computer science | 26% | 16% | -38% |

There has been major change here: in 1988, 52% of respondents described their occupations as scientific/technical, engineering or computer science; in 1998, only 33% did.

What is the highest level of schooling you have completed?

| | <u>1988</u> | <u>1998</u> |
|-------------------|-------------|-------------|
| Doctoral degree | 21% | 16% |
| Master's degree | 13% | 17% |
| some grad school | 16% | 16% |
| Bachelor's degree | 24% | 22% |
| some college | 18% | 23% |
| high school grad | 6% | 5% |
| some high school | 2% | 1% |

Which of the following best describes your religious training as a child?

| | <u>1988</u> | <u>1998</u> |
|---------------------|-------------|-------------|
| Roman Catholic | 33% | 25% |
| Mainline Protestant | 30% | 37% |
| Fundamentalist | 7% | 10% |
| Jewish | 10% | 6% |
| none | 13% | 14% |
| other | 7% | 8% |

Do you consider yourself a follower of any religion today?

| | <u>1988</u> | <u>1998</u> |
|-----|-------------|-------------|
| yes | 23% | 29% |
| no | 77% | 71% |

How long ago did you most recently attend a church or other form of worship?

| | <u>1988</u> | <u>1998</u> |
|-------------|-------------|-------------|
| 0-7 days | 2% | 13% |
| 8-30 days | 10% | 7% |
| 31-90 days | 7% | 7% |
| 91-365 days | 13% | 10% |
| 1-5 years | 10% | 21% |
| longer | 52% | 40% |
| never | 7% | 2% |

What is your annual income?

| | <u>1988</u> | <u>1998</u> |
|--------------|-------------|-------------|
| (thousands) | | |
| \$100+ | 5% | 20% |
| \$50-100 | 26% | 32% |
| \$30-50 | 26% | 20% |
| \$20-30 | 14% | 14% |
| \$10-20 | 14% | 8% |
| \$10 or less | 16% | 6% |

How many years (if any) were you in the military?

| | <u>1988</u> | <u>1998</u> |
|------|-------------|-------------|
| 0 | 73% | 67% |
| 1-2 | 13% | 10% |
| 3-4 | 8% | 11% |
| 5-6 | 3% | 4% |
| more | 3% | 8% |

Was your highest rank enlisted or officer? (Question only asked to those with military experience.)

| | <u>1988</u> | <u>1998</u> |
|----------|-------------|-------------|
| enlisted | 88% | 35% |
| officer | 12% | 65% |

What is your sexual orientation?

| | <u>1988</u> | <u>1998</u> |
|--------------|-------------|-------------|
| heterosexual | 95% | 90% |
| homosexual | 3% | 6% |
| bisexual | 2% | 3% |
| other | 0% | 1% |

What is the predominant form of sexual activity that you engage in?

| | <u>1988</u> | <u>1998</u> |
|--------------------|-------------|-------------|
| monogamous | 70% | 70% |
| autoerotic | 16% | 10% |
| casual/promiscuous | 7% | 9% |
| celibate | 5% | 7% |
| polygamous | 0% | 4% |
| group sex | 2% | 0% |

How long have you been with your current partner?

| | <u>1988</u> | <u>1998</u> |
|-------------|-------------|-------------|
| 0-1 years | 13% | 9% |
| 2-4 years | 15% | 15% |
| 5-10 years | 30% | 20% |
| 11-20 years | 20% | 26% |
| 20+ years | 23% | 30% |

What are the political beliefs of your current partner?

| | <u>1988</u> | <u>1998</u> |
|---------------------|-------------|-------------|
| active libertarian | 5% | 15% |
| quasi-libertarian | 24% | 27% |
| passive libertarian | 38% | 33% |
| non-libertarian | 32% | 25% |

Do you belong to any community groups?

| | <u>1988</u> | <u>1998</u> |
|-----|-------------|-------------|
| yes | 18% | 26% |
| no | 82% | 74% |

Do you belong to any political organizations?

| | <u>1988</u> | <u>1998</u> |
|-----|-------------|-------------|
| yes | 45% | 57% |
| no | 55% | 43% |

Do you give money to libertarian causes? Humanitarian causes? Cultural causes? Religious organizations?

| | <u>1988</u> | <u>1998</u> |
|--------------|-------------|-------------|
| libertarian | 87% | 82% |
| humanitarian | 53% | 44% |
| cultural | 37% | 33% |
| religious | 15% | 26% |

Do you talk to acquaintances about libertarianism?

| | <u>1988</u> | <u>1998</u> |
|-----|-------------|-------------|
| yes | 76% | 92% |
| no | 24% | 8% |

What percentage, if any, respond favorably?

| | <u>1988</u> | <u>1998</u> |
|--------|-------------|-------------|
| 80%+ | 9% | 6% |
| 55-75% | 13% | 10% |
| 35-50% | 16% | 24% |
| 20-30% | 20% | 17% |
| 10-15% | 16% | 12% |
| 1-5% | 13% | 4% |
| 0% | 13% | 3% |

Do you speak in public about libertarian ideas?

| | <u>1988</u> | <u>1998</u> |
|-----|-------------|-------------|
| yes | 23% | 35% |
| no | 77% | 65% |

Are you a registered voter? Have you ever run for political office?

| | <u>1988</u> | <u>1998</u> |
|------------------|-------------|-------------|
| registered voter | 81% | 90% |
| run for office | 24% | 19% |

□



"I used to work for the IRS, but I couldn't handle the guilt."

Canada's Supreme Blunder

by Scott J. Reid

Maybe if Canada just ignores Quebec, it won't go away.

Secession is the most drastic remedy, short of revolution, for escaping centralized political power. Therefore, next to revolution, it is the event which those who possess such power will do the most to resist. For this reason, rulings by domestic courts (as opposed to international tribunals) on the legality of secession are as rare as hen's teeth. Secessionists are more often shot than sued.

In the United States, the unconstitutionality of secession was legally established by the Supreme Court in the 1869 case, *Texas vs. White*, where the court ruled that the reconstructed state of Texas was not bound to honor debt instruments issued by the Confederate state of Texas in 1861-65, since they had been issued by a government whose existence was never sanctioned by law. Exactly 100 years later, Britain's high court, the Judicial Committee of the Privy Council, ruled in *Madzimbamuto vs. Lardner-Burke* that Rhodesia's unilateral secession from the British Empire had been illegal and that the British government could continue its policy of using all available diplomatic and economic sanctions to bring down the unlawful Rhodesian government.

But these two cases just about cover the waterfront. Moreover, the American case is of limited utility as a precedent for anything, given that it was handed down by a court mostly nominated by President Lincoln and confirmed by a Republican Senate, both of whom, as a matter of policy, supported only candidates with firm anti-secession sentiments. The British case too was rendered under imperfect circumstances, as it related to the ongoing policies of the government of the day.

The ruling of the Supreme Court of Canada, handed down on August 20 last year, on whether Quebec has the right to unilaterally secede from the Canadian confederation therefore commands considerable interest both to those who regard secession as a legitimate option in the defense of liberty, and to those who fear the strife, bitterness and blood-

shed that this option tends to produce.

The court is composed of four justices from Quebec and five from Canada's other provinces. Its composition presumably guarantees a good degree of balance between those more interested in the well-being of Quebec and those more interested in the well-being of the rest of Canada (ROC). Moreover, the question before the court was hypothetical, enabling the justices to address it with a detachment and an impartiality seldom available to any court.

The story of how this question arrived before the court is itself an interesting tale, which sheds considerable light on the wording of the court's decision. In Canada, unlike the United States, the federal executive can ask the Supreme Court to make rulings on hypothetical questions. In September 1996, the federal cabinet asked the court to rule on three such questions:

1. Under the constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?
2. Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?
3. In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to effect the secession of

Quebec from Canada unilaterally, which would take precedence in Canada?

The government's decision to ask for a ruling — known in Canada as a "reference decision" — marked a substantial departure from the approach that both Conservative and Liberal governments have taken since the separatist Parti Québécois won the 1977 Quebec provincial election. This policy has two components.

First, the federal government refused to advocate the interests of ROC. It would not establish conditions of secession protecting the interests of the 20 million Canadians liv-

The ruling of the Supreme Court commands great interest both to those who regard secession as a legitimate option in the defense of liberty, and those who fear the strife, bitterness and bloodshed that this option tends to produce.

ing outside Quebec on such issues as how to divide the enormous federal debt between Quebec and ROC. The federal government took this approach because any advocacy of the interests of ROC might cause the ruling Liberal Party to lose votes in Quebec to another party, the Bloc Québécois. The then-governing Conservatives did the same thing in the 1980s and early 1990s.

But this strategy has a serious drawback that both the Liberals and Conservatives simply ignored: it makes secession look more enticing to Quebecers. It allows separatists to paint pictures of a painless secession in which ROC pays most of the transition costs.

The second part of the federal strategy has been a stony refusal to deal with the enormous practical problems raised by secession. What will happen to the non-French minorities within Quebec who would want to re-attach their neighborhoods or towns to Canada? How will ROC and Quebec divide Canada's military stores located primarily at armories in Quebec?

The government apparently hopes that ignoring such problems raises the stakes of secession for all parties, thereby making it less enticing. "In fact, it is hard to think of a more effective way of maximizing costs," one observer noted, "than to refuse to contemplate how to cope with sovereignty until it occurs." In the short run, this refusal to discuss practicalities probably does discourage some Quebecers from supporting secession, just as a jealous lover's threat to kill his beloved should she ever try to leave might keep her at home, at least for a while.

Dion's Song

Over the past two years, the federal government has augmented this approach with occasional enunciations of curious, passive-aggressive warnings, typically delivered by Stéphane Dion, the federal minister responsible for national unity. At the same time Dion warns of one or another dangerous and costly result of secession, he emphasizes that he is simply an honest messenger stating the unpleasant objective facts about secession, rather than an advocate of any

positive action on behalf of the federal government to defend the interests of ROC.

In February 1997, Dion made headlines by warning that secession could lead to the "partition" of Quebec, with loyalist areas remaining part of Canada. That August, he drew national attention to the sad story of the Islamic Republic of the Comoros, which had unilaterally broken from France in the 1970s. One of the four islands in the Comoros chain had remained loyal to France, thereby causing a de facto partition of the new republic. Two other islands subsequently requested permission to re-annex themselves to France, but France refused to take them back. (They are now tiny independent republics, insistently flying the tricolor in the hope that *la mere patrie* will change its mind).

Dion's statements highlight the costs of secession without actually thrusting the federal government into the vote-losing job of addressing any of the problems that force these costs upwards. During oral presentations before the Supreme Court in the case regarding secession, some observers suggested that the federal government should argue in favor of partition. To this, Dion responded by hastily declaring, "If, in a situation where we would have to negotiate secession, you have . . . strong populations with territorial representations asking to stay in Canada, this would be on the table of negotiations. I will not go further than that." The chief federal government lawyer before the court actually

The government apparently hopes that ignoring the problems entailed by secession raises the stakes of secession for all parties, thereby making it less enticing.

asked the justices not to rule on partition, even though such a ruling would strengthen the case against secession.

Upon closer investigation, even the decision to seek a court ruling turns out to have been motivated by the dual strategy of raising the stakes and avoiding a defense of ROC's interests. The federal cabinet requested a reference decision from the Supreme Court only because it seemed to be the sole method of preventing the court from hearing a high-profile, privately initiated case which sought a ruling that any attempt at secession would represent an unconstitutional violation of Canada's bill of rights, the Canadian Charter of Rights and Freedoms. Had the court agreed to hear this case — which had already enjoyed a favorable reception in a lower court — it would have forced the federal government to either support or condemn the decision, keeping it from continuing its self-imposed rule of never advocating the rights of ROC over those of an independent Quebec.

Nevertheless, there had been reason to hope that the court would take advantage of the hypothetical questions placed before it to lay out some of the ground rules that Ottawa steadfastly refused to provide. Likewise, it seemed the court might nudge the federal government to fill in some of the blanks that it has willfully avoided addressing. It is not the role of the court to advocate the interests of ROC, but in the event of an actual secession attempt, the federal gov-

ernment's policy of maximizing the potential costs of the transition would suddenly transform into a maximization of real costs to all parties. The court would view that scenario as harmful to everyone.

The Court Rules

At first glance, the judgment appears to have done just these things. The court ruled:

1. The constitution does not permit secession, so secession cannot take place without a constitutional amendment. However, "a clear majority vote in Quebec on a clear [referendum] question in favor of secession would confer democratic legitimacy on the secession initiative which all of the other participants in Confederation would have to recognize." In effect, such a vote would require negotiations on the terms of secession. The court even specified the scope of such negotiations: "There would be no conclusions predetermined by law on any issue. Negotiations would need to address the interests of the other provinces, the federal government and Quebec and indeed the rights of all Canadians both within and outside Quebec, and specifically the rights of minorities."

2. Under international law, only colonized countries have the right to secede. Since Quebec is not a colony of Canada, its population cannot claim that membership in the Canadian confederation has been incompatible with the internationally recognized right to "self-determination" (an ill-defined term in international law that some have argued is a synonym for "contingent right of secession."). Rather, international law maintains that self-determination can be pursued as a province within Canada.

3. There is no conflict between domestic and international law.

The Ottawa establishment enthusiastically welcomed the 78-page ruling. Canada's largest weekly news magazine editorialized that "the Supreme Court's unanimous decision should become required reading in all schools." Leaders of all federal parties expressed support, although the separatist Bloc Québécois also stressed that its support hinged on the court's statement obliging ROC to good-faith negotiations following a pro-secession vote in Quebec. The other parties, all pro-union, praised the court for requiring a "clear majority vote" on a "clear question."

Initially, I was equally enthusiastic. At last, one important participant in the National Unity debate seemed to be setting out some rules governing the process of secession. As the party bureaucrat in charge of policy design on this issue for Canada's largest opposition party for four years, I had been involved in drafting legislation to implement a series of guidelines governing the secession process. It often seemed futile, from the wilderness of political opposition, to compose hypothetical rules to reduce the overall costs of secession. Now it appeared that the court would force the governing Liberals to engage in a similar process of setting the ground rules.

Thanks for Nothing

Regrettably, a closer look at the Supreme Court decision shows that it does nothing of the sort. The court commendably avoided taking sides in the dispute between Quebec and ROC over the division of commonly-held assets and liabilities. But while the justices instructed all sides to negotiate in

good faith, they offered no guidance on how to conduct those negotiations.

In fact, on closer inspection, it becomes clear that the court has self-consciously decided to perpetuate the federal government's strategy of not clarifying any question that might lower the transaction costs of secession:

1. How big a majority? For example, the court missed a golden opportunity to resolve an ongoing dispute over the vote required to trigger the secession process. The separatists favor a simple majority. Prime Minister Chrétien rejects this, but refuses to suggest what percentage he thinks should be required. If and when Quebecers vote in favor of secession in a future referendum, he seems to think he can simply declare

The court has self-consciously decided to perpetuate the federal government's strategy of not clarifying any question that might lower the transaction costs of secession.

that the winning margin, whatever its size, is insufficient.

In practice, this sophomoric stratagem won't work, since Quebecers are neither stupid nor docile enough to tolerate unilateral invention of ex post facto rules transparently intended to disenfranchise them. This tactic has already caused one near-disaster. In the 1995 referendum on secession, many anti-secession Quebecers voted in favor of breaking away from Canada because the prime minister's soothing words had persuaded them that a majority in favor of secession would merely force the federal government to make substantial concessions to the provincial government in various federal-provincial disputes. In 1995 the separatists won 49.4 percent of the vote. If the measure had won a simple majority, it was later revealed, the provincial government planned to declare itself independent within ten days, no matter how narrow the margin of victory. With no rules governing secession in place, the fallout could have included violence, a default on the government debt, or even widespread terrorism.

The Supreme Court's ruling requiring "a clear majority" did nothing to clear the air. The federal government immediately indicated that its stand in favor of an undefined super-majority had received legal sanction. The premier of Quebec announced that at last the Supreme Court itself had stated that a clear majority of 50 percent plus one really was sufficient after all.

The justices would have done far better if they had cited examples from other parts of the world of what constituted an acceptable majority in secession referenda. When the District of Maine separated from Massachusetts early in the 19th century, state law required a mandate from not less than five-ninths of participating voters. In one referendum, a majority of roughly 53 percent voted in favor of secession, but all participants recognized that this majority did not meet the standard. Maine remained part of Massachusetts until the necessary super-majority was achieved in another referendum.

By citing precedents such as this, the court could have

established that the question of sufficient majorities is a political rather than a judicial matter. At the same time, the justices could have put their own considerable moral weight behind one or another proposal. After all, when a court addresses a political question, its role shifts from that of an arbiter with binding powers to that of a conciliator with the power of moral suasion. It is a shame that the court failed to use this power to help resolve this vexing issue.

2. *What is a "clear question"?* Similarly, the court's vague requirement that any secession referendum must present a "clear question" for the voters resolved nothing. In

The court missed a golden opportunity to resolve an ongoing dispute over the vote required to trigger the secession process.

1995, the provincial government insisted that its referendum question was a model of clarity. The federal government insisted that it was a model of obscurity. When the court declined either to provide an alternative text of its own or to indicate what sort of misleading statements might be proscribed, it left future separatist governments free to be at least somewhat obscure, and the federal government free to reject any referendum as invalid by reason of insufficient clarity.

Setting out criteria for an acceptable question is not so difficult a task. In preparing the text of a proposed federal law on this subject in 1996, opposition MP Stephen Harper suggested that it contain the following provision:

The Government of Canada shall not recognize any referendum or plebiscite carried out under the authority of the government or legislature of Quebec on the question of the separation of Quebec from Canada if the question is unclear or implies that the government or legislature of Quebec might be empowered by an affirmative vote in the referendum or plebiscite to unilaterally amend the Constitution of Canada relative to the position of Quebec in Canada.

Again, the court could have used its moral weight to impose de facto proscriptions on a referendum question. As a result of its failure, both the federal government and the separatists have declared that their own widely differing positions had been right all along. The court achieved nothing at all by making magisterial-sounding but hollow pronouncements like "We refer to a 'clear' majority as a qualitative evaluation. The referendum result, if it is to be taken as an expression of the democratic will, must be free from ambiguity both in terms of the question asked and in terms of the support it achieves."

3. *Does the Canadian constitution allow secession?* Even more fundamental to the secession issue is the question of whether the Canadian constitution permits it at all. Again, the justices tried to take both sides of the issue. They ruled that the constitution does not allow secession, but added that a clear majority vote for secession would require the federal government to negotiate secession in good faith. The court took pains to reject two other interpretations of the current situation.

First, it rejected the separatist argument that, in the event

of a pro-secession majority vote, "there would be a legal obligation on the other provinces and federal government to accede to the secession of a province, subject only to negotiation of the logistical details of secession." Then it declared equally unacceptable "that a clear expression of self-determination by the people of Quebec would impose no obligations upon the other provinces or the federal government."

So far, the court's words make eminent good sense. However, what follows is utterly impractical:

[O]ther parties [in other words, ROC] cannot exercise their rights in such a way as to amount to an absolute denial of Quebec's rights, and similarly . . . so long as Quebec exercises its rights while respecting the rights of others, it may propose secession and seek to achieve it through negotiation. The negotiating process precipitated by a decision of a clear majority of the population of Quebec on a clear question to pursue secession would require the reconciliation of various rights and obligations by the representatives of two legitimate majorities, namely, the clear majority of the population of Quebec, and the clear majority of Canada as a whole, whatever that may be.

The final four words of that paragraph speak volumes. It is not at all clear who would negotiate on behalf of ROC. Would it be the federal government, which so far has absolutely refused to do so, and which takes pride in its refusal to engage in contingency planning? What happens if the federal government, like the United States Congress in the

The court declined either to provide an alternative text of its own or to indicate what sort of misleading statements might be proscribed.

period between Lincoln's election in November 1860 and his inauguration in March 1861, refuses to perform the role of defending the interests of the rump state of Canada, and instead tries to broker a deal to reunite the country? Brokering such a deal is not an illegitimate goal, but it is incompatible with hardball negotiations over the division of the assets and debts of the Canadian confederation.

The court was not legally empowered to order the federal government to assume one of these roles at the expense of the other. Nonetheless, it could have informed the public about the obvious contradiction between these two roles, and the enormous costs that all Canadians would have to bear if the two were blurred in the midst of a secession crisis. The justices seem blissfully unaware that the more time passes between the commencement of a secession crisis and its amicable conclusion, the greater the cost to Canadian taxpayers, since investors in Canadian bonds would demand a risk premium for refinancing the federal debt, as long as it remains unclear exactly who (if anyone) would make future payments on interest and principal. The court seems to favor a situation in which such negotiations drag on indefinitely, as things often do in the world of litigation and appeal.

4. *How to amend the constitution?* An even more striking absence in the court's judgment relates to the conflict between

Quebec's right to secede and the need to amend Canada's constitution to authorize secession. The Canadian constitution contains no less than three distinct amending formulae. Amendments dealing only with one or two provinces can be executed by means of a resolution of Parliament and identical resolutions passed by the relevant provincial legislatures. Amendments dealing with most other matters must be enacted by Parliament plus the legislatures of two-thirds of the provinces, which must represent at least 50 percent of Canada's population. Some particularly important constitutional provisions can only be amended by Parliament plus all ten provincial legislatures. It has never been clear which of these three formulae would apply to the secession of a province.

The court holds jurisdiction over this purely legal question. And the matter of constitutional amendments is clearly relevant to the first of the three questions posed by the federal cabinet. So it is absolutely astonishing that the justices advised the federal government to be prepared to amend the constitution, without bothering to declare which formula to use. This is certainly not a matter of accidental oversight. A document filed by the federal government's lawyers during the court's hearings advised the judges that "this court need not consider arguments as to which of the amending procedures might apply in the event of a potential secession." One wonders why, unless the point is to keep uncertainty, and hence the costs of attempting to secede, at the highest possible level.

5. Are negotiations after a vote to secede conventional or legal? Nearly as breathtaking was the complete absence of any mention of the fact that Quebec's right to demand negotiations following a vote to secede is a matter of convention. In the early years of the separatist movement, separatists had considered an election victory as an adequate mandate for secession. This changed in the early 1970s, when separatist leader René Lévesque promised that, if elected provincial premier, he would not attempt to lead the province out of the country without first holding a referendum. Opponents of secession rejected the notion that a mandate would justify the breakup of the country. Today's consensus that a referendum is a precondition of secession is merely a convention with no actual legal weight.

In practice, of course, conventions can carry enormous moral weight. Witness the convention that holds that Canada's prime minister, rather than its queen, makes all the important decisions. But some indication from the court that convention and black-letter law conflict would have done much to clarify the judgment. As things stand, one cannot help but feel that the justices themselves may have been un-

ware of this elementary point.

On the positive side, the court did manage to rule that a government cannot legally establish independence through "effective control" of a given territory. This doctrine (also known as "effectivity"), which dates back to the Latin American wars of independence in the 1820s, had dubious legal weight, to say the least. Despite its contestability, separatists have cited it extensively, with the alarming implication that they might believe that the surest route to independence involved intimidating the population into obeying the laws of an illegal regime.

Lacking a definitive response from Ottawa to this preposterous claim, some of the parties before the court simply accepted the separatist argument that might makes right.

As a result of the court's failure, both the federal government and the separatists have declared that their own widely differing positions had been right all along.

They seemed prepared to use force to establish and defend their territorial claims within Quebec. Aboriginal groups opposed to secession made this point crystal clear in their presentations before the court. This is a serious matter in a province where the army was called out as recently as 1990 to quell a territorial dispute between an Indian tribe and the provincial government. Hopefully the court will discourage potential violence by its declaration that "the alleged principle of effectivity has no constitutional or legal status. . . . If . . . it is put forward as an assertion of law, then it simply amounts to the contention that the law may be broken as long as it can be broken successfully."

Sadly, this was the only note of practicality in the ruling. In other matters, the justices seemed unable to bring themselves to state the hard truth of the situation: In cases where secession, revolution or a Lockean "appeal to heaven" is invoked, the basic rule is that might really does make right. The role of a court in such a situation is to alert the weaker parties that they would be foolish to oppose overwhelming force with powerless legalistic arguments, while at the same time preventing the stronger parties from cloaking their use of force in the language of legitimacy. For the most part the court failed to do this, and Canadians may yet suffer for this lack of courage. □

Reflections, continued from page 14

ment with the thrust of the staff appraisal." "The Committee expressed its great appreciation . . ." "Directors also welcomed the progress achieved . . ."

Whiffs of self-congratulation and empire-building are evident. "You can count on the IMF and on its competent and valiant staff to be steadfast in implementing your fundamental objectives . . ." I imagine people with important-sounding titles gravely listening to staffers' presentations and then gravely going through the motions of expressing

judgments and reaching decisions. As Anna Schwartz observed (in the September 1998 Policy Statement and Position Papers of the Shadow Open Market Committee), "It sometimes appears that the real mission of the IMF is to offer well-paid employment to economists." —LBV

Food for thought — Elsewhere in this issue Jacob Hornberger hints he might seek the Libertarian Party's nod as its presidential candidate in 2000. Would this make anyone who works on his campaign a Hornberger Helper? —TC

Why Harry Browne Doesn't Work

by Jacob G. Hornberger

The Libertarian Party needs a plan of action. It should not go with a proven failure.

Friedrich Hayek's observation that competition is a discovery device applies not only to the economic marketplace but to the political marketplace as well. Through the process of competition among products or political candidates, people can decide which product or which candidate will best serve their self-interest, either as consumers or as voters.

When Harry Browne, the 1996 Libertarian Party presidential nominee, formed a presidential exploratory committee more than two years ago, he signaled his interest in seeking to be the party's nominee again next year.

Some people think he ought to be handed the nomination again. "Why not simply let Harry Browne be the LP presidential candidate again?" they ask. "He has devoted a lot of time to membership recruitment and to promoting the LP on radio and television shows. He has also helped the party to raise funds. Shouldn't this entitle him to the LP's nomination again?"

My answer: No. While Browne has earned the appreciation of all Libertarians, the party should not select its presidential nominee purely on the basis of service to the party. That's how Republicans selected Bob Dole as their 1996 presidential nominee, and the result for the GOP was an electoral debacle.

How should Libertarians choose their presidential candidate in 2000? The answer to this question requires an analysis of Browne's 1996 campaign.

In the 1996 general election, Browne finished fifth, garnering one-half of one percent of the national vote, less than Ralph Nader and not significantly above the LP presidential vote totals of 1988 and 1992. Almost everyone agrees that, strictly in terms of total votes received, the Browne campaign was unsuccessful.

Since then, Browne has repeatedly suggested that the principal reason for his low vote total was that the Libertarian Party did not have enough members to finance a successful campaign.

As much as anyone, I wish the LP were bigger and had more money. But I don't think that problem adequately explains Browne's disappointing performance.

I am convinced that the Browne electoral debacle happened because his campaign committed the cardinal sin of electoral politics: it failed to generate any significant degree of excitement or enthusiasm among voters generally, or even among Libertarian activists. No matter how much money a candidate has at his disposal, it won't do any good if he fails to energize either his supporters or the general public. (The failed presidential bids of John Connally in 1980 and Phil Gramm in 1996 come to mind.) Only a campaign infused with excitement has the potential to take off with few monetary resources at its inception. (Recall the presidential bids of Gene McCarthy in 1968 and Jerry Brown in 1992.)

Why did Browne's campaign fail to energize people in a big way? Because rather than provide a clear, positive, and pure case for the libertarian philosophy, the Browne campaign relied on simplistic slogans and a watered-down, pragmatic, compromised form of libertarianism. The result was the worst of all possible worlds: a diluted libertarian message that failed to ignite the hearts and minds of Libertarians and non-libertarians alike, coupled with an almost complete indifference toward the LP candidate by the voting public.

For example, a centerpiece of the Browne campaign was his positions on taxation. In the course of his campaign, Browne endorsed a flat tax on income, a national sales tax to replace the income tax, a repeal of the income tax ("replacing

it with nothing"), and taxes on imports.

In a letter Browne wrote to *LP News* that appeared in the November 1995 issue (a letter posted neither on the LP's nor on Browne's website), Browne argued that he was the first LP presidential candidate ever to have a realistic chance of winning the presidency, but only if he could "capture the public's imagination" with pragmatic tax and budget proposals, including a six-year plan to gradually downsize government and a plan to save payments to Social Security recipients. "A political campaign," he opined, "isn't the place

I believe the LP has to do better in 2000. It needs an active and enthusiastic candidate who can articulate a vision of liberty as both morally and economically better than statism.

to browbeat people into accepting every aspect of libertarian dogma."

But a political campaign is the *perfect* place to explain to people what libertarians stand for and what we have devoted our lives and fortunes to. How many non-libertarians — who heard Browne advocate income taxation, sales taxation, tariffs, a six-year plan to gradually reduce the size of government, and a plan to save payments to Social Security recipients — now believe that the Libertarian Party stands for those positions?

Browne has never answered the important pragmatic question about taxation: Who would enforce the collection of the tax on a person who refused to pay it? After all, as libertarians have long argued, anyone who refuses to pay taxes will ultimately be killed by the government (for "resisting arrest"). Who would execute the tax liens and levies, foreclosures, and killings under Browne's various tax plans?

Browne's Social Security proposal, another central element of the campaign, was to sell national assets to buy annuities for current recipients of Social Security and to pay off the national debt. If the sales did not produce enough money for both purposes, Browne said he would cover the difference with either a 10 percent income tax or a 5 percent sales tax.

Browne said that his Social Security plan was politically salable to the American people, but there's little evidence for that. It's easy to see why it enjoyed so little public support: it covered only current recipients of Social Security rather than everyone who has "paid into the system," leaving people in their 50s, 40s, and 30s to ask, "Aren't we also entitled to annuities from the sale of all those assets?"

And what about those assets that Browne assumes would be so easy to sell? Is he talking about selling the Grand Canyon to a landfill developer? Or Yellowstone National Park to a condominium builder? Yosemite? Glacier National Park? In order to privatize these properties, might it not be environmentally better and perhaps more politically salable to propose donating them to groups like the Audubon Society? Combining a plan to save payments to a select group of Social Security recipients with a plan to sell off

Yellowstone and Yosemite to the highest bidder means fighting Social Security taxpayers under the age of 60 and environmentalists at exactly the same time — not exactly a prescription for political success.

Why is it necessary for a Libertarian presidential candidate to present any plan to save Social Security payments? Why not simply call for a repeal of Social Security, along with Medicare, Medicaid, and the rest of the socialistic welfare state? After all, Social Security didn't come from Washington, Jefferson, or Madison; it came from German socialists and in fact was a centerpiece of Hitler's National Socialism. Why shouldn't a Libertarian presidential candidate attack directly and frontally the crown jewel of the socialistic welfare state?

The real question is: Why is a Libertarian presidential candidate calling for income taxes, sales taxes, tariffs, six-year plans to gradually reduce the size of government, and a plan to save payments to Social Security recipients? Not only do these policies fail to interest voters — they don't light the internal fire of libertarians, including me.

Moreover, Browne's pragmatic attempt to secure votes created a seriously damaging practical consequence: it caused him to abandon the New Hampshire presidential primary and surrender one of the golden opportunities in the 25-year history of the Libertarian Party.

In 1995, Browne had raised money from donors with a promise to wage an active campaign in the New Hampshire primary with the hope of earning lots of votes on a statewide basis, the way that André Marrou did in Dixville Notch in 1992. But three months before the primary, Browne announced he was giving up the New Hampshire fight to do

A case can be made that Republican Steve Forbes's ideas were more radical than those of Libertarian Harry Browne.

radio shows and to sell copies of his new book, *Why Government Doesn't Work*.

Browne suggested that he was retreating because his campaign message in New Hampshire was being drowned out by the major-party candidates, who were spending lots of money there. But Browne had to know all along that the major players would flush lots of money and intense political energy into the New Hampshire primary. Everyone knows it is the first primary of the electoral season and that it attracts an inordinate amount of media attention.

The real reason that Browne threw in the towel, I believe, was Steve Forbes's entry into the race for the Republican presidential nomination. Forbes called for flat income tax, a gradual downsizing of government, and a plan to privatize Social Security. A case can be made that Republican Forbes's ideas were more radical than those of Libertarian Browne. By compromising and diluting libertarian principles in the hope of expanding his vote totals among the general public, Browne found himself outflanked on economic issues by a Republican.

Browne's withdrawal was a major blow to Libertarians. I

still grimace when I think about the woman from Dixville Notch who was asked by C-SPAN why the Libertarians had done so poorly. She said that the policy of New Hampshire voters was simple: to never vote for someone who doesn't come and ask them personally for their vote. She said that New Hampshire voters had not seen the Libertarian Party's 1996 presidential contender.

What should Browne have done when Steve Forbes entered the race? He should have rescinded his November letter to *LP News*, canceled his support of the flat tax, the sales tax, his six-year plan to gradually reduce the size of government, and his plan to save payments to Social Security recipients. He then should have stayed and fought in New Hampshire with pure libertarian principles.

It would not have cost Browne much money (perhaps \$200 a day) to get a hotel room, rent a car, and walk the streets of Nashua, Manchester, Concord, and Dixville Notch, talking to people about libertarianism and asking them for their vote. Browne might not have had the victory he needed in New Hampshire — that is, gotten enough votes to grab national attention — but surrendering three months before the primary election ensured that his campaign would never get off the ground.

(Unfortunately, the golden opportunity that Browne failed to pursue in 1996 will not be available for LP presidential candidates in 2000. The New Hampshire Libertarian Party failed to regain major-party status in the 1996 and 1998 general elections and, therefore, LP presidential candidates cannot participate in the New Hampshire presidential primary in 2000.)

Having at various times embraced an income tax, a national sales tax, tariffs, a six-year plan to gradually reduce the size of government, and a plan to save payments to Social Security recipients, Browne now carries some pretty heavy political baggage. What would Browne now say if candidate Forbes calls for a flat income tax of 5 percent? If candidate Bush calls for a national sales tax of 4 percent to replace the income tax? If candidate Quayle calls for unilateral free trade and the abolition of U.S. tariffs? If candidate Bradley proposes a five-year plan to downsize government? If candidate Gore suggests using the budget surplus to save payments to Social Security recipients now rather than later with the sale of assets?

Browne has repeatedly emphasized in speeches that libertarian philosophy should play a minor role in a political campaign. He continually says that the way to convince people to vote for Libertarians is with political slogans such as "Government doesn't work" or "Are you willing to give up your favorite government program if it means you never have to pay income taxes again?"

I couldn't disagree more with this conscious policy of downplaying philosophical and moral principles in favor of superficial slogans or appeals to self-interest to those on the dole. Philosophy and moral principles are everything in a political campaign. Throughout history, people have been moved by grand and noble ideas and ideals. The Magna Carta. The Petition of Right. The Declaration of Independence. The Constitution. And underlying such movements is an understanding and appreciation of the moral and philosophical principles that undergird the ideas.

It is impossible to convince people to move toward monumental change with lame political slogans. Only through philosophy and principles can we hope to achieve the massive shift toward the freedom for which we yearn.

Why didn't Browne use his C-SPAN appearances to explain that individuals have the moral right to live their lives any way they choose, so long as their conduct is peaceful, and that the individual in society is supreme and can never be rightfully sacrificed for the good of the collective? Why did Browne choose to remain silent before the general public about Waco, Ruby Ridge, Cuban repatriation, INS

Rather than provide a clear, positive, and pure case for the libertarian philosophy, Browne relied on simplistic slogans and a watered-down, pragmatic, compromised form of libertarianism.

killings of illegal immigrants, and syphilis and nuclear radiation experiments on unsuspecting Americans?

What about the immorality of socialism itself? Under what moral authority does the state take money from some people and give it to others? Under what moral authority does the state require people to seek permission before engaging in an occupation? Under what moral authority does the state regulate trade, people's movements, the accumulation of wealth, education, and the ingestion of harmful substances? Under what moral authority does the state regulate any peaceful behavior whatsoever?

What about the benefits that individual freedom and free markets would bring to our society? Isn't pure libertarianism the only way to achieve a prosperous, harmonious, and civil society? Shouldn't we strive to convince people to raise their sense of self-esteem and belief in themselves, their families, and their communities? Isn't freedom the only proper transition to freedom?

Why shouldn't a Libertarian presidential candidate raise the level of political debate in this country with questions such as these? Why shouldn't we challenge Democrats and Republicans to answer them?

I believe the LP has to do better in 2000. It needs an active and enthusiastic candidate who can articulate a vision of liberty as both morally and economically better than statism.

I hope there's competition for the LP's presidential nomination in 2000. I think competition is more than a discovery device. It is also a tonic that generates great dynamism, fun, and excitement. And the more Libertarian candidates out there among the public campaigning for libertarianism, the better for all of us. That is why I am thinking about seeking the LP nomination myself.

In this competitive process, each member of the Libertarian Party will have to ask himself an important question: "Which candidate would best serve my self-interest in achieving freedom in my lifetime?" The opportunity to spread libertarianism during the race for the presidency comes only once every four years. We should seize that opportunity, and use it to proudly proclaim our ideas and values with energy, determination, and candor. □

When Freemen Shall Stand

by J. Neil Schulman

It was the third Wednesday in October, just two weeks before the election of our sheriff, and as chairman of the political action committee, I was supposed to moderate the candidates' debate for our monthly Southwestern Freehold Militia council meeting. Only, when the candidates are from the Independence Party, the Constitutional Rights Party, and the Founders Party, nobody wants much moderation and you're not going to get it anyway.

Our council meetings are supposed to start promptly at seven p.m., but stragglers are always still drifting in to the American Legion Hall for the next hour. Our council president, Audie St. Cloud — my oldest friend, principal of the junior high, and our Justice of the Peace — is a stickler for time, but he's learned to bend a little bit for us grownups. He always gavels us to order at seven-fifteen and doesn't schedule anything important until after the eight o'clock doughnut, coffee, and I'll-show-you-my-gun-if-you-show-me-yours break. Not that anyone was likely to have anything to show that most everyone didn't already have, or hadn't already seen during first Wednesday drills, anyway. I picked up a copy of the canary yellow agenda from my seat. The candidates' debate was scheduled as first item after the break.

I could always tell that Tony Bonaduce was in attendance, even if he was way in the back near the doughnut table, grabbing an early one, because right after the "With liberty and justice for all" of the stars-and-stripes salute that starts each meeting, Tony always loudly proclaims, "Amen!" That's why I was surprised by the dead silence after the Pledge of Allegiance. Tony, and his son, now 16, hadn't missed the Pledge in six years. So I knew as early as seven-fifteen that if Tony and Rick couldn't make the meeting, something was wrong. I caught Audie St. Cloud's eye and could tell by his expression that he had the same gut feeling.

The first half of the meeting was just the usual house-keeping stuff, committee reports, my report on the blood donation drive, plans for our float in the Waco Memorial

Day parade next April 19th. And, of course, every sort of fund-raising — dues reminder, passing the hat, raffle tickets, ticket sales for our annual Shoot Out and Barbecue. I figure on spending around twenty bucks at each meeting, not counting tickets for our events. Whatever Marcia Alvarez hasn't already gotten out of me at the donated-book table by the end of the meeting, I just spend on raffle tickets. This year, so far, I've won two bags of reloads for my M-16 assault rifle, a bound edition of the Encyclopedia of Thomas Jefferson, a collection of John Wayne movies, and a "Danger: Politically Active" tee-shirt — in XL, as a partial consequence of the bear claws and fritters that Jamal Johnson contributes as refreshments from J.J.'s Doughnuts each month.

I was trying to get myself back down to an ordinary shirt size on my camo, so I only had a plain cake doughnut this meeting and had my coffee black. Besides, I planned to join Audie, Jamal, and some of the other guys for supper after the meeting at the Thirsty Cactus. Wednesday was all-you-can-eat fried chicken night. When it comes to Bessie's fried chicken, I just have no self control. But if I don't get the extra pounds off by June 15th, I'll pay for it with extra laps and push-ups during summer training, I know. My cardiovascular fitness is fine, and even though I'm over the age for mandatory participation, I'm not about to quit.

The candidate's debate was going to be a decisive factor in the election, since our current Sheriff, Fred Wu, was term-limited out and it was an open field. Fred wasn't endorsing a replacement and the *Freehold Clarion's* latest website poll showed it pretty much a three-way dead heat between sheriff's deputies Aaron Goldstein, Ralph Springer, and Deborah Butler, which meant a runoff election two weeks later. But whoever was going to be in the runoff, this was their last shot at speaking to us, since our November council meeting would be the day after a runoff, and no politicking is allowed at our first Wednesday drills.

The main issue in the sheriff's election this year was the

same as it always was: what the sheriff was going to do about the raiding parties of drunken PeaceKeepers from Ft. Barbie.

Every few months, a bunch of Brown Berets right out of Peacekeeper boot camp storm onto the freehold under pretense of buying marijuana, which their regs don't allow them to buy on base, and start looking for trouble. The Edmonton Accord doesn't allow us to deny them entry, or disarm them prior to arrest, and no matter how many petitions we've sent to Playa del Rey, we've gotten absolutely no cooperation from the interfeds in controlling them. The base commander of Ft. Barbie keeps assuring us that when our posse arrests one of his men within freehold limits, the soldier will be court-martialed; but all of our follow-up inquiries after turning over their detained personnel have been bureaucratically stonewalled. Also, every request for the M.P. captain to at least warn our sheriff when Brown Berets are off-duty and might be headed our way have been denied on the grounds of "international security." And worst, every arrest of a Brown Beret on the freehold has been followed by an even nastier incident a few days later. The Brown Berets protect their own.

They say nobody ever raped a .38, but that isn't true with the stuff the Peacekeepers are equipped with. The Brown Berets carry everything from C.D.F. sweepers, which will instantly turn a perfectly good bullet into a dud from a thousand feet away, to heartbeat detectors, which makes hiding perfectly useless, to prohypnotic tranquilizer canisters.

I probably have a better idea how many of the freehold's women have been raped than anyone else, because even though most women won't talk about getting raped to the sheriff's deputies, sometimes they're torn up so badly that they need a surgeon.

But our freehold has had more than our share of babies born who don't look anything like their daddies, and even though abortion is illegal here, nobody has ever asked me if I've been supplying RU-486 to women following the raids. I'm not about to tell you, either; that's strictly between my patients and their doctor. Medical privacy is guaranteed under Article 4, Section 6 of our freehold's Declaration of Rights . . . until someone decides to file a complaint against me.

I took my place at the right side of the head table with the candidates to my left, and after I did the formal introductions, they proceeded to put forward their different schemes for dealing with the raids, if elected sheriff.

Aaron Goldstein, the Independence candidate, has served on the posse for eight years — the last two of them as a deputy. He promised that if elected he'd hold onto the next Brown Berets arrested on the freehold and make the interfeds petition for extradition. That got a lot of applause, but I wasn't particularly anxious to find out how the interfeds would respond.

The Constitutional Rights candidate, Deborah Butler, was all for equipping the posse with arms equal in power to what the Peacekeepers were carrying, and citing Article 51 of the UN charter as the legal basis for doing so when the interfeds came to arrest her. This was also a popular idea, but one which seemed impractical to me. Even assuming we could find an out-freehold source willing to sell us the hardware, how are we supposed to allocate funds from the treasury's bank accounts without the interfeds knowing about it immediately? And with as little money as we have to work with, how can we justify spending tens of thousands of our budget

on arms which are just going to get confiscated, likely even before they're delivered?

I didn't get to find out what the Founders candidate, Ralph Springer, had to say, because just after I introduced him, young Rick Bonaduce burst into the American Legion Hall and ran right over to me at the head table. "Dr. Lester," he whispered to me, "come quick! Dad's barricaded himself in the bedroom with a gun, he's been drinking heavy, and I think he's tryin' to kill himself!"

Audie St. Cloud took the microphone from me. I followed Rick out the door as fast as my legs would carry me, climbing onto the back of Rick's motor scooter, and held on for dear life during the bouncy three-mile ride down Eagle's Nest Highway to the Bonaduces' trailer.

"Is your mom at home?" I asked Rick softly, as soon as he cut the engine.

Rick shook his head, causing straight blond hair to bounce against an almost-invisible mustache he was trying to grow. "She's over at Mrs. St. Cloud's tonight."

"Anybody else in there?" I asked. He shook his head again. "You have any idea what this is about?"

"He got some email earlier today is all I know for sure," Rick started. "Broke out the Jack Daniels right after Mom left. First I knew something was wrong was when I told him it was time for the meeting and he said he wasn't going. Then he started watching some old movie — you know, the one where David Koresh survives Waco and masterminds the Oklahoma City bombing? I always thought it was pretty funny but Dad never liked it. Anyway, I guessed he'd just fall asleep in front of the screen like he always does when he's had a few, but this time he went to the gun safe and grabbed his old Colt sidearm and a box of .45 ammo. Then he went into the bedroom and locked the door. Dr. Lester, you know my dad. He'd never touch a gun after he's been drinking. Breaks every safety rule he's pounded into me since he taught me Eddie Eagle when I was four. I thought about calling the Sheriff's station but thought you'd be able to figure out what was eating him faster."

I put my hand on Rick's shoulder to steady him a little. He looked around twelve at the moment, really scared. "You ride on over to Ethel St. Cloud's and get your mother," I said. "I'll see what I can do."

Rick rode off on his motor scooter and I went into the trailer.

I could see a light on from under the bedroom door, so I knocked right away. "Tony, it's Jess Lester. You scared the hell out of Rick already. You want to let me in?"

"It's not locked," came Tony's voice through the door.

I opened the door. Tony was sitting on the foot of the bed in a cut-out undershirt and boxer shorts, with the Government Model pistol in his right hand, cradled on his lap, safety off, index finger inside the trigger guard.

There was a wicker chair against the one wall of the bedroom where there wasn't either a door or a dressing table. I picked up freshly washed pink towels from the chair and tossed them onto pillows wrapped in flower-print pillowcases, then made a production about sitting down casually. Even from across the room, I could smell the liquor on his breath. His eyes were bloodshot and his hair was laying the wrong way across his bald spot.

"It's Bessie's fried chicken night," I said. "If you put on a

continued on page 60

Reviews

One was a self-avowed progressive, the other a government skeptic. Yet the two of them joined to write Ayn Rand's favorite novel. Who were they? What did they write? How did they influence Rand?

Fountainheads of Industry

Bruce Ramsey

In 1945 Ayn Rand called *Calumet "K"* "my favorite thing in all world literature." Rand's novels idealized builders and industrial leaders, and rekindled support for an open, free-wheeling capitalism. In praising *Calumet "K,"* she had reached back to the turn of the century, an era far removed from the governmental triumphalism of the 1940s, to a novel that had been virtually forgotten. To a publisher, she wrote, "I'm sure it will appeal to all the readers of *The Fountainhead*. It's that kind of thing."

The judgment was characteristic of Rand, who responded to heroism and a "sense of life." In music, her favorites were light band numbers — "tiddlywink music," she called them. *Calumet "K"* is tiddlywink music to the spirit of American industry.

The book was given to Rand, then a young immigrant from Soviet Russia, by Cecil B. DeMille. Its voice is folksy, Midwest American. Its hero, Charlie Bannon, is a construction boss, sent to Chicago to ensure that a grain elevator is built on time. Bannon is indomitable. When his foreman says the top boss "can't blame us" if the schedule slips, Bannon replies, "When I have to begin

explaining to MacBride why it can't be done, I'll send my resignation along in a separate envelope and go to peddling a cure for corns. What we want to talk about is how we're going to do it."

As Rand says, Bannon is an *efficacious* man. He might be a superintendent at one of Howard Roark's building sites. But he is not a Roark; he is not a radical arrayed against the ideas of the day. He embodies them — at least, some of them.

Calumet "K" was published in 1901, in the late summer of *laissez-faire*. The book, wrote Rand, "captures the atmosphere — the sense of life — of a free country — what it was like, what it demanded of men . . ." It is not the whole truth about industrial America, but an essential part that has largely been pushed aside. The book I was assigned in school was Upton Sinclair's *The Jungle* (1906), a socialist's story of immigrant Slavs sweating in the Chicago meat plants. From the same neighborhood, Merwin and Webster show the work of a purposeful boss. Bannon's grain silo takes on the aura of a Roark skyscraper. He even hoists a woman sky-high in an open box, as in the final scene in *The Fountainhead*.

Calumet "K" was noted by English playwright and novelist Arnold Bennett. In an essay in the *North American Review*, Bennett named it as

the "prototypical specimen" of the new romantic American novel.

Cultural historian Vernon Parrington condemned it. Though Bannon "has no time nor inclination to think [and] possesses no philosophy," Parrington wrote, *Calumet "K"* and its predecessor, *The Short-Line War* (1899) "present the ideal of a competitive bourgeoisie" to prevail over others. In his Pulitzer Prize-winning *Main Currents in American Thought* (1927) Parrington wrote, "No more heartless, brutal, anarchistic books could be conceived — a mad philosophy for a mad world." It's the same hostility Rand would spark years later.

Rand rescued *Calumet "K"* from oblivion and wrote a glowing introduction to it. But she said nothing of

Rand rescued "Calumet 'K'" from oblivion and wrote a glowing introduction to it. "It captures the atmosphere — the sense of life — of a free country — what it was like, what it demanded of men . . ."

Merwin's and Webster's other books. She said almost nothing of the two men — not even their first names — and nothing of their ideas.

There aren't any ideas discussed in *Calumet "K."* But ideas aplenty are scattered through books Merwin and Webster wrote later. Their literary method grew less like Rand's, but some of their ideas — Webster's, if not Merwin's — were much like hers.

Who Is Merwin-Webster?

Samuel Merwin (1874-1936) and Henry Kitchell Webster (1875-1932) were boyhood friends. They grew up in Evanston, Ill., a suburb of Chicago, which was then rising to challenge the dominance of the East. As schoolboys,

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they collaborated on plays, edited an amateur magazine and penned a book of verse. At a time when only 3 percent of Americans attended college, they both did, Merwin at Northwestern and Webster at Hamilton College near his father's hometown of Utica, N.Y. They were lifelong friends.

Their start as writers was influenced by Webster's father. T.K. Webster was a self-educated manufacturer of engine parts, grain elevator components and, unhappily, the Paige Compositor, a linotype machine that was too expensive to produce. Mark Twain was an investor in that, and went broke — and T.K. nearly did. T.K. was more of a businessman than Twain, but his son wrote, "He never made a conservative investment in his life."

In politics, T.K. was a progressive Republican. He brought his son home from college to vote for William McKinley and the gold standard in 1896, and stumped for Teddy Roosevelt on the "Bull Moose" ticket in 1912. In a speech to the City Club of Chicago, his son recalled, T.K. argued that "no industry could be self-respecting that didn't pay better than a bare living wage." In the 1890s he insured his workers for industrial accidents, breaking ranks with his fellow manufacturers. T.K.'s attitude toward unions is evident in *Calumet* "K." When the union delegate makes a demand related to safety, Bannon readily agrees; when the delegate defends a worker who endangered others, Bannon fights him. T.K. got along with unions for many years, but finally reached an impasse and moved his factory to Ohio.

T.K. accepted that his son would be a writer. "He never asked me to report progress, never gave me unsolicited advice, never offered me any small errands or chores to do for him 'if I hadn't anything else to do,'" Webster wrote.

Collaboration was common among beginning authors. To compose their first book, *The Short-Line War*, one account goes, "the two young men shut themselves into a room, and Webster, smoking a corn cob, would formulate sentences in his mind." On this and later collaborations their names appeared as "Merwin-Webster." Many a reader would assume that it was one author.

As they wrote, T.K. read each chapter. He must have been pleased. When the manuscript was done, he took it to New York, presented it to Macmillan, and sent for the young men. "Father had been paying Sam an allowance to enable him to go on working on the book, and in his telegram he offered to pay Sam's expenses to New York," Webster wrote. "This . . . was Sam's escape from Evanston." Webster, for all his world travels, would always live in Evanston, and in 1930 was still in the house built by his grandfather.

The Short-Line War concerns a fight for control of a Chicago railroad. The style and characterization are rough, but the story is full of action. Rivals lock up blocks of stock, issue new shares, buy judges and send out trains of armed men. The focus, however, lurches between the railroad industrialist and his assistant. The climax is short-circuited by a politician who calls in the governor.

But the story connected with the American public. Merwin and Webster, said a contemporary blurb, had "discovered in the exciting movements of trade and finance a field of fiction hitherto overlooked by American writers, but containing a great wealth of romance." Scott Dalrymple, the author

Merwin believed in the lifting of social repression. To him, the United States was "the most conservative country in the world, with the possible exception of China."

of a recent Ph.D. thesis on the turn-of-the-century business novel, wrote that Merwin and Webster "may be said to have invented the genre" of the business romance.

Vernon Parrington wrote that Merwin and Webster's "popular success was immediate and maintained surprisingly." *The Short-Line War* was in print until 1909.

Calumet "K," their second collaboration, was simpler and more tightly focused. It had sharp detail grounded in the experience of T.K., who had built a grain elevator in England. And at a

time when business was under attack in the name of the common good, it presented a counter-ideal. In Merwin and Webster's hands, Dalrymple writes, the silo became "a metaphor for human achievement . . . as much a parable about the value of hard work and tenacity as anything from the pen of Benjamin Franklin."

Calumet "K" appeared in *The Saturday Evening Post* from May 25 to August 17, 1901. It boosted the magazine's circulation, and in book form it was in print into the 1920s. Rand had it reprinted in 1967, and her admirers at Second Renaissance Books reprinted a hardbound replica edition in 1993 that is still available.

Merwin and Webster separately wrote other business romances. Webster's *The Banker and the Bear* (1900), *Roger Drake: Captain of Industry* (1902) and *A King in Khaki* (1909) hold up better than Merwin's *The Whip Hand* (1903) and *The Road Builders* (1906). Webster's stories have more substance. They also have an impish humor. In *The Banker and the Bear*, a young woman is named Dick, because her older brothers are Tom and Harry. The struggle between "The Banker" and "The Bear" is over the price of a most inglorious commodity, lard — i.e., pig fat. When the agents of "The Bear" move on the commodity pit, Webster writes, "They sold actual lard, wholly imaginary lard, grotesque prophecies of lard . . ."

By today's standards, Webster is less politically correct about the common man. In *Calumet* "K," Bannon is proud of his men's work, but the way they gulp down the slogans of the union delegate shows him that "most of 'em have gunpowder in place of brains." That's Webster talking. Two decades later, in *Joseph Greer and his Daughter*, Joe Greer says the same thing about the North Dakota farmers, who gulp down the slogans of socialist A.C. Townley's Non-Partisan League. The farmers "aren't willing to think," says Greer. "All they're willing to do is make trouble for the men who do think."

Greer later observes that his chauffeur has plenty of free time to improve himself, and that "if he isn't any good, he has a handsome chance to go to the devil." He adds, "But that's no concern of mine." (The chauffeur later becomes

an airmail pilot and marries Greer's daughter.)

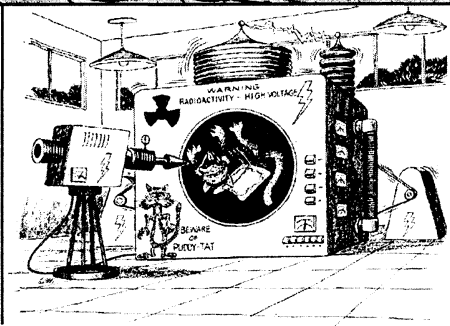
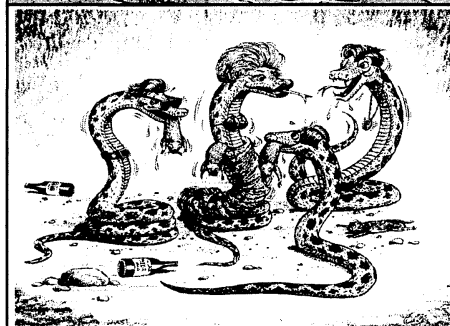
A woman reminds Greer of the man in the Bible who said he wasn't his brother's keeper. "That was Cain," he replies. But Cain, he says, wasn't being criticized for a lack of solicitousness. "He'd just murdered his brother and was trying to establish an alibi."

Merwin is less flippant and more solicitous of the little guy. He may not focus his stories on the down-and-out, but he makes a point of caring about

them. Webster doesn't. In *A King in Khaki*, Smith, the manager of a private Caribbean island, fights a director's scheme to trick the company's small investors — "preachers and school-teachers" — through insider trading. Smith fights for the investors not because they are small, but because, he tells the director, "they are the real owners of this island, just as you are the owner of your watch."

Webster's businessmen do think about the morality of their actions. In

Jurassic Horde Whisperer of Madness County



This new novel by Titus Stauffer is a wacky tale of lawyersaurs, Quart Low Trackers, Ale Run Hubba-Bubba and His Church of Omnology, Panderwood, and officials at THEMNOTUS and NADGRAB run amuck. A tale so utterly bizarre as to defy all rationality. A tale beyond belief.

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Roger Drake, an industrialist's memoirs of building a copper and railroad empire out west, the industrialist pauses to consider a bribe he's just paid. "I had never trafficked in men's consciences," he says. "This is not pretending, mind you, that I did not sometimes buy what ought never to be for sale . . . But I never paid money for what wasn't in the market, for anything

Webster was not a joiner of causes, and less inclined to believe in the goodness of government. He was too much the realist to swallow the socialist cream pie.

which, if not mine at my price, wasn't some other man's at his."

The bad guys in these stories use tactics forbidden today, such as fomenting a bank run (*The Banker and the Bear*), discriminatory freight rebating (Roger Drake), predatory price cutting (*The Whip Hand*), and refusal to deal (*Calumet "K"*). Some of these tactics were forbidden then, too, but a business response was usually quicker and more effective than filing a lawsuit. In *The Whip Hand*, a lumber man undercut by below-cost selling retaliates by secretly buying his competitor's goods. In *The Banker and the Bear*, the banker stops a run of depositors by keeping his bank open into the night and paying only in gold coin. Robbers being a more imminent danger than insolvency, the depositors go home.

Webster is particularly accepting of all that comes with *laissez-faire*. After Roger Drake vanquishes his opponent, he buys up all the local mines and forms a modern, efficient copper trust. And after "the banker" beats "the bear," the story ends happily as the banker's client corners the market in pig fat.

Merwin the Idealist

In politics, Merwin and Webster disagreed. Merwin was an early 20th century liberal; he once said his philosophy was mainly derived from John Stuart Mill, Bernard Shaw, Henrik Ibsen, Havelock Ellis and Ellen Key. Merwin

believed in the lifting of social repression. To him, the United States was "the most conservative country in the world, with the possible exception of China." He was the nephew of a prominent suffragette, Frances Willard, and contributed to a book that promoted the vote for women. In 1922 he publicly opposed an effort to censor books.

Merwin admired entrepreneurs but was against *laissez-faire*. He presented his politics with a blast in his political novel, *The Citadel* (1912), written at the peak of the Progressives' crusade for the direct election of senators, the initiative and recall, municipal ownership and the federal income tax. The book's protagonist, young Rep. John Garwood, is for all these things. He has a Progressive epiphany and runs for re-election as an independent. He champions an amendment to make the Constitution easier to amend — a proposal straight out of Theodore Roosevelt's National Progressive Party platform of 1912.

Garwood is a hero. Merwin has given him the same can-do spirit as Charlie Bannon, but instead of a grain elevator he's building, it's government. "The purpose of all vital government," Garwood declares, "is to sit above and wield the greatest power in the land, whatever form that power may happen to take." All that matters is that government be "expressive of nothing on earth but the will of the people at the moment."

Garwood loses his seat. He loses, too, his fiancée, the delicate and fluff-headed daughter of a "standpat" industrialist. But he gains a wife, a modern-thinking biologist named Margaret, and sets off with her to campaign for the Progressive state.

Reviewing this in *The Smart Set*, H.L. Mencken was surprisingly polite. His complaint was that *The Citadel* doesn't explain *why* Garwood has his conversion. "Progressivism, in brief, is depicted as a disease of sudden and devastating onset," Mencken wrote. "We see a representative of a safe and rotten borough suddenly run amuck, and are left wondering wherefore and why." Mencken summed up: "Not a story of much depth and beam, to be sure, but still a pleasant one, and not as pontifical as it might have been."

A dozen years later Merwin allowed

he'd been "a bit naive," but said, "I'm glad I once fought for something."

Webster the Realist

Webster was not a joiner of causes, and less inclined to believe in the goodness of government. After traveling in Central America, he wrote, "Their 'administration' consists of those who are getting it, the 'opposition' of those who are waiting for it. That is the whole philosophy of their system of government." The people in that system, he wrote, were imbued with "the curious belief that the state is the actual source of wealth."

At any age Webster was too much the realist to swallow the socialist cream pie. In 1913, he published a satirical piece in *The Atlantic Monthly* called "Real Socialism." He set the story in a private club in which each character has an allegorical name. The outsider in the group, whom he calls the Pest, interrupts when the talk turns to socialism.

"In the course of my travels through the Tropics," he says, "I visited a Socialist state."

They don't believe it. Not in 1913.

But I did, the Pest says.

The Real Socialist is indignant. If the Pest can back up that statement, he

Journalism had left its mark; Merwin had become a much closer observer of his fellow man.

says, "I'll cheerfully pay for the drinks."

"You yourself shall be the judge," says the Pest, who confidently cracks open a half-liter. "To begin with," he says, "the state owns all the land." It is the only employer. There are 30,000 inhabitants, and it feeds and houses all of them. "The state provides everything necessary for domestic purposes, down to knives and forks, pillow-cases and dish-towels; the quantity and quality of these, like the houses themselves, being graded according to the value of the service which the citizen performs." The state provides doctors and medicines, including a scientific program of insect control.

This state, says the Pest, is run by a

dictator appointed by the president of the United States.

"You can have no doubt," says the Pest, "that the place I have been talking about is the Panama Canal Zone." (The canal was then under construction.)

The Real Socialist sputters. The Canal Zone cannot be socialist. "It has no foundation whatever in Democracy."

"Precisely," replies the Pest. "That's what is so wonderfully fitting about it. Because there's nothing democratic about Socialism." Listen to any socialist speaker, he says, and you will be convinced of one thing: that the utopia they crave will be run "by an oligarchy of highly intelligent persons, like the speaker, while the 'mere unthinking voter' ramps around and amuses himself with the illusion that it is all his own doing."

The story concludes, "We made the Socialist pay for the drinks. Well, it's lucky these Socialists are all so rich."

The "Fiction Factory"

Webster began his career with a good education. It was noted when he died that he was schooled in classical literature, had learned French and Italian and was "a belligerent classicist in music." He had spent the year after his graduation in 1897 as a college instructor in rhetoric.

But making it on his own, he hit a dry spell in which he said, "I had almost lost my grip." In desperation, he took an old plot, hired a stenographer, and gushed 60,000 words in three weeks. The story brought him \$600 — and would have been \$900, he said, had he put his name to it. Thus began a routine that lasted for decades. Webster would begin at 9:00 a.m. and dictate 1,000 to 2,000 words. From what he called "the work of my left hand" — short stories, mainly, published under pseudonyms — he earned \$5,000 a year. In gold dollars, that was the equivalent of about \$75,000 today, and in living standards relative to his contemporaries, more than that.

Years later, in describing the plight of a failed novelist, Webster wrote, "True Art had never got adequately paid for since the capitalist system had been established." He is only partly serious about this. Webster saw to it that he got paid — so much so that *The New York Times* chuckled editorially

when, at age 47, he was to receive his inheritance. T.K. had bequeathed him a double share because young Harry had chosen such an unpromising career. (What the *Times* didn't know was that the old man had died insolvent, ruined by his final venture.)

Webster's "fiction factory" left him with several months a year to dictate novels under his own name. In all, he managed to pull more than two dozen out of his head, several of which con-

cerned the social changes going on around him in upper-class Chicago.

The Real Adventure (1916) is a story of a lawyer's wife who joins her husband to learn the law. She gets no respect from him, and leaves to join a chorus line. Her "real adventure" leads not to disaster, but to a successful career as a costume designer. *The Real Adventure* was the No. 6 U.S. fiction bestseller for 1916. It was made into a silent movie in 1922 by King Vidor,

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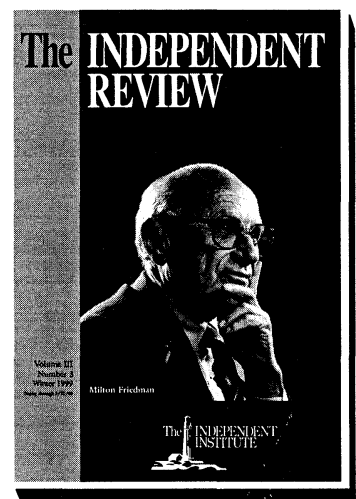
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who directed more than 50 films between 1913 and 1959, including Ayn Rand's screenplay of *The Fountainhead* in 1949. Sad to say, the film version of *The Real Adventure* is lost.

An American Family (1918) is about a Chicago manufacturing clan similar to Webster's own. Third-generation son Hugh Corbett is a believer in company-provided social work — a cause then promoted by such Chicago concerns as International Harvester. Hugh sets up a

"I had never trafficked in men's consciences," he says. "This is not pretending, mind you, that I did not sometimes buy what ought never to be for sale."

welfare department with nurses to visit the homes of the sick. The workers label them snoops, and are soon goaded into a strike. Hugh then tries to step in as an impartial umpire.

Hugh's elder brother Gregory,

who's running the company, has a better understanding of business. "I'm not pretending to be the umpire," he says. "I'm after the best trade I can make. Because I happen to know . . . that the best I can get won't be any too good . . . If one bunch out there are in a position to force me to pay them more than they're worth, I've got to make some other bunch take less. As a matter of fact, what they're worth is . . . what they can make me pay for what I have to have."

The strike has been fomented by anarcho-syndicalists. Hugh tries to sell them on the idea that the social work should be done by their "one big union." Forget taking over the company — its profit is only \$1.60 per worker per week — and take over the playfields and medical plan instead. They want to take over the whole company. In the end, they are muscled aside by the more down-to-earth craft unionists, who cut a deal with Gregory and go back to work. The impractical dreamers on both sides lose out. (And that happened in the early 1920s, as the left-anarchist Industrial Workers of the World — the Wobblies — were mus-

cled aside by company unions and the forerunners of today's AFL-CIO.)

Hugh gives up his vision of corporate paternalism and goes off to be a metallurgist. During World War I he invents a low-friction alloy that will revolutionize airplane engines. Gregory insists it's not viable. This time Hugh does not give up: he will develop the alloy on his own.

It is a difficult choice. Hugh is, implicitly, "a Protestant of an extreme type . . . standing before his God with no intermediary whatever." He has to think things through himself — and he does it correctly.

An American Family has the skeleton of a first-rate business novel, and has more ideas in it than any of Webster's business romances. But as the title suggests, it is more the story of a family.

Webster portrayed a different type of businessman in *Joseph Greer and His Daughter* (1922). Joe Greer has made a grubstake in the South American jungles, returned to Chicago and set himself up as an industrial engineer. He invents a labor-saving process for making flax into linen, and asks the bankers to back it. They do, but they view the blunt-talking, black-bearded Greer with "instinctive distrust, like that of the domestic animal for the wild beast."

To Greer, the financiers are "stall-fed," living placidly off interest payments. "Money's nothing but a way of getting things done," he declares. "What is it they're trying to get done? If I had Williamson's money, I'd do something with it . . . What does Williamson want to run? The city? . . . A railroad? A steamship line? An opera company? A harem? I don't care what. But it ought to be *something*."

Similarly, Greer can't fathom the attitude of his hired scientist, who sees only an intellectual problem. "They're queer birds, these pure scientists," Greer says. "They don't care what anything's for any more than the bankers care how it works. It isn't till a man like me comes along . . . and cracks their heads together that anything really happens in the world."

Here, plainly stated, is the credo of the entrepreneur. But after Webster creates this "tough-sinewed . . . barbaric, and genially predacious" character, he mires him in conversation and flirtation for 300 pages. Greer's attempt

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to manage his 19-year-old daughter is quite convincing — he fails — but only in the last 75 pages does his business regain center stage. His financiers sell him out, and he goes off to work on a new kind of road pavement.

Isabel Paterson, who would become a confidante of Rand in the 1940s, and

As Rand says, Bannon is an efficacious man. He might be a superintendent at one of Howard Roark's building sites. But he is not a Roark.

publish the libertarian classic *The God of the Machine* in 1943, was beginning her career as novelist and book critic in 1922. In her review of *Joseph Greer and His Daughter* for the *New York Tribune*, she wrote that the story sets up Greer as a "type" and then fails to make a convincing statement about that type. "Too often it slides off into being just a good story," she wrote.

And it is a long story — 489 pages. Webster "is said to dictate his novels," Paterson wrote, "and no doubt it sounds all right, but it doesn't read right. This novel can be read, but if it were half as long it could be read twice as easily." At 452 pages, the same could be said of *An American Family*.

In his final decade, Webster produced mostly light fiction. He died of cancer at age 57, in 1932, a few weeks after the election of Franklin Roosevelt. Merwin went to Chicago to be a paller.

The New York Times gave Webster a one-column obituary with photo, as it would Merwin in 1936. It said, "Mr. Webster's novels attracted attention about 15 years ago, when they were described . . . as precise and accurate interpretations of existence in Chicago at that time." By 1942, *Twentieth Century Authors* opined that *An American Family* was "perhaps the only one of these productions that has any chance of survival." No such luck. By 1983, *The Oxford Companion to American Literature* identified Webster as best known for the Merwin-Webster "romantic glorifications of captains of industry."

In all likelihood, this reference is lifted straight from Vernon Parrington,

who uses the term "captain of industry" in his denunciation of *The Short-Line War* and *Calumet* "K." It is a sloppy characterization: the Merwin-Webster heroes are not Rockefellers. Bannon is a construction superintendent.

However, the Merwin-Webster characters are heroes. Webster's own characters are less heroic. He saw his job as a storyteller, not the presentation of an ideal. The essence of a novel, he wrote, was neither psychoanalysis, sociology nor philosophy, but "purposeful motion." A story should have movement and suspense. His example of "one of the finest stories ever written" (not that he always lived up to it) is Robert Louis Stevenson's *Treasure Island*.

A "Draught of Absinthe"

In 1915, Merwin was asked by *The New York Times* to list the best novels in English. "A romance is not a novel," he replied. "A story in which the characters are secondary to the plot interest cannot possibly be a novel."

The portrayal of character, Merwin believed, should be based on experience. He said, "The only thing a man has to write about is himself." Strong writing required strong experiences. "Writers need reactions, shocks, a sort of spiritual absinthe. In order to produce books worth reading, they must be excited, alert, on the third gear."

Merwin had a more difficult start than Webster. "Even when we were playing together in Evanston, outwardly thinking the same things, our inner developments were tremendously different," he wrote Webster in 1915. Merwin recalled hiding behind a door and sobbing when a constable came to seize the family furniture. "I was always desperately fighting away from and covering up (instinctively, I suppose) a painful variety of genteel poverty . . . I could never write of prosperous, comfortable people with the solidity, the convincing sense of belonging, that you have conveyed in some of your recent work." He summed up: "You and I really have in us, I do believe, the germs of representing two real and vital aspects of American life. But very different aspects."

A shy boy with a taste for fine clothes, Merwin was drawn to writing. As a teenager, he covered lectures, businessmen's picnics and sports for

the *Evanston Index*. He created comic operas, and had one produced at 23. But he was on the verge of taking a job with a harvester company when *The Youth's Companion* paid him \$35 for a short story.

After he and Webster had made a success with *Calumet* "K," and traveled with their wives on extended trips to France, Merwin, too, hit a dry spell — and a longer one than Webster's. "Before I was 30," Merwin wrote, "all that fine fresh vigor of the earlier twenties was gone." He turned back to journalism, working for a New York magazine, *Success*. The magazine sent him to China for six months — his draught of absinthe, judging from how often he used the Orient as a setting for stories.

His aim was to expose the British government's trade in opium. A campaign had arisen in Britain to end that trade, and a year after his *Drugging a Nation* (1908) was published in the United States, Britain did end it. Merwin's book shows the British government licensing and financing the poppy growers of India, processing the crop and auctioning it to "a curious crowd of Parsees, Mohammedans,

He loses, too, his fiancée, the delicate and fluff-headed daughter of a "standpat" industrialist. But he gains a wife, a modern-thinking biologist named Margaret, and sets off with her to campaign for the Progressive state.

Hindoos and Asiatic Jews" for sale in China.

Merwin's expose was part of a broader movement that would end in opiate prohibition. In 1906 the Pure Food and Drug Act had driven laudanum (opium) out of most patent medicines in the United States by requiring disclosure on the label. In 1914 the Harrison Narcotic Act required physicians to maintain records of all opiate transactions.

Merwin, meanwhile, had become publisher of *Success*, where he joined in the muckrakers' attack on business. It

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was a time, he recalled, when "any sensitive capitalist had to dodge through back streets if he wished for momentary peace of mind."

Muckraking flourished "until exactly 1910," he wrote, whereupon *Success* began to fail. For ten months Merwin struggled without pay. He began feverishly writing *The Citadel*. It was too political for the magazines that had published his other fiction. He had to move his family to a \$30-a-month basement apartment. Then, one day, he collapsed in the Pennsylvania Station of nerves and overwork. In an account for *Collier's*, he wrote, "That day marks the end of Merwin the publisher."

The Citadel was also the beginning of his recognition as a mainstream novelist. Journalism had left its mark; Merwin had become a much closer observer of his fellow man. His writing had become more efficient and easier to read than Webster's, but remained more earnest and middlebrow.

In his novel *The Honey Bee* (1915) he tells the story of one of "the unsexed females that do the work." After a passion for a married entrepreneur, apparel buyer Hilda Wilson has immersed herself in work. Now 32 and alone in Paris, she discovers that "she could not forever go on suppressing those deep yearnings and stirrings that make life the tangle it is."

Hilda's situation is the opposite of the frustrated wife Webster portrays in *The Real Adventure*. "Two men might have been writing the same story," said Merwin, "one pro, and the other, con." Merwin's story sounds anti-feminist, but is not. He is not against women going out in the world of men; he is against the unreasonable judgments society imposes on them.

In her introduction to *Calumet "K,"* Rand complained of the "timidly, evasively mid-Victorian" romance between Bannon and his stenographer. Hilda Wilson is a much more red-blooded character. But even when *The Honey Bee's* heroine is reunited with her old lover, who will be free to marry her in a year, they don't have sex. It's still 1915.

Later in the decade, Merwin wrote three novels about a character named Henry Calverly. *Twentieth Century Authors* picked the first two books, *Temperamental Henry* (1917) and *Henry is Twenty* (1918), as Merwin's best, saying

they "had sound adolescent psychology, and evoked the period of the Illinois town of the 'nineties with skill and charm."

In *Henry is Twenty*, Henry is living in a boardinghouse, his parents both dead. Moody, and occasionally moonstruck, he seethes with the passions of a writer-to-be. If he were a weaker lad he would have "long since given up, gone into Smith Brothers' wholesale, taken his spiritual beating and fallen into step with his generation." Instead, he is stuck as a reporter for the weekly paper, paid by the column-inch while the owner, who "lived on the labor of others," flatters the town merchants.

In a burst of creation, Henry writes a brutally honest story of the characters at the annual businessmen's picnic. His employer suppresses it, but Henry sells it to a rival. It is a sensation. He pours out 20 literary sketches of the town grandees. The second paper fails, and Henry's manuscripts are about to be seized by creditors as assets. "But they're mine!" he wails. In desperation, he arranges a buyout of the little paper, and gets his stories into print under his own control. He has no head for busi-

In "The Banker and the Bear," the banker stops a run of depositors by keeping his bank open into the night and paying only in gold coin. Robbers being a more imminent danger than insolvency, the depositors go home.

ness — Merwin didn't either — but his writing is noted by a publisher, and his career takes off.

It eventually blows up. In *The Passionate Pilgrim* (1919), set in 1903, Henry is starting over as a newspaper reporter in a midwestern city. Sent to interview the mayor, an obsequious whore of "the interests," Henry once again writes a brutally honest piece, which gets him fired.

He ends the story as the biographer of industrialist Jim Cantey, the original "interest" himself. Cantey is one of the few honest men in the book. *The New York Times* reviewer called him "by all

odds its most interesting character." Unfortunately, he's dead, and speaks through a posthumous testament.

In this testament Canteley reflects on the era of *laissez-faire*: "Business, as I've found it, is lawless and cruel . . . It's no way to build a nation — to do that, you've got to breed for sound citizenship, organize for it — but it's a cruel, beautiful game, all the same. Like war. And I guess this country can stand it for another fifty years or so. Until the land is settled thicker, and the limits of our natural resources come in sight.

In matters of religion, neither Merwin nor Webster were as radical as Rand. If she was for an idea, she was for it all the way. Being for reason meant being an atheist.

Then, I suppose it'll become some kind of socialist state, but for the present, while the going's good, no power on earth can stop it . . . Congress? That's only a place. And a place can't stop anything, or start anything. It's where the hired men of the great business forces meet and fight to neutralize one another . . . That's all I can see — forces, with strong men riding them, perhaps managing to steer them a little, more often dragged along by them."

To blame "forces" rather than individuals is something no Webster protagonist would do. But Merwin had to reconcile his admiration for strong individuals with a belief in "some kind of socialist state" in which "forces" could be controlled.

Merwin's later fiction was less serious. His last book, however, *Rise and Fight Again* (1935), was something different — the business story of his childhood friend Louis Liggett, who founded the United Drug Co. and organized the Rexall drugstores.

Rexall was not a chain, but an alliance of independents that aimed to forestall a chain. Liggett, he writes, had "conceived a New Deal for the small merchant." Merwin, the defender of the little guy, says America "would be a sounder, saner country" with more

such cooperative ventures.

Though he calls United Drug "never for a moment a private enterprise in the old sense," it is private. It is a stock company, organized by one man, a salesman "giving value for value."

The Rexall story, Merwin admits, shows "much of the drive to success and power that has made us as a people, for better or worse, what we are today." (Note the "for better or worse.") He goes on, "It may be that the extraordinary 'rugged individualism' of the past fifty years is over now. Sometimes it almost seems so. Maybe we are to be less concerned with building up great private enterprises and more with considering the cultural welfare of the nation as a whole. I don't know."

Merwin never did square his admiration of individuals with his support of the Progressive state. He died a year later, at 62, after suffering a stroke while eating dinner at his club overlooking Gramercy Park.

"Two True Religions"

In matters of religion, neither Merwin nor Webster took the same position as Rand. She was a radical. If she was for an idea, she was for it all the way. To her, being for reason meant being an atheist.

In daily living, that meant she was for "this world" and not some other. So are many people who are not atheists. The distinction is between having a mystical view of ultimate questions and a mystical rule of one's daily life. On this divide, Merwin and Webster are clearly "of this world."

T.K. Webster had been a devout Baptist. He converted to his wife's Presbyterianism because the Baptists would not admit her to communion without a dunking. Young Webster thus became a Presbyterian, too. "My personal relief at this move was enormous, as it removed for me the horror of contemplating my immersion," he writes. Of his father, he writes, "From that time forward, his religion was in the daylight zone where he thought things out for himself." Webster was likely the same sort of "extreme Protestant" as his character Hugh Corbett, who also thought things out for himself.

Merwin wrote of his religion, "I seem to have my own." As to what it

consisted of, he wrote, "I'll only say that I seem to find a thrill in being a two-legged speck in a universe where the stars move around right on time, and the maple tassels appear methodically every spring."

Years earlier, Merwin and Webster had spoken to the issue of fundamentalism in their last and most ambitious collaboration, *Comrade John* (1907). The novel is the story of a capitalist builder and a cult prophet. The prophet, when he meets his downfall, says:

There are only two true religions and they're both old. One of them has got a cross on it, and it tells you that the way to save your life is to give it away, to deny it. It isn't my religion, and I don't know much about it. It never was to my taste. But it's a true religion for such as care for its terms. And the other religion, my religion, tells you to get what pleasure you can out of what comes to you, and be content to die and rot when your time comes.

The hero has nothing to say of this bold doctrine. To him, the prophet is little more than a peddler of patent medicines.

The hero is John Chance, a builder of modern and fantastic amusement parks. After finishing one such park in Pittsburgh, Chance vacations in Paris.

Merwin and Webster deserve credit as forerunners of Rand. She made fireworks of the business romance; they were its principal inventors.

There, during a boisterous street carnival, he spots a stunning young American woman being borne along by the crowd. She is about to be chosen queen of the carnival. He knows (but she doesn't) that means she will be debauched. He rescues her, but afterward she is not so sure she wants to be rescued. Paris is so much more thrilling than Ohio.

"I feel as if I must have gone through the looking glass," says the woman, Cynthia. "Someone was telling me about a place called that at the Pittsburgh fair last summer, and I thought it would have been fun to see

it. But this is nicer; this is the real thing . . . I don't a bit want to go back to the other — the country where you always know just what to expect and have to take things called consequences."

Chance replies, "If this were a looking-glass country I'd be inclined to let you stay in it, but it's not. Even that side-show fakir at Pittsburgh was nearer it. A man could go there and ride in the scenic railway or shoot the chutes and get a thrill of danger and abandonment without the consequences. Somebody that he didn't know about was responsible for his safety; that was somebody's job . . . But here — people come here, people without jobs, who think this is a looking-glass country. It looks like it, but you get what's coming to you here just as surely as in a steel mill."

They part ways, and Chance returns to America. He has been offered a job to build a cathedral at Beechcroft, a utopian community founded by Herman Stein. Stein, a character based on a turn-of-the-century messiah named Elbert Hubbard, preaches that commercial labor is wicked, and hand labor, divine. Chance is offered double the usual pay for the project, but only if he agrees that he and his crew, who are "frankly commercial" builders, will dress up in tunics and pretend to be Stein's devotees.

Intrigued by the challenge of a cathedral rather than an amusement park, Chance accepts. He builds a splendid cathedral. He is about to tackle the accompanying buildings when who should appear but Cynthia. Once again he has a chance to lecture her about reality and one's dreams. It's not enough to have a dream, he says. "It's making the dream come true that counts . . . It means turning your dreams into mathematics and your mathematics into hard, rough refractory materials."

In her introduction to *Calumet "K,"* Rand says Charlie Bannon's "dominant characteristic is a total commitment to the absolutism of reality." In *Calumet "K,"* that was an implied message; in *Comrade John*, it is explicit.

Paving the Way for Rand

It took Webster's realism and Merwin's idealism to make *Calumet "K."* And so it did for *Comrade John*.

Publicly they were equal collaborators, but the book was written mostly by Webster, and privately they agreed that he would receive most of the royalties.

The book was their first made into a movie, though it's unlikely that a copy survives. Produced in 1915, *Comrade John* presented Stein played by debonair Lew Cody, Chance by William Elliott and Cynthia by "Baby Ruth" Roland. All went on to careers in the silent films. *Variety's* one-paragraph review made no mention of a serious theme, however, summing it up as a "fairly good popular-priced picture."

Even as a book, the story only partly succeeds. Despite Chance's lectures about reality, the story is not as tethered to the earth as *Calumet "K."* Its focus sometimes blurs. But it has a more daring premise than *Calumet "K,"* and more sparkling lines. The ending of *Comrade John*, in which the builder brings down his own creation to keep it from being used against the woman he loves, calls to mind the ending to *The Fountainhead*.

Fans of Rand might wish that Merwin and Webster would have perfected *Comrade John*, and followed the literary road it marked out. Had Webster focused on his protagonists' values rather than scattering ideas like daubs of colored paint, and had Merwin not succumbed to Progressivism, the two authors could have taken the business romance much further than they did.

There is no account of Ayn Rand ever reading *Comrade John*. She may have; *Calumet "K,"* after all, was her favorite book, and one would think she would find other works by its authors. Isabel Paterson could have told her about *Joseph Greer*.

It's notable, too, that The Gregg Press of Ridgewood, N.J. — just a few miles from Rand's office in Manhattan — reprinted Merwin-Webster's *The Short-Line War* in 1967, the same year she resurrected *Calumet "K."* It reprinted Webster's *The Banker and the Bear* a year later. Each was part of a series on neglected American novels. Rand seems to have never mentioned either of these reprints, if she even knew about them.

In any case, Merwin and Webster deserve credit as forerunners of Rand. She made fireworks of the business

romance; they were its principal inventors. □

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Legacy & Betrayal

R. W. Bradford

In 1923, George Eastman, founder of Eastman Kodak, explained why he had given away so much of the huge fortune he had amassed. "If a man has wealth, he has to make a choice, because there is the money heaping up," he said. "He can keep it together in a bunch, and then leave it for others to administer after he is dead. Or he can get it into action and have fun, while he is still alive. I prefer getting it into action and adapting it to human needs, and making the plan work."

Which is pretty much what George Eastman did. Having no wife or children, and doubtful about the wisdom of endowing one's family with great wealth (people who do that create "wastrels, race-track touts and whore-mongers of their sons and gilded parasites of their daughters"), Eastman gave his money away. By the time he died, he'd given millions to universities (mostly to M.I.T., the University of Rochester, the Hampton Institute and Tuskegee Institute) and millions more to a host of causes in his hometown, Rochester. Many of his donations were made anonymously.

Of course, things were different when robber barons like George Eastman walked the earth. For most of his life, Americans were free to earn as much as they could, spend it as they wanted, and not even tell the government or anyone else what they did with it. They could give it away, as Eastman chose to; spend it on lavish living, as Diamond Jim Brady chose to, or leave it

to their children, as Hetty Green ("the Witch of Wall Street") chose to.

Today, things are not so simple. There's another reason for people to give away their money. The U.S. government snatches a portion of the estate of any American citizen or resident who dies owning property worth \$650,000 or more. And the more he's worth, the more they snatch. Most U.S. states also grab a share, sometimes even of smaller estates.

Shortly after the estate tax was instituted in a major way in the U.S., owners of large enterprises found a method of passing control of their companies to their children, even if they couldn't transfer much wealth to them. They'd set up a charitable foundation and leave the bulk of the stock in the family-controlled corporation to it. The foundation would be controlled by family members and friends, leaving the heirs with effective control of both the corporation and the foundation. In addition to retaining control of the family company, the heirs and friends could see to it that the income produced by the foundation went to the kinds of causes the original donors wanted.

Or so it worked in theory.

But, as Martin Morse Wooster points out in *The Great Philanthropists & the Problem of "Donor Intent,"* from the creation of the first large charitable foundations early in this century, something very strange occurred: professional bureaucrats gradually took over the foundations and perverted their purposes. Thus the Rockefeller Foundation, set up by the billionaire Baptist

businessman, soon became a major source of funds for "progressive" (i.e., anti-business, anti-religious) causes.

This happened even in many cases where the person who created and funded the foundation went to great lengths to see that it focused on promoting free enterprise. Consider the case of J. Howard Pew of Sun Oil. During his lifetime, he was a tireless champion of free markets and individualism. In 1957, he created the J. Howard Pew Freedom Trust, with instructions that it use its funds to "acquaint the American people" with "the evils of bureaucracy," "the values of the free market," and "the paralyzing effects of government controls on lives and activities of people," to "inform our people of the struggle, persecution, hardship, sacrifice and death by which freedom of the individual was won" and to educate them about how "Socialism, Welfare statism [and] Fascism . . . are but devices by which government seizes the ownership or control of the tools of production." In accordance with those wishes, the Freedom Trust funded mostly libertarian and conser-

If you've ever wondered how conservative or libertarian foundations end up financing socialism, this is the place to find out.

vative activities, as long as its board consisted of Pew family members and friends.

But as the family members and friends died off, they were replaced by others who gradually reoriented its spending, first toward mainstream activities, then gradually toward the very activities that the trust had been set up to oppose. In 1994 it gave \$6 million to left-liberal causes and just \$150,000 to conservative or libertarian efforts.

The experience of the MacArthur Foundation was similar. John D. MacArthur amassed a fortune in the insurance and real estate businesses between the 1930s and his death in 1978. Not surprisingly, he spent much of his time fighting the government,

and held a special animosity for environmentalists. When he died, he created the John D. and Catherine T. MacArthur Foundation, to be run by a five-man board, consisting of his old friend, conservative news commentator Paul Harvey, two business associates, his attorney and his son. Within a decade, it was firmly controlled by forces that would have scandalized

The simple fact is, if the property you own when you die is worth \$650,000 or more, you either leave a substantial portion of it to charity or to the government.

old John, and it was spending heavily to support socialists and environmentalists.

Wooster chronicles the story of how the Rockefeller, MacArthur, and Pew family fortunes (among others) were squandered on agendas repugnant to

their founders. If you've ever wondered how conservative or libertarian foundations end up financing socialism, this is the place to find out. Wooster also tells the story of a few fortunes that were spent according to the wishes of their owners. The secret, he argues, is limiting the life of the foundation to a relatively short time period — the expected lifespan of the board set up to administer it — and requiring that it divest all its assets during that period.

Wooster (or his publisher) seems to have a genius for concocting dreary titles: the sequel to *The Great Philanthropists & the Problem of "Donor Intent"* is titled *Should Foundations Live Forever? A Question of Perpetuity*. But don't be put off by its title, or by a subject matter one would expect to find desperately dry. *The Great Philanthropists* is a surprisingly good read. I literally couldn't put it down until I had read every word.

Part of the reason for this is Wooster's clear and very readable style. But part of it is the inherently fascinating stories he relates — fraught, as they are, with important insights about the attempts of individuals to work their

will in an increasingly collectivized society. Where else, for example, could I have learned that in 19th century England, among those charities bound by the wishes of their founders was one established by a man named Greene to provide green clothing for the poor, one by a man named Grey to provide gray clothing to the poor, and one by a man named Rose to insure that his hometown always had plenty of rose bushes?

The inheritance tax produces relatively little revenue for the government, but thanks to inflation, today it even forces the sale of family farms and small businesses when a patriarch dies. The simple fact is, if the property you own when you die is worth \$650,000 or more, you either leave a substantial portion of it to charity or lose a big chunk to the government.

This presents a special problem for those who believe that giving money to the government is like giving booze to a dipsomaniac. If you don't want your money going to impose American will by force of arms on people in Latin America, the Middle East, or wherever else the U.S. feels it has a right to rule (i.e., anywhere on the planet), or to help finance the arrest and imprisonment of a peaceful citizen who happens to possess *cannabis sativa*, or to pay a huge sum to a government-certified artist to produce works of art that range from the repulsive to the merely banal, then you had better give away most of your money during your lifetime or leave it to a charitable enterprise when you die.

But if you leave the bulk of your estate to charity to keep it from falling into the hands of government, the chances are very good that a substantial portion of it will support causes that you oppose, as the experiences of Rockefeller, Pew, MacArthur and many others demonstrates. What can you do about this?

Well, if you're a middle class American whose estate barely reaches the threshold of inheritance taxes, you can leave a reasonable sum to your family and donate the remainder to causes that you believe will spend it wisely. This presents problems, as anyone who has reviewed the financial records of tax-exempt foundations can attest. (It's amazing how many execu-

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tives of tax-exempt foundations enjoy huge salaries and fringe benefits and how little money sometimes goes to pursue the foundations' ostensible purposes.) But a prudent person can investigate and avoid the foundations that waste money.

Indeed, this is something that I believe libertarians who are in danger of dying with a net worth of more than \$650,000 ought to do — and since death comes to every human being, this means every libertarian worth \$650,000 or more ought to make the necessary arrangements to see that as much as possible of his estate passes to his fam-

ily or friends and the remainder to worthwhile causes that will use the money prudently.

But what if your estate exceeds an amount that can reasonably be given to a few operating foundations? If you set up a foundation to disburse it gradually to worthy causes, I suggest you follow Wooster's suggestion: require that the foundation disburse all its assets in a period in which its board members can sensibly be expected to live and remain active on the board. Or better still, do what George Eastman did: "get it into action and have fun, while [you are] still alive." □

The Pleasures of the Imagination: English Culture and the Eighteenth Century, by John Brewer (Farrar, Straus & Giroux, 1997, 721 pages)

Capitalism and the Rise of Art

Alan W. Bock

By any standard, England in the eighteenth century witnessed an explosion of cultural manifestations. Com-posers like Handel, Haydn, a couple of younger Bachs and the child Mozart were busy wowing London. Theatrical expression expanded and provided a stage for great actors like David Garrick. Literary life was dominated by Samuel Johnson but was notably varied and innovative, enriched by Addison, Steele, and many others. Philosophy and political thinking informed by culture was embodied in Edmund Burke, David Hume and Adam Smith, while painting and the decorative arts were enriched by such as Joshua Reynolds. Not all of these luminaries were contemporaries, of course, but the fact that they flourished during the same century and in the same country suggests something

of a cultural outpouring.

Indeed, a case can be made, as John Brewer does in his book, *The Pleasures of the Imagination: English Culture and the Eighteenth Century*, that "Our modern idea of 'high culture' is an eighteenth-century invention."

Certainly, when PBS wants to display itself as highly cultured (as opposed to pledge-break time, when it is relentlessly middle-brow in response to its real market niche) it is as likely to resurrect something from this period of English-language cultural flowering as anything. It didn't happen only in England, of course, but all over Europe as well. Yet England offers a fascinating case study.

The question is, how did all this happen? How did high culture as a mark of refinement and taste accessible to most intelligent and educated people rather than only to the nobility and their courtiers, come to be developed to such a degree? It's not that this was the

first time in history when people other than courtiers or the nobility had aspirations to refinement and culture. As Brewer points out, "the earliest picture dealers appear in Italy in the late fourteenth century; by the fifteenth century the Pand, an art fair with some seventy to ninety stalls, was being held twice a year in the cathedral cloisters at Antwerp. The roots of eighteenth-century culture stretched back to the Renaissance and to the advent of printing and the first production of engravings on metal." But the spread of serious attention to high culture during the eighteenth century was remarkable, partly because of the growth of large urban centers, partially because of the emergence of a caste of critics competing to define and develop "good taste."

But the most important reason Brewer adduces may be surprising in an age when it is fashionable to view art as something preferably divorced and aloof from commercial enterprise. He sees the explosion in cultural expression as intimately tied to the emergence of a strong commercial society increasingly independent of the royal or aristocratic class that had been the main patron of artists in previous eras.

The modern view among what might be called dilettante culture vultures, familiar at least since the Romantic era in the nineteenth century, is that high art and culture constitute some sort of sacred calling that can only be polluted and vulgarized by anything resembling commercial activity. Certainly not all romantics thought this, but the era saw the rise of "cultural pessimists," with John Ruskin perhaps the most influential, who equated commercialism with artistic pollution. Cultural pessimists of one ideology or another have flourished for a long time; a horde of skillful and eloquent writers have articulated arguments that sound superficially plausible and always seem to exert influence.

Thus de Tocqueville, who got so much right, predicted that America would never develop a flourishing high culture because with its democratic ethos it lacked the aristocratic tradition necessary to such endeavors — not quite the same as saying that commerce degrades art, but in a similar vein. Ruskin, Matthew Arnold and other Victorian critics made nervous by the

Industrial Revolution spun variations on the theme that the marketplace creates a degraded form of art and culture because it must needs appeal to a mass market in which only the mediocre can find a place. The Frankfurt School and other Marxist critics have made similar arguments, sometimes adding that turning works of art into mere commodities necessarily alienates the artist from his work and degrades the product and the process.

You can see similar attitudes in almost every form of artistic endeavor, from painting to poetry to rock 'n' roll. As soon as an artist achieves a certain level of popular and commercial success, he or she is immediately viewed as having "sold out" and henceforth will probably be incapable of anything remotely respectable from an artistic standpoint. This is sometimes true, of course. But it's hardly a universal pattern. Frank Sinatra, (OK, he ain't high culture) continued to grow artistically until his voice started to fade. Picasso kept innovating long after he achieved commercial success. Dickens got better with age, as did Beethoven.

I'm still not completely sure whether

Brewer set out deliberately to delineate a contrarian thesis or simply let events speak for themselves. But what emerges from his account is that what we moderns think of as high culture emerged precisely because England was becoming a more commercial society and less a society dominated by the monarchy and the royal court. He notes that in 1660, "there were few professional authors, musicians or painters, no public concert series, galleries, newspaper critics and reviews; by the dawn of the nineteenth century these were all part of the cultural life of Britain." Britain moved from being viewed as a cultural backwater on the continent to being viewed as a cultural leader. And "it was the political as well as the economic condition of England — its weak monarchy, free constitution and rule of law — which helped to create literature and the performing arts that aimed for a public and were organized commercially rather than being confined to a few."

In a word, less government, more commerce, more culture.

It's not quite that simple, of course, and Mr. Brewer dwells lovingly on complexities and apparent paradoxes. But here is the broad outline. Because of monarchical troubles in the 1600s and the ascension to the throne of Hanoverians with little interest in art and culture, art moved from the court into the marketplace, to coffeehouses and private clubs, and to highly commercial "pleasure gardens" like Vauxhall. The major reason culture migrated instead of dying when royal patronage was cut back was economic development — the emergence of wealth held by a commercial class with (as has so often been the case) a desire to "validate" its wealth by means of culture.

There were cultural entrepreneurs as well. The first performance of Handel's 1749 "Royal Fireworks Music," commissioned by King George III, was staged by an entrepreneur, Jonathan Tyers, proprietor of the Vauxhall pleasure garden. By the middle of the century private entrepreneurs were more skilled at staging public spectacles than the crown, and had more available resources. The crown went to Tyers to use his resources; his price was the right to stage the first performance, which went better than the first royal-sponsored performance.

The old guild-oriented rules that gave the king a virtual monopoly on

printing — e.g., the Licensing Act of 1662, reinforced by a charter to the Stationers Company in 1684 that enshrined prior government censorship and limited the printing trade to 20 master printers — expired or were over-

The rise of capitalism was accompanied by an increasing sense that artists could achieve and might even be entitled to artistic independence.

turned. This didn't create an entirely free market, but political censorship ended and the number of printers was allowed to grow to meet an ever-growing demand. Literature blossomed along with printed expressions of political dissent. By the 1720s there were 75 master printers and by 1860 more than 120. Samuel Richardson, who plied the printing trade before publishing several successful novels (by which time he knew the business inside and out) had nine presses and employed 40 journeymen and numerous apprentices by the 1750s, and he was just one master printer. By 1785 the publishing industry was so diverse that the bookseller John Pender brought out the first guide to the industry, listing 650 businesses engaged in 32 different occupations.

Newly wealthy people took pains to become connoisseurs, opening new channels for artists and writers. Music halls and theaters flourished, and Shakespeare was revived in highly commercial and sometimes downright vulgar ways.

Meantime the profession of critic, whose mission would be to distinguish between the truly refined and tasteful and the merely vulgar, was virtually invented. Middle-class and even working-class people had access to affordable prints and engravings, and shed tears over sentimental novels that by modern standards were complex and full of large and obscure words. People well beyond the old aristocracy were constantly urged by the newly emerging professional critics to upgrade their tastes, to read history and serious literature as well as pulp fiction, to aim at the higher pleasure of the imagination as well as the merely sensual. Different

"I told all the vested interest groups to go to Hell!"

Roger Parmenter, Labor Minister, New Zealand

The New Zealand Miracle

This remarkably inspiring video, originally aired on Canada's CTV "W5" television documentary program, explains the New Zealand "miracle," and how this tiny country transformed from socialist basketcase to free-market powerhouse, dismantling much of its welfare state. 48 minutes, VHS cassette (MLC)

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schools of criticism arose and contended with one another.

It should hardly be a revelation to a society that esteems and rewards the Three Tenors that art and commerce can co-exist. But those who argue that high culture would disappear without government patronage will find little comfort here. It is more likely that high culture was a product of commercial growth and came forth only when the government patronage of the time faded.

The more you know, of course, the less surprising such a thesis becomes. The Italian Renaissance bloomed in the commercial republics of Venice and Florence, where artists had a larger variety of patrons interested in their output. (Artistic independence became a possibility when artists were no longer dependent on a single patron as, for example, the painter Velasquez depended on the Spanish court.) Haydn, Mozart, Beethoven and others sought whatever financial support they could get, and some of it came from the nobility or royal courts. But they all sought to diversify their sources of income — to act as entrepreneurs — believing that it was essential to their own artistic independence and integrity.

Indeed, a case can be made that romantic-era artists and writers had the luxury to brood over artistic independence and the possibly corrupting aspects of the marketplace because they were the first generation of artists to whom actual independence was a real possibility — precisely because of the rise of capitalism, especially the industrial revolution so many sensitive artists deplored. One wouldn't want to make the thesis too broad, of course; some romantic-era artists inherited money and some starved. People made a living from art as a relatively commercial enterprise with other-than-royal customers long before the eighteenth century. But to a greater extent than is often acknowledged, the rise of capitalism was accompanied by an increasing sense that artists could achieve and might even be entitled to artistic independence.

Whether the implicit thesis I have simplified here interests you or not, *Pleasures of the Imagination* is a delightful and erudite book, full of surprising stories of major and minor figures who, together with a growing appreciative audience, created much of what we now view as high and rarefied culture.

Brewer explains, for example, how Jonathan Richardson, a portrait painter of modest abilities, was more successful at developing an influential critical system for the visual arts than was William Hogarth, a much better painter but a more cantankerous individual. He tells how Theresa Cornelys, a singer and mother of an illegitimate child by Casanova, organized London's first successful professional concert series in the 1760s, learning from the mistakes of several earlier attempts and benefiting from her status as someone on the margins of aristocracy. He dwells lovingly on the career of poet, publisher and engraver Thomas Bewick who rose (in the previously unlikely cultural center of Newcastle) from printer's apprentice to become a publisher and author praised by Wordsworth, Ruskin and Carlyle.

Brewer knows how to create a context, to sift happenstance and luck from developments that were carefully and craftily planned, and to give the reader the sense that culture, politics, religion, commerce, and technological development are interconnected, often in surprising and unpredictable ways. This is a great, fat book of surpassing sophistication, but it doesn't take a specialist to enjoy it. □

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Schulman, continued from page 44

pair of pants and comb your hair, there's still plenty of time to meet Jamal and Audie over at the Cactus."

"Did you know I wanted to be a composer?" he said after a few moments. "Not just songs or movie scores. I wanted to write symphonies, choral works, piano concertos."

"You should talk to Sam Katz over at the high school," I said. "He could turn whatever score you give him into parts using their MIDI software, have the school orchestra work it up."

Tony acted as if I hadn't said anything.

"You want to hear a joke I made up?" he asked.

"Sure," I said.

"What's the difference between a zoo and a freehold?" he said.

I thought carefully about several flippant answers, then decided not to risk them. "I don't know, Tony," I said. "What's the difference?"

"Exactly," Tony said, and before my lunge could propel me all the way to his right arm, he had already swallowed the barrel of the pistol and blown his medulla oblongata and an impressive portion of his cerebellum onto the wallpaper.



If you're curious about the email that young Rick said his dad had received earlier, that might have set him off, you can stop wondering.

After Deborah Butler got Rick and his mother, Claudia, back over to Audie and Ethel St. Cloud's place to stay the night, and Fred Wu and I had done what we needed to do with Tony's body and the medical examiner's report, I logged onto our electronic village using Tony's account and his password, which Rick had given me.

Tony had received no personal messages for two days. There was nothing attached to his email queue except the usual public notices, not even in his deleted message queue. Later, as part of the medical examiner's inquiry, I asked Aaron Goldstein to norton the email cache memory of Tony's phone just to see if Tony had trashed anything. But there were no trashed personal messages in the box.

So I can state with some authority that all Tony had been reading before he ate his gun was the weekly edition of the *Interfederal Register*, the same that we all get.

But there was plenty of probable cause for Tony's suicide to be found in that publication.

To begin with, we were being consolidated again. The Tucson Freehold was being stripped of 35,000 acres of its territory, because a type of short-tailed rodent listed as extinct had been found there by an 8-year-old girl. She'd just thought it was some sort of field mouse and had naively taken her new pet to school for show-and-tell on a day when some eager-beaver intern from the Department of Freehold Affairs was observing. The land had been declared an endangered-species habitat, and 1,871 Tucsonites were being relocated to our freehold by the end of the year. The Tucsonites were not going to be particularly welcome neighbors. A lot of people around here who lost family members in '08 still haven't forgiven their council for signing the Declaration of Interdependence.

To "pay" us for the costs of consolidation, we were being thrown a bone by the IAA. The Arts Administration had

authorized a \$450,000 location fee to be paid to our treasury by "Dynamic Entry Entertainment," for a remake of *Last of the Extremists*, starring Rolf Glock and Donnelly O'Brien. An additional hundred bucks a day was available to any locals chosen by the company for extra work. I knew that left non-whites like Jamal and me out. These productions never wanted anyone with other than a Nordic complexion to play the freemen.

Tony Bonaduce had always been a favorite of the production companies for extra work, whenever they shot on the freehold. He'd even been given small speaking parts on occasion. He was pale and blue-eyed, with a round face and a strong chin, and after they'd shaved his head for a part, he always looked the perfect freeman skinhead, rather than the fringe-topped, beer-bellied poultry inspector that he was the rest of the time.

Because Tony's death was a suicide, Claudia Bonaduce had been unable to get a Roman Catholic priest to perform a funeral mass or allow Tony to be buried at San Miguel's. So, appropriately, Tony's funeral was held the following Monday at the same American Legion Hall where most of his close friends had been meeting the night he died, with Pastor Audlin performing the service. Rick Bonaduce had cut some yucca flowers from his father's garden and placed them on Tony's flag-draped closed casket; they were the only flowers he'd planted that were in full bloom this October.

Then Tony was buried with a full U.S. Army honor guard at Veterans Memorial Park. Tony was laid to rest with a rifle salute, taps played off-key, and the American flag from his coffin carefully folded and presented to his widow, as befitted a Silver Star veteran of Operation High Five, a medal he'd won by walking for three days up 11,000 feet in front of a school bus on a heavily mined mountain road, leading thirty-eight children and their teacher to safety.

After the burial, there was a wake of sorts at the Thirsty Cactus, with the bar closed off to the public for the afternoon. Ethel St. Cloud was up front at a table with Claudia and Rick. Fred Wu and several of his deputies were in the back room playing pool with Bessie, she of the magnificent fried chicken, and the owner. Audie, Jamal, and me sat around a table near the casino entrance, about halfway back, and proceeded to try figuring out why Tony did it, what we could do to help Claudia and Rick out, and to try getting stinking drunk.

We didn't get very far in either analysis, but we were about halfway to drunk when three Brown Berets walked in.

The Brown Berets stood for a moment, looking around, and seemed to focus their gaze on Claudia Bonaduce. I don't blame them. Claudia has that classic model look and she's kept her figure. Now that she was wearing black, her wavy blond hair was set off even more. Then the Peacekeepers took a table near the door and all three sat down with their backs to the wall. One of them tried waving over the bartender.

I noticed Rick looking toward the Peacekeepers apprehensively. He looked as if he was about to go over to them and say something. I caught Rick's eye and shook my head. Instead, I went over. "Gentlemen," I said, "the sign on the door says that this is a private party tonight."

The middle of the three Brown Berets, a beefy Russian or maybe Ukrainian, gave me a look as if I was dogshit. The other two, one who looked like he'd be at home in Ku Klux Klan robes, one Mediterranean-looking I think, just stared. These were no fresh recruits out of camp for the first time, looking for casino action or a fling with one of Bessie's back-

Notes on Contributors

room girls. Their ranks were equivalent to what in the old system would have been master sergeants.

I don't have it in for most cops. The average street cop's job involves meeting the worst kind of people, and even the best kind of people when they're at their worst. A city cop's job isn't all that different from being the bouncer at a dockside bar. Even our posse has to have training that makes them able to control a situation, no matter what happens.

But the Peacekeepers are missionaries with guns. It's not that they're inclined to be bullies. They're trained to be bullies. It's part of the job description. They're always right, you're always wrong; they can be trusted with the keys to the city and you're trouble waiting to happen.

"Move aside," the Russian said to me. "You're blocking my view."

I didn't move. Somehow, my head was perfectly clear. Perhaps if I'd been more sober I would have been more afraid, though. "My name is Jesse Jackson Lester," I said. "Doctor Jesse Lester. I serve on the posse, I'm the freehold's medical examiner, and I'm a captain in our militia. If you're here on official business," I told him, "I'll step aside, or even assist you, if you need it. Otherwise, as I said, this is private. We just buried a friend today. That's his widow and son over there." I gestured toward Claudia and Rick's table.

"The cockroach who killed himself," said the Mediterranean-looking one, speaking not to me but to his companions. "A failure even among these pathetic losers. He did not deserve to fuck a woman like that."

All three of them laughed. The Russian leered at Claudia Bonaduce and winked. The expression on her face was enough to break your heart.

There are moments when the provocation is clear and intentional, and designed to create an opportunity for conquest. I noticed that my friends from the back room, including the Sheriff and his deputies, were now only a few yards behind me waiting to see what I would do. I knew the Peacemakers had almost certainly used their C.D.F. sweepers to deactivate any ammunition within the bar before they walked in, so there was no chance of shooting it out with them, if it came to that. They were twenty years younger than I was so there wasn't even much I could do to start a brawl with them.

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Sandy Shaw is a research scientist, best-selling author and rabble-rouser.

Fred L. Smith, Jr. is president of the Competitive Enterprise Institute.

So I said, "Gentlemen, I believe you wanted something to drink."

I walked calmly behind the bar, grabbed a bottle of 120 proof rum from the shelf, and started pouring it onto the bar countertop. The Peacekeepers stared at me in disbelief. I struck a match and dropped it onto the rum, setting the bartop ablaze.

"I don't like you," I told the Peacekeepers, as the fire spread. "You are indecent. You have no regard for our legends or our history or our culture. You don't have a clue what makes us tick. Your movies and books lie about our history and libel our forefathers. You steal our families' lands. You think trees and rats have more rights than we have. You are the most sanctimonious, self-righteous creatures ever to walk the earth. There is no living with you, and I will burn this entire goddamned country down before you will ever get anything to drink here."

I heard a hail of cheers and applause from behind me. I glanced over and saw that even Bessie, whose bar I had just torched, was cheering.



It could have turned out differently, I know. The Peacekeepers could have grabbed their weapons and started firing. We might have all been massacred. Instead, they got up and left quickly, watching their backs as they withdrew.

We all chipped in to buy Bessie a new countertop for her bar, which was the only thing singed before I grabbed the

fire extinguisher from the wall.

I didn't want to be sheriff, but I wasn't given any choice in the matter. All three of the declared candidates withdrew and Fred Wu organized a last minute write-in campaign for me.

I've been spending a lot of my spare time with Rick Bonaduce, but have to admit that at least part of my motivation isn't altruism but the dinners I've been invited to by his mother.

I think my boyhood friend, Audie St. Cloud, summed up my unexpected savagery better than anyone else, when he swore me in as sheriff. "Jesse Lester and I used to play Cowboys and Indians as kids," Audie told the crowd. "Both of us always wanted to be the cowboy, like every American kid does. What Doc figured out," said Audie, "is that it's just our turn to be the Indians." □

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China

Fascinating concept of privatization, as reported by the *People's Daily*:

The military is completing the transfer of its sprawling commercial empire to local and regional governments, ending 20 years as a leading force in the economy.

Great Britain

Advancements in public welfare under the progressive New Labour government, as reported by Reuters:

The state-supported Family Planning Association has announced it will begin to offer vibrators and sex toys by mail, as a special service for the disabled and house-bound.

Minnesota

An obvious end-around by animal rights activists, as seen in the *Minneapolis Star Tribune*:

Parents who fail to pay child support should lose their hunting and fishing licenses, a House panel was told.

Republic of Ingushetia

Democratic progress for women's rights as reported by Agence France-Presse:

The Caucasian republic of Ingushetia will hold a referendum on Feb. 28 on whether to legitimize the traditional practice of letting suitors kidnap their brides, the republic's president, Gen. Ruslan Aushev, announced.

Los Angeles

Entrepreneurism at work among Law Enforcement, as reported in the *Orange County Register*:

Los Angeles police Sgt. Ken Kuwahara has started PursuitWatch, a pager service that beeps its customers whenever a high-speed chase comes on the local television stations. Subscribers pay 99 cents per year to keep tabs on the pursuits, which have become a staple of local television news. Kuwahara told the Register he has already signed up 200 subscribers.

Kuwahara also offers a \$9.99 three-month membership that makes participants eligible for a \$100 bounty if they are the first to report a chase in progress. Police pursuits attract so many viewers in Los Angeles that local stations will interrupt scheduled programs to follow them to their conclusion, which almost always involves the suspect's arrest.

Nashville, Tenn.

Advances in Christian pedagogy, as accounted in the *St. Louis Post-Dispatch*:

Sunday school lessons on how homosexuals can "change" will be offered to adults at many Southern Baptist churches for the first time this weekend. "I hope through this lesson that people would see an open door for all sinners and come and have a changed life through Jesus Christ," said Ross McLaren, who worked on the lessons.

Santiago, Chile

Effects of cunning shysters on the gullible, as reported by *La Nación*:

Swindlers duped an unidentified U.S. woman out of about \$840 by convincing her the money would be donated to the London defense fund of Chile's former dictator Augusto Pinochet, the state-owned daily *La Nación* said Friday.

North Dakota

Perils of grass mowing in America's hinterlands, as reported by Reuters:

The North Dakota Department of Transportation wants to put up signs that include specific language warning people against throwing litter containing human waste on the roadsides. There were 20 incidents last year in which state road crews mowing grass were sprayed with urine after rupturing urine-filled plastic bottles that became swollen in the hot sun. Windshields were installed on the front of the mowers, but, as Department of Transportation chief engineer Ray Zink explained, "That does a pretty good job for the front wheels, but if the back wheels run over it, it pretty much comes straight up."

Kentucky

The resurgence of Bolshevism in an unlikely place from Gov. Paul Patton, reported by the *Herald Leader*:

"Karl Marx was right when he said that the natural course of the capitalistic system is the concentration of wealth and the subjugation of the masses of the people to a subsistence living and the development of a wealthy class."

Great Britain

The progress of the institution of marriage, from Reuters:

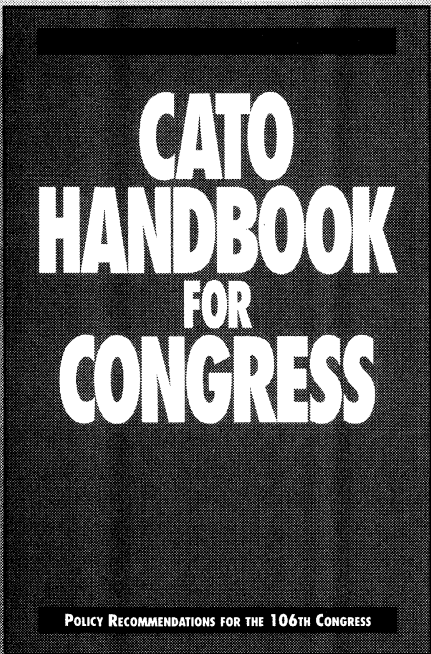
Model Carla Germaine, 23, and salesman Greg Cordell, 28, married on the day they met. They were chosen from 200 contestants in a competition for people willing to marry at first sight staged by a radio station in the central English city of Birmingham. They were offered a free wedding, honeymoon in the Bahamas and a car and apartment for a year.

China

Innovative approach to dealing with the Y2K problem in the People's Republic, as seen in *Financial Times*:

China, as an ultimate incentive to solve the millennium bug computer problem, has ordered its airline executives to take a flight on January 1, 2000. "All the heads of the airlines have got to be in the air on January 1, 2000," said Zhao Bo, in charge of dealing with the problem at the Chinese ministry of information industries.

(Readers are invited to forward newspaper clippings or other items for publication in *Terra Incognita*, or to email them to TerraLiberty@hotmail.com.)



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Coming Soon to a City Near You • Randal O'Toole exposes the arrogance of "urban planners" — and reveals the disastrous consequences of their "New Urbanist" designs. Watch out! Your automobiles are in danger. (audio: A220; video: V220)

The Nazification of the Money Supply • J. Orlin Grabbe is the author of the standard reference on international financial markets. Here he explains how and why the government has seized control of the banking system — and how you can foil their plans and get your privacy back. (audio: A132; video: V132)

Sexual Correctness • A new breed of feminist has declared war on individual liberty, in the process undermining women's autonomy — the very value they claim to uphold. **Wendy McElroy** runs down the latest illiberal court precedents and speaks up for the civil liberties of men and women alike. (audio: A155; video: V155)

Searching for Liberty Around the World • Whether you're fed up with encroachments on your liberty, or just interested in opportunities ranging from Nicaragua (!) to Hong Kong to Zambia, this is the tape for you. Hear **Doug Casey**, *Investment Biker* author **Jim Rogers**, international journalist **Bruce Ramsey**, and travelers **Scott Reid** and **Ron Lipp** — the men who've been there. Includes a special discussion of the problems of escaping the IRS. (audio: A103; video: V103)

The Four Political Types • Fred L. Smith, Jr. points out some nasty roadblocks on the way to freedom — and how libertarians can navigate around them. (audio: A147; video: V147)

How I Found Slavery in a Free World • Douglas Casey's acerbic tales of government failure — at home and in the 120 countries he's visited. (audio: A208; video: V208)

How Hillary Got Rich • One of the most fascinating speculators in the nation, **Victor Niederhoffer**, analyzes Hillary Clinton's history with beef. Did she get amazingly lucky, or was there something else more sinister going on? (audio: A114; video: V114)



Will Technology Advance Liberty or the State? • For every glowing prediction of the liberating effects of technology, there is a clipper chip, a phone tap, or a spy satellite. **Harry Browne** presides while **Ross Overbeek**, **David Friedman**, **R.W. Bradford**, and **Sandy Shaw** measure the capabilities of freedom and Leviathan. (audio: A303; video: V303)

Liberty and the Press • Where does media bias come from, or does it even exist? Join veteran reporter **Bruce Ramsey**, *Slate* editor **Jack Shafer**, **R.W. Bradford** and **Jane Shaw** as they dissect the press. From a freedom perspective, what's wrong with the media — and what's right? (audio: A216; video: V216)

The Liberty Group • R.W. Bradford, Bill Kauffman, Jack Shafer, Douglas Casey, and Durk Pearson look at the hottest topics of the day and make some interesting predictions — many have already come true. Topics include a preview of the 1996 election and its candidates, the anti-tobacco movement, Ron Brown and Vince Foster, Clinton's nose job, and drug smuggling politicians. You listen to conservative and liberal pundits on the radios and television. Find out how libertarian pundits measure up! (audio: A201; video: V201)

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