

Liberty

August 2000

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Who Burned Los Alamos?

by Robert H. Nelson

The "Greatest" Generation

by Merrel Clubb

Reclaiming the Republican Revolution

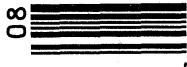
by Stephen Cox

Why the West Tolerates Genocide

by Oliver Becker

The FBI's Killing of Vicki Weaver

by Judge Alex Kosinski



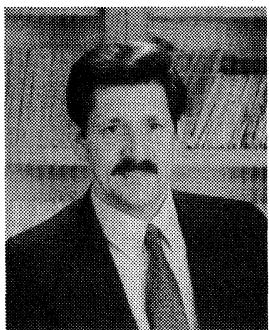
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Also: Bruce Ramsey looks at America's looniest vice president, David Kopel recalls a time when honor was a factor in American politics, Peter McWilliams tells why liberty is as much fun as medical marijuana... plus other articles, reviews & humor.

"The supreme goal of all human development is liberty" —Michael Bakunin

It's Time to Put Public Schooling behind Us

by Richard M. Ebeling



There is no better indication of the failure of and increasing disappointment with public education in the United States than the growth in the number of charter schools and homeschooled students. A new study released by the federal government reported that the number of charter schools in the 27 states in which they operate increased by 40 percent in 1998–1999. Almost 1,700 of them serve more than 400,000 students.

The number of children being homeschooled by their parents has also grown by leaps and bounds. In 1996, the Department of Education estimated that the number of homeschoolers was somewhere between 700,000 and 750,000. Homeschooling advocates say that the number increased to as many as 1.5 million in 1999.

Since charter schools operate with public funds that cover the tuitions of the students attending them, they remain a part of the state ed-

ucational system. But the private-sector managers of charter schools are given greater latitude in structuring teaching methods to meet the needs of their students. And equally important from the parents' point of view, they are able to impose more demanding standards on student conduct to prevent anti-social and violent behavior.

The benefits of homeschooling have also become apparent. There is more individual attention, and the child is able to learn at his own pace. And more and more homeschoolers are outperforming their counterparts in public schools, in terms of both classroom performance and college admission.

Moreover, homeschooling isn't limited to Caucasian religious families concerned with an excessively secularized education in the public-school system. It is estimated that 4 percent of homeschooling families are black, with another 4 percent in the Hispanic community.

It is clear that a growing number of American families have lost confidence in the public-school system. An increasingly dumbed-down curriculum, with an emphasis on "politically correct" fads and fashions, as well as a concern about the safety and security of the school environment, has resulted in more and more parents' try-

ing to opt out into a better alternative.

The problem, however, is that the government continues to be a giant stumbling block standing in the way of parental choice. For millions of families, homeschooling is simply not feasible, either because they cannot afford for one of the parents to stay home to educate their children or because of the parents' own inability to satisfactorily educate their children in various subjects. At the same time, the burden of federal, state, and local taxes imposes too great a strain on family budgets to afford the costs of a private school, especially when there is more than one child to educate.

Charter schools seem to offer a partial answer to this problem, since some of the tax dollars paid by the parents to the state or federal government pay the costs of tuition on a per-pupil basis. Charter schools, however, are not the same as independent, private schools. They remain part of the public-school system, especially since they still have to conform to a state-mandated curriculum and are mostly limited to hiring teachers certified by the state. Qualified college-level chemistry or math professors, for example, cannot be permanently employed in a charter school unless they have gone through the addi-

tional layer of a state certification process enabling them to teach at the primary or secondary level of schooling.

Furthermore, it is inevitable that over time, charter schools will become another vested interest determined to limit any innovations or new competitors that may threaten their enrollments and the tax dollars they receive from the state.

It's time, therefore, to rethink the entire idea of public schooling in America. It's time to consider whether it would be better to completely privatize the entire educational process from kindergarten through the Ph.D. With the state no longer responsible for education, the local, state, and federal government taxes imposed for the present system could be abolished. The tax dollars left in the hands of the citizenry would then be available for families to use directly to pay for their own children's education. The free market would supply an infinitely diverse range of educational vehicles for everyone. And families would finally be free to select the best educational vehicle for each of their children.

Professor Ebeling is vice president of academic affairs for The Future of Freedom Foundation (www.fff.org) in Fairfax, Va., and the Ludwig von Mises Professor of Economics at Hillsdale College.

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Inside Liberty

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Letters

Did you hear the one about the little boy kidnapped at gunpoint in the middle of the night?

Your July issue (emphasis on Elián) was a joke, wasn't it? Just trying to see how your readers would react? How else to account for your multi-faceted departures from sound, objective journalism?

Don F. Hanlen
Benton City, Wash.

The Climax of the Sandefurs

WOW! Timothy Sandefur wrote the best article in your July issue.

I was a modern day Copperhead, but I ain't no longer. I stand corrected and inspired by his writing. Good luck, Mr. Sandefur! Keep your aim high!

Mike Mueller
Bakersfield, Calif.

El Carcel Grande

Gene Healy concludes "Hillary, Newt, and Elián" (June) on a tentative note that accords with his thoughtful essay. He writes of Cuba's "communist tyranny" and "Castro's island prison," yet begrudgingly contends Juan Miguel González is "within his rights as a father" to bring his son back to Cuba since that "repulsive and despotic state" does not meet the standard for child abuse.

I respectfully disagree. As deprivation of natural rights constitutes criminal, abusive conduct, so it does when the victim of deprivation is a child. The Cuban regime's deprivation extends from freedom of assembly and expression to the most basic right of emigration. As Walter Block observes, "A country which will not allow its citizens to leave is nothing better than a vast jail." Surely a jail is an abusive environment, especially when the imprisoned individual is an innocent child. (Compulsory child labor — The Sugar Cane Chain Gang? — doesn't help.)

Healy further contends, "It's

unlikely that the Cuban government will torture or murder Elián González." On the contrary, if Elián comes to part with communist dogma and has the audacity to do so openly — in a pamphlet or protest, for instance — several provisions of the Cuban Penal Code and Constitution (so-called) will have been violated.

Having displayed such criminal "dangerousness" and "disrespect," Elián will become intimate with Castro's terror apparatus (tip-top despite the U.S. embargo). If Elián maintains his dissent in silence, he'll only have to endure compulsory labor and rationing.

Suffice it to say a country predicated upon self-determination and freedom ought not promote the imprisonment and abuse of children.

Myles Kantor
Boynton Beach, Fla.

Darth Bradford?

I was a bit concerned to read R.W. Bradford's remarks (Reflections, July) about Giuliani dropping out of the NY Senate race. ("Who's taking his spot on the ballot? Lazio? Fazio? Who cares? Vote for Lazio! or Fazio!")

I am annoyed by the mainstream media's constant concern about celebrity candidates in New York. There is a Senate race in my state and a vote by the winner will count just as much as the senator from New York, or any other state. It was a shock to read something in *Liberty* which seemed to emulate the "media."

Also, the column was very "bipartisan." Are there no other choices available to the voters? Turns out there is another choice. John Clifton is also running for the Senate as a Libertarian.

There may be more, but "Who cares?" Has R.W. Bradford gone over to the Dark Side?

Jim Maas
Stevens Point, Wisc.

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Two Nice Guys

Paul Rako's article ("McCaffrey's Brain on Drugs," June) was not kind. If McCaffrey understood the havoc his positions cause, he could not continue as the drug czar in good conscience. I'm sure that, in his own way, Hitler was also a nice man who wanted to do good. But suggesting that Mr. McCaffrey is an evil self-serving jerk and psychopathic pig does nothing to move the discussion forward. Let's just call him "misguided" and deal with the issues.

McCaffrey cannot accept that heroin addicts in England lead peaceful, productive lives when enrolled in medically monitored programs. He would be fired if he suggested that medical doctors administer heroin to addicts in this country. As long as the Drug Enforcement Administration classifies marijuana as a Schedule 1 drug, he can not publicly acknowledge that persons responsibly use marijuana recreationally.

One of his medical consultants probably told him about the rat allowed to self-administer pleasure. An electrode was implanted in the "pleasure center" of the rat's brain. Once the rat learned that pressing a lever delivered a brief stimulus, the rat pressed the lever hundred of times per hour. Ignoring food, water and sex, the rat finally collapsed of exhaustion. McCaffrey may believe that a similar fate will befall our youth if unrestricted access to pleasure enhancing drugs is available. When the social cost of personal tragedy is considered prohibitive, drug warriors act to constrain liberty.

Matthew Hine
Bartlett, Tenn.

Enemies in High Places

I keep wondering if Dolores Puterbaugh ("Suffer the Little Children," June) is aware of how intrusive she is being on the caste, turf and budget of lots and lots of Very Important People, cadres of bureaucrats, and The Drug Industry.

John Simpson
Bandon, Ore.

Locking Up the Unclean

Thomas Szasz is the only voice of sanity in a world of psycho-witch doctors who have a vested interest in turn-

ing every non-standard behavior into a diagnosable, treatable (government payable) disease. (It's not the X-Files, it's the bank account files, stupid!)

As for that guy who wants to ruin Joseph Windhurst's life (Letters, July) by smudging your windshield — he's homeless, hungry, dirty — what sort of look do you expect to see in his eyes? Zen-like bliss?

Maybe he's not insane at all. Maybe he's homeless for other reasons (like government redevelopment projects that have destroyed cheap housing). But in your world, that doesn't matter

— let's just call him insane because he's bothering you!

We'll call in the SWAT team to take him away to a so-called "hospital" that's really a prison, stuff him full of drugs until he hardly knows he's alive, shuffle him around like furniture, confine him, demean him, make him live in conditions that are worse than an animal in a zoo! Brutalize him to the point that he can't survive as an independent human being! But, most importantly, keep him out of sight — so you and others like you will never, ever have to deal with an ugly,

From the Editor . . .

On June 14, Peter McWilliams died, a victim of the idiotic and vicious War on Drugs. Peter's death was a genuine tragedy, a loss to every human being who, like Peter, treasured life, liberty, and the pursuit of happiness. We begin this issue by celebrating his life, with a brief tribute and publication of his wise and witty address before the Libertarian Party convention two years ago.

Also on June 14, the Ninth Circuit Appeals Court upheld a lower court's ruling that the U.S. Constitution sanctioned the murder of Vicki Weaver, who was shot by an FBI sharpshooter as she held her baby in her arms. The implications of the decision are enormous and horrible. Federal Judge Alex Kosinski vigorous and eloquent dissent from the decision will explain why . . . and, I hope, provide an argument for a successful appeal to the Supreme Court.

Are you tired of all the assertions that the generation that gave us the most horrible war in human history and the most stupendous growth of state power in American history is somehow the "Greatest Generation"? Well, so is Merrel Clubb, who draws on his experience as a naval officer in the Pacific theater during World War II to explain why he disagrees with this nostalgic nonsense.

Most people see the recent fires that burned over thousands of acres, destroyed dozens of homes, and endangered the nuclear facility at Los Alamos as the product of a single federal bureaucrat's screwup. Bob Nelson discovers that the real problem is a lot more fundamental and the risk of massive conflagration is worse than almost anyone thinks. Worse still, the Clinton administration is powerless to do anything about it.

Gene Healy takes a close look at the logic of libertarians who would keep Elián González in the U.S. . . . and finds it downright dangerous. Sally McCarthy decries the end of the Senate campaign of Rudolph Giuliani, and Oliver Becker reports from Europe about the massive hypocrisy that enables the western powers to denounce Austria for allowing a right-wing party in its government, while still doing business with perpetrators of outright genocide.

To help us celebrate Independence Day, Timothy Sandefur takes a look at the life and thought of the greatest libertarian among the Founding Fathers. Steve Cox looks at the failure of the Republican Revolution. Bruce Ramsey examines the career of the goofiest vice president in history. And Dave Kopel looks back at a time when honor was a more important political force than expediency.

As always, we begin with *Reflections* — remember, it's the world that's skewed, not us!

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unpleasant, difficult person.

Daniel Smith
West Hollywood, Calif.

Straight Shooting

David Kopel's "Open Letter to the People of Japan" (May) is an excellent analysis of why Americans have gun rights, although he does make one questionable statement: "The Second Amendment of the American Constitution guarantees the right to own and carry firearms."

Not quite true. It was supposed to guarantee that the right would "not be infringed" upon by Congress. It was never intended for Congress to "guarantee the right." That would require Congress to define by law what the right consists of, and penalties for those who violate such law. The Founders didn't want Congress to have any power over their hard-won rights.

The preamble to the Bill of Rights referred to them as "restrictive clauses" and that their purpose was to "prevent misconstruction or abuse of its [Congress'] powers" to infringe on those rights. It started with "Congress shall make no law" concerning rights. The 9th Amendment states that restriction applies to "other" rights not enumerated. And the 10th Amendment reminds Congress that "powers not delegated," such as the above, "are reserved to the states . . . or to the People."

James Harrold
Decatur, Ark.

When Good Editors Go Bad

I was pleased with my first ever issue of *Liberty* until I got to the ranting of Paul Rako in "McCaffrey's Brain on Drugs" (June). You describe *Liberty* as a review of thought, culture and politics. Rako's contribution does not fit under any of the above.

Rako's tirade can only hurt the cause of thoughtful citizens who realize that the drug war is just another method of further subjugating the people.

Most people over nine years of age don't try to win an argument by calling

their opponent names. How old is Rako anyway?

Please try to be more selective in choosing contributors in the future. Don't allow those of us who believe in the cause of liberty to be embarrassed by authors like Paul Rako.

Don Johnson
Filer, Ida.

Nazis vs. Communists

Michael Drew, in his July letter, claims that "a capitalist, technically advanced Nazi empire would have posed a greater threat to our survival than the socialist, technically backward Communist empire." The facts do not support this observation.

It was not so much technical advancement, per se, with which Germany stunned the world with its swift victories as it was with military technique — namely, the blitzkrieg. The chief weapon of the blitzkrieg was the tank, but even France had more and better tanks than did the Germans. Drew should read Guderian's *Panzer Leader* where he would discover that the "technically backward" Soviet Union developed the best tanks in the world.

The claim that Nazi Germany with jet aircraft and rockets would have been invincible has no realistic foundation.

Robert E. Walters
Winter Park, Fla.

Wash Your Mouth Out

I object to the growing use of four-letter vulgarities in *Liberty* (e.g. Gene Healy's Reflections, July). It is unnecessary and offensive to many. Of course, there is much that finds its way into *Liberty* that might be deemed "unnecessary" and certainly, I trust, offensive to many. But the gratuitous use of four letter vulgarities does not signify intellectual strength, but the opposite.

Adrian Day
Annapolis, Maryland

Free to be a Determinist

I recognize that a book review

continued on page 42

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

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Reflections

None dare call it collusion — Headline on lead story in the business section of the *New York Times*, June 12: "U.S. Pursuit of Microsoft: Rare Synergy with Company's Rivals."

— Ralph Raico

Luke 6:41, updated — It's interesting that the FBI recently arrested 120 members of a mob-backed stock manipulation ring that reportedly cost investors \$50,000,000; meanwhile, the Justice Department's antitrust action against Microsoft has cost investors in excess of a thousand times that amount.

— John Haywood

Pizza delayed is pizza denied — Domino's Pizza has promised the Justice Department that its drivers will not limit deliveries to any neighborhood without reliable evidence of a safety threat. The accusation, of course, is that Domino's and its drivers are refusing service to black customers out of racism or simple perverseness. As if corporate managers and tip-seeking drivers would arbitrarily refuse to serve some customers.

One assumes that this will not change Domino's policies in the slightest, since obviously its drivers would only refuse delivery in neighborhoods where there is a credible risk. It seems to me a fair compromise would be that, any time a Domino's driver is afraid to deliver to a particular address, a Justice Department lawyer would stand ready to make the delivery without a SWAT team. And of course the lawyer should be able to keep the tip.

— David Boaz

Not our kind of addiction — Two moves you don't want to force on drug-dependent people are making them feel sorry for themselves and giving them nothing to do. The results will be obvious. Bad publicity is enough punishment for a public figure such as Darryl Strawberry, who hasn't been caught with prostitutes since his last infraction. Come on, guys; wise up. In suspending Strawberry, Bud Selig, in the name of Major League Baseball (aka MLB), was not only contributing to an individual's demise, he was jeopardizing the game.

MLB was also violating the law. Doesn't Selig know that the Americans with Disabilities Act (aka ADA) forbids the termination of an employee for a list of afflictions that specifically includes drug addiction? Should Strawberry in the next months have another relapse, which the MLB decision makes more likely, can we blame him or his smart lawyer for suing MLB for every cent he can get? It would be gratifying to see Selig and his colleagues get their comeuppance for being so stupid when they thought they were sanctimoniously smart.

Don't give me any nonsense about Strawberry being a Bad Example. In the hallowed monuments section of center field in Yankee Stadium are plaques memorializing three former Yankees who died prematurely of illness or accidents caused by alcohol or tobacco dependency: Babe Ruth,

Mickey Mantle, and Billy Martin. Until Bud Selig physically removes those plaques, he's implicitly accepting one kind of addiction while decrying another, a sort of move that was once called hypocrisy.

— Richard Kostelanetz

O glorious day! — On Flag Day, 2000, Howard Kurtz of the *Washington Post* revealed the fact that George W. Bush had "acknowledged" that he did not even know "who Leonardo DiCaprio was."

— Stephen Cox

Relieving himself of responsibility — Al Gore was not aware that he might have been breaking campaign finance laws because he had been drinking excessive amounts of iced tea, and was probably in the bathroom during the meeting where fundraising was discussed. I don't know about Al Gore and Bill Clinton. For people that are constantly striving for more control over our lives, they certainly don't seem to be able to control much of their own bodies beneath their navel.

— Tim Slagle

True colors — For most of this century, left-liberalists have defended the rights of people to hold unpopular, unconventional, and even outrageous views. They courageously defended the rights of birth control advocates, black nationalists, pornographers, and communist revolutionaries.

Now at least one prominent left-liberal has turned against freedom of opinion. In his June 9 column, *New York Times* pundit Thomas L. Friedman observed that "if you read carefully Judge Thomas Penfield Jackson's ruling to split up Microsoft, you'll see that this was . . . a case about attitude.... an indictment of the attitude of the high-tech community in general toward government." Lest anyone get the impression that Pulitzer Prize recipient Friedman opposes selective prosecution based on people's beliefs, he quickly adds, "Bless Judge Jackson's heart for that."

What are the beliefs that justify selective prosecution? "For many in Silicon Valley," Friedman explains, "government is irrelevant at best and obstructionist at worst . . . an institution of tax-seeking bloodsuckers."

In case someone somehow manages to miss his point, he repeats himself: "And that is the real point of Judge Jackson's ruling: Microsoft isn't a threat just because it's big. G.E. is big. Intel is big. Microsoft is a threat because it is big and *deaf* to some of the bedrock values of the American system." Disagree with Friedman's political thinking? You risk being broken in two.

Well, shouldn't Microsoft be allowed to defend itself? Not according to Friedman. "As far as I'm concerned, the government had grounds to break up Microsoft simply for what Mr. Gates did last year — which was to hire an army of Washington lobbyists to try to get Congress to cut the budget of the Antitrust Division of the Justice Department *while Microsoft had its case before that department*."

What would Thomas L. Friedman have said two genera-

tions ago, when the House Committee on Un-American Activities was investigating communists, who, in turn, were calling for the abolition of the committee? "As far as I'm concerned, the government had grounds to jail communists simply for what communists did last year — which was to hire an army of Washington lobbyists to try to get Congress to abolish the Committee on Un-American Activities while *the communists were being investigated by that committee.*"

Of course, the same logic that dictates that the Communists had the right to lobby against agencies that they believe unjustly and arbitrarily persecuted communists also dictates that Microsoft executives have the right to lobby against agencies that they believe unjustly and arbitrarily persecute them.

Cynics have long suspected that the Clinton administration launched its jihad against Microsoft for reasons far different from its ostensible purpose of securing justice and protecting consumers from the predations of a dangerous monopoly. Friedman's frank admission that Microsoft is being punished for thought crimes — and, indeed, his celebration of that persecution — goes far toward showing that the cynics are right. So does the absence of any outcry from his fellow journalists or his friends in the Clinton administration.

A half-century ago, right-wing cynics suggested that left-liberal support for free speech was really a manifestation of liberalism's sympathy for communism. The fact that liberals have turned against free speech without even noticing that they've done so suggests, sadly, that the right-wing cynics were more insightful than they seemed.

Without a trace of irony or even self-awareness, Friedman concludes his column with a call for "the rule of law." If the rule of law means selective persecution of people for unpopular political beliefs, I want none of it.

— R. W. Bradford

Note from Nanny — I recently received a postcard in the mail from Anne Arundel County Traffic Enforcement, informing me that I should stop for red lights. "That's the message we're sending drivers," adding that if I run a red light, I could get a ticket.

Does anyone else find this offensive? Now, I believe wholeheartedly that drivers should stop for red lights. But I am not a child and the local county is not my parent. Further, the requirement to stop at a red light is a law that is known to every single driver. What next? A postcard telling me not to rape the girl down the street?

Before Margaret Thatcher, Englishmen referred to their government as "the nanny state," because the government



was trying to take care of every aspect of our lives from cradle to grave. America has now replaced Britain as "the nanny state."

— Adrian Day

Bad medicine — Reading the *Journal of the American Medical Association*, the *New England Journal of Medicine*, and *The Lancet*, the three leading medical journals, means suffering through more and more editorial material of a socialist nature. A good example (and a surprisingly perceptive one) appears in an unsigned editorial entitled "A manipulated dichotomy in global health policy" in the June 3 issue of *The Lancet*, which asks, what should be the priorities of those planning global public-health policies? (Somehow, these editorials never ask the basic questions like who should be planning people's medical choices in the first place.)

The Lancet editorial responds to recent comments in *The Wall Street Journal* and *The Times* of London that appeared on May 15, just before the yearly meeting of the World Health Assembly. According to *The Lancet* piece *The Wall Street Journal* editorial (by Roger Bates) argued that "'socialist' health elites have perverted the health agenda 'at the expense of big business,' and that, for example, smoking is merely 'a free choice with health consequences.' He [Bates] preferred to see these issues not in the context of public health, but as matters of 'commercial free speech and individual choice,' rights that must be upheld against attacks by 'leftist' bureaucrats." *The Times* meanwhile called the "preoccupation with 'lifestyle diseases' — cancer, heart disease, and hypertension — an instance of pure and mistaken political correctness."

In response, *The Lancet* makes the remarkable statement that the pieces in *The Times* and the *WSJ* help explain the stand being taken by the World Bank in "shoring up the World Trade Organization's troubled position on free markets. By converting tobacco into an issue of individual choice rather than one of collective responsibility for public health, the Bank is appealing, successfully in the case of *The Times* and *Wall Street Journal*, to our natural instincts of resisting undue government interference in our lives." But, of course, *The Lancet* continues, the real issue is not free choice but "trade and unrestricted profit."

How terrible! People don't just want to be free. They want to be free to actually do something! What other outrages will follow?

The Lancet is right about one thing, though: Commercial free speech is spreading. A new Israeli law repeals the ban on physician advertising. The Knesset overwhelmingly supported the bill presented by the Justice Ministry that allows doctors the right of self-promotion as "an expression of free speech and practice." The Justice Ministry argued that, given Israel's Basic Law guaranteeing personal freedoms, a ban on advertising could not be upheld in a court of law.

Meanwhile, the German Medical Association has relaxed its ban on public advertising for physicians. They argued that patients can exercise their right to choose their own doctor and their right to self-determination in medical treatment only when they have the necessary information.

— Sandy Shaw

Sell the State! — Last year, several government agencies hired private lawyers to lobby the Hawaii state leg-

Liberty

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islature. In one case, the state Department of Health paid a law firm to win support for fluoridating Hawaii's drinking water, and paid thousands of dollars to a public relations firm to "educate" the public about the "benefits" of fluoridation.

This reveals that state officials lack confidence in lawmakers and the public — implying that lawmakers and the public are uneducated, unable to think for themselves, easily overwhelmed by emotion, and not as wise as the bureaucrats under their authority.

While all this may be true, it is ironic that the highest state officials also lack confidence in their own agencies. That is why they hire private firms to lobby for them. Indeed, top officials recognize that for really important things that need to be done, like propagandizing lawmakers and the public, they can always depend on the competence of the private sector.

So here is my modest proposal. Why not hire private sector alternates for everyone in the Governor's cabinet. Since private lawyers and public relations experts are so competent, they can stand in for all department heads and even the Governor himself. Then the real work can be done competently by substitutes while elected and appointed officials can retire to the golf course or Las Vegas.

The double cost of salaries would be a small price to pay for competence. Surely lawmakers and the public will understand the importance of all this, if state officials can just hire the right private public relations firm to "educate" everyone else.

— Ken Schoolland

Life, liberty and the pursuit of rats —
Once again I am struck by a glaring example of the wealth of this nation. We are so rich and well-fed that people can obsess over nonsense. On June 16, a group of skinny, anemic PETA protesters gathered around a CBS office to protest an episode of the hit show "Survivor," where a group of people compete to be the last inhabitant of a deserted island. They were outraged at the footage of the cast eating rats. I felt more sorry for the humans than for the rats. It would probably take more than a chance at a million dollars to get me to do that. After all, rats were put onto this earth for the sole purpose of being eaten by small predators and third world residents.

In India, there are people who eat little more than rat their entire lives. In a marvelous example of the free market at work, they charge farmers to get the rats out of the grain

piles, and spend the evening grilling whole, unskinned rats over an open fire. Of course the wealthy American Survivors were spoiled — they ate only the rat meat. They threw away the sweetbreads.

How can animals have rights? Okay, when animals start publishing a newspaper, I won't outlaw it. I believe that animals have the right to worship at any church they choose. I might have a bit of a problem letting them organize freely though.

In the third world they have rights, but they're just a little bit different: "You have the right to be dinner. Any part of your body can and will be used for said meal. You have the right to be accompanied by a side dish. If you do not have a side dish, one will gladly be provided for you."

— Tim Slagle



Earlier this year, two pickups collided on Interstate 90 near Snoqualmie Pass in Washington state. It was a head-on crash: one of the pickups was travelling west in the eastbound lanes.

The driver of that vehicle was Audrey B. Kishline, aged 43, who suffered severe internal and head injuries. Two occupants of the other pickup were killed: Richard D. Davis, aged 38, and Lachelle Davis, aged 12.

As *Liberty* goes to press, no one in the mainstream media seems to have noticed the significance of this traffic accident, though very likely some journalist will have made the connection before this issue hits your mailbox. Audrey Kishline is a prominent figure in the movement to provide alternatives to Alcoholics Anonymous (AA).

AA was founded in 1935, and has been a remarkably effective spiritual cult. Some years ago it was reliably estimated to have over two million members worldwide, most of them in the U.S. Among AA's tenets are: that heavy drinking is a disease, that an "alcoholic" (a drunk) is incapable of reforming himself and can only recover by relying upon "a higher power" (God), and that a drunk can never return to social or moderate drinking — the only hope for recovery involves lifelong total abstinence.

All "Twelve Step" programs are offshoots of AA and share its religious underpinnings. The addiction treatment industry is largely staffed by veterans of AA, who cease-

lessly proselytize for its distinctive views. Many people don't appreciate that these are religiously-motivated theories, and are contradicted by the findings of research into heavy drinking and other addictions.

A number of organizations have sprung up to challenge AA and offer alternatives. The Secular Organization for Sobriety (SOS) was founded in 1985 and Rational Recovery Systems (RRS) in 1986. Though these organizations disagree with AA about God, they seem to agree with AA that total abstinence is required for recovery.

Audrey Kishline's organization, Moderation Management (MM) broke new ground. It appeared to reject total abstinence in favor of moderate drinking. MM was founded in 1995 by Kishline and a couple of associates, following the success of Kishline's book, *Moderate Drinking: The New Option for Problem Drinkers* (1994). Kishline, a "recovered alcoholic," had been a member of AA, had become disenchanted with it, and had then read Herbert Fingarette's persuasive book, *Heavy Drinking* (1988).

In 1995 Kishline enjoyed more than the statutory minimum fifteen minutes of fame. She appeared on numerous TV talk shows and was featured in several national magazines. At first, she may have seemed to agree with writers like Fingarette and Szasz that there is no such disease as "alcoholism" and to oppose outright the AA view that total abstinence is essential for recovery.

Then Kishline began to emphasize something she had already broached in her book: her view that moderation works only for "problem" drinkers and not "chronic" drinkers or alcoholics, who ought to practice abstention. This issue became a point of contention within the organization, and one of Kishline's principal collaborators subsequently left.

In fact, any distinction between problem drinking and alcoholism is arbitrary. In any case, Kishline's followers were easily able to diagnose themselves as problem drinkers, not chronic drinkers. People who knew Kishline reported their impression that in practice her conception of "moderation" was fairly flexible.

Media attention to MM died down after 1995, only to flare up again in April 1998. Larry Froistad, a twenty-something computer programmer and participant in an MM Internet discussion list, divulged the fact that he had murdered his own five-year-old daughter. Some list members reported Froistad to law enforcement agencies. In the ensuing controversy, Kishline was criticized because she seemed to show more concern for protecting the "confidentiality" of Froistad's confession than for investigating the cold-blooded killing of a child.

Those list members who had reported Froistad's online confession received hate mail from pro-Kishline members. Froistad subsequently made several further confessions to the murder, and retracted each one in turn. Now claiming innocence, he was tried, convicted, and sentenced to 40 years for the killing.

Another organization, SMART Recovery, was founded in 1994, as a breakaway from RRS, and has grown very rapidly, to become easily the most active group favoring moderation. Whilst rejecting the notion that recovery always requires total abstinence, most members of SMART Recovery believe that in many individual cases abstinence is the best practical

chance. Kishline's MM has therefore appeared unique in its strong emphasis on moderation rather than abstinence. A fuller account of all these organizations is given in Jeffrey Schaler's book, *Addiction Is a Choice* (2000).

Will the Kishline auto accident be a boost for total abstinence and a blow to moderation? I hope not, since the Twelve Step cult, by undermining individuals' sense of personal competence and responsibility, does a lot of harm.

And this story does have one more little wrinkle. A short while before the accident, Kishline announced that she had relapsed into excessive drinking and had again begun attending AA meetings.

— David Ramsay Steele

The thin blue line — On June 10, a celebration of National Puerto Rican Day in New York's Central Park got out of hand and at least fifty women were sexually assaulted by gangs of young men. New York's Finest were out in force but did nothing to stop the assaults that were happening in front of their eyes. They told women who asked for assistance not to bother them.

Not since the Los Angeles police stood by while violence erupted in the wake of the exoneration of the policemen who had beaten up Rodney King has the nation witnessed such widespread dereliction of duty by policemen. Although the scale of violence was lower — the mob didn't destroy any buildings or actually kill anyone — the police pusillanimity was even more outrageous in Central Park than in Los Angeles.

In the case of the Rodney King riots, the police had an excuse: they faced serious danger. It's not a very good excuse — after all, it is a policeman's job to face danger — but feeble

To say that police standing by doing nothing while women are sexually assaulted is the result of some kind of "lapse" in "strategy" or "tactics" or "communications" is the equivalent of saying that the Holocaust was a "bureaucratic mixup."

as it was, it was an excuse, and one that New York's Finest didn't even have.

Sure there may have been some cases where breaking up an assault might have had a small element of danger. A single cop wading into a group of ten or twenty drunks assaulting a woman might have risked injury. But the risk was hardly great, given the fact that the police wore protective gear and were heavily armed and the drunks were, well, drunk — and unarmed.

In some cases, however, the police refused to act even when they could easily have gained the upper hand, dispersed the drunks and saved the women from further harm. Consider the following vignette from *The New York Times*:

Richard Walsh, a 43-year-old businessman, was running laps around the reservoir in Central Park when he noticed several young men spraying water on women and yelling lewd insults at them. On three consecutive laps, Mr. Walsh said, he alerted a nearby contingent of some 40 police offi-

cers taking cover in the shade to what happened. The officers, he said, never budged in the 90-degree heat, and the young men continued to menace women.

Why had this outrage occurred? The same *New York Times* news article that reported the phalanx of cops ignoring the assaults while relaxing in the shade explained why they failed to respond:

Just as a thundercloud is fueled by moisture and heat, Sunday's attacks on women in Central Park were fueled by an alchemy of alcohol, marijuana, oppressive weather, testosterone and lapses in police *strategy, tactics and communications*. (emphasis added)

This, I submit, is absurd. Time and time again, women who were molested reported their plight to the police. Time and time again, witnesses to the assaults reported them to the police. Time and time again, police actually saw assaults take place. Yet the police refused to respond. So far as the news media can discover, not a single police officer did anything whatsoever to come to the aid of the victims.

Worse still, when confronted with the charges that they had stood by and allowed numerous episodes of mob violence to occur, the police denied having done so. It was not until various members of the public who happened to videotape some of the assaults turned their tapes over to local television stations, and people could actually see the assaults taking place while the police stood by doing nothing, would the police admit that anything out of hand had happened. To call this outrageous dereliction of duty the product of any kind of "lapse" in "strategy" or "tactics" or "communications" is the equivalent of saying that the Holocaust was a "bureaucratic mixup."

It's not possible, of course, to look into the minds of the hundreds of New York policemen who refused to do their jobs and identify their precise motivations. But it's pretty plain that there were a couple factors the *Times* reporters missed: cowardice and laziness. Police acted as ordinary bureaucrats do when faced with work: they tried to avoid it.

Almost as outrageous as the mass dereliction of duty were the explanations offered by conservative defenders of the police. At first they denied that anything had happened. When shown incontrovertible evidence, their first reaction was, so help me God, to *blame the public*. You see, last year a group of four New York policemen fired 41 bullets into an unarmed young black man who they thought might have committed a crime. The public was so outraged that the cops

were actually charged with wrongdoing. The case went to trial and the cops were let off. But, according to conservative "pundits" like Sean Hannity of *Fox News*, this public criticism left cops understandably reluctant to take action against criminals who happen to be members of a racial minority.

Right. People get unhappy when cops kill an unarmed, entirely innocent young man, mutilating his corpse by pumping 41 bullets into it, so police figure they'll get in trouble if they intervene when groups of 10 or 20 young drunks sexually assault women in broad daylight in Central Park.

Faced with the videotapes showing the police standing by as women were assaulted, Hannity retreated a bit from his "it's-the-public's-fault-for-having-the-gall-to-criticize-the-police" explanation. In a show of sympathy for the victims, he allowed that there may be a few bad apples in the New York Police Department, and they should be dealt with.

But this is not just a case of a few bad cops. Central Park is a big place and there were numerous sexual assaults in different parts of it. Within a week of the event, more than 50 women had come forward to report their assaults — yet there has not been a single report of a single policeman doing anything to help protect the life or safety of even one of those assaulted.

This is not about a few bad apples. This is about a subculture that has a lot of terrible values. Far too many New York cops are unwilling to do what they're paid to do. Far too many are bullies who see the general public as the enemy. Far too many are cowards (a class of people proverbially identified with bullies). Far too many are simply too lazy to do what they're paid to do.

It was an amateur video that started the Rodney King case. Had the videotape not existed, the perpetrating policemen would have gotten away with their lies. And it was amateur videos of the assaults in Central Park that prevented the police from getting away with the lie that no assaults had happened. A still photographer played the same role in the case of the snatching of Elián González by the Border Patrol in April — the federal agents wisely knocked down the sole video cameraperson there, but failed to notice the still photographer. One wonders what sort of lies the federal cops would have told if the still camera had not been present — and what other misdeeds they perpetrated out of view of the camera.

But one thing is certain: the ubiquity of videocameras is putting a check on the outrageousness of the police lies.

— R.W. Bradford

Public privacy — I live in Central Nevada in an area so far away from the expected amenities of "civilization," that the Post Office doesn't deliver to your house; you have to rent a post office box and come in to get your mail. (Private parcel delivery firms, of course, deliver to your door.) Because of this inconvenience, the Post Office offers "free" rent on post office boxes here. On the form you fill out to qualify for a free box, the Post Office provides a "Privacy Act Statement" about the information that is collected.

The Statement promises that the information they have collected on you may, "as a routine use, be disclosed to anyone, when the box is used for the purpose of doing or soliciting business with the public; to an appropriate government



"Help! Police! Sexual harassment!"

agency, domestic or foreign, for law enforcement purposes; to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants, or other benefits; to an expert, consultant or other person under contract with the USPS to fulfill an agency function; to a labor organization as required by the National Labor Relations Act," as well as others that I don't have space to list. It would have been much more informative if the Post Office had simply stated when, if ever, it *wouldn't* give out the information. Perhaps its Privacy Act Statement should read: You should not expect us to keep private any information you give us.

—Sandy Shaw

We are all Berliners now — Remember the sneaky amendment to the more than 600 page Kennedy-Kassebaum health portability act, passed in 1996, in which anybody who renounced his or her U.S. citizenship for the purpose of saving money on taxes would be forced to pay U.S. income taxes for the next ten years? Well, it appears that wasn't good enough. According to Rep. Charles Rangel and the Clinton Administration, wealthy U.S. expatriates are "easily" avoiding millions in taxes because of loopholes in that law.

They propose a new, one-time tax on all expatriates at the time they leave, regardless of their motive for renouncing their U.S. citizenship, hoping to grab from Americans over 10 years \$2,000,000,000 (Rangel's plan) or \$2,900,000,000 (Clinton's plan).

Remember when people were actually outraged because would-be escapees from East Germany had to pay the government \$20,000 to leave the country or be shot in the back at the border?

—Sandy Shaw

The Luddite virtues — Luddites are attacking technology again — most recently, bio-engineered crops. Well, I too worry about technology. After all:

If we didn't have computer models, we wouldn't be worried about global warming;

If we didn't have airplanes, we wouldn't see clearcuts;

If we couldn't measure quantities in parts per billion, we would ignore carcinogens in our drinking water;

If we couldn't aggregate economic statistics, we would never have embraced so much government control.

—Jane S. Shaw

Condemn nation — Years ago the Hawaii legislature passed a law requiring the state to spend up to one percent of state construction funds for the purchase of art. This led to the buildup of a massive inventory of art that has, ironically, been taken off the market and kept out of public view in government warehouses. A cynic might come to the rather unflattering conclusion that this policy has paid artists to hide their work.

Well, the governor has put such speculation to rest. He wants to display more of the hidden art in the historic Hemmeter building. Under this plan, not only would taxpayers pay for art, they will also pay for additional architecture to display the art.

Some people were concerned about the \$22 million cost, so one lawmaker declared that the government should use

its condemnation powers in order to get a better price for the Hemmeter building. What an impressive attitude this represents. If politicians want something and are not willing to pay the voluntary price, then they use force by "condemning" it.

The term "condemnation" used to mean that the government determined that a building was a public hazard and had to be condemned for public safety. Now the term applies broadly to architectural jewels that lawmakers can't wait to get their hands on.

Well, if condemnation is an acceptable way for politicians to take architecture, why not just save more tax money and condemn the art inside, taking it for less than the asking price? Or condemn the artist and take what he produces? After all, that's how politicians treat the taxpayer.

—Ken Schoolland

Uptalk and downtalk — You can tell a lot about people by the words they use. You can also tell a lot about them by the syllables they emphasize.

During the past two decades, American speech has been deeply affected by a certain pattern of emphasis that has aptly been termed "uptalk." Uptalk is what happens when people (I mean stupid people) tweak their sentences by giving some of the words a rising accent. They turn everything they say into a question:

I went out to the movies last night? And I went with Bart? And he had this car? Y'know? And he was drunk? And there was like, this accident? OK? And he's all 'Wha' happend?' And I'm all, 'You bastard? My parents are gonna kill me? When I get home?' And he's all . . .

You understand. Uptalk is the speech of the totally ("tolly") ignorant, people so ignorant that they know but one thing in this world: when they speak, others may not be listening. That's why they enunciate every phrase as if it were a

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question. "Like, man, are you lisning? Y'know?"

Now the American language is being subjected to another intonational tendency, and worse. It comes at us from the purportedly opposite side of the linguistic spectrum, the narrow but determined bandwidth of the brahmin class of politicians. (Think of Hillary Clinton, Jesse Jackson, Al Gore, and all those White House lawyers.) It is downtalk. It is the falling accent that is inserted into a sentence to tell you that *we* know this, and if *you* don't, you had better pretend you do.

Downtalk is ordinarily reserved for argument, and for the most speculative and questionable parts of argument, where it enables bizarre contentions to mask themselves in a haughty (or a theatrically weary) matter-of-factness. It's an excellent accompaniment to finger-wagging. Examples abound:

I did not have sexual relations with that woman, Ms. Lewinsky

Instead of discussing *false charges* about some kind of *purported sexual misconduct*, it's time we talked about the *really important issues: child care, global warming*

These *allegations* have been made *before*, and they have already been *addressed*

There is, of course, *nothing new* about these *allegations* This is, of course, nothing but *another partisan attack*

If we don't do something about the *real causes of violence, like guns in this country*

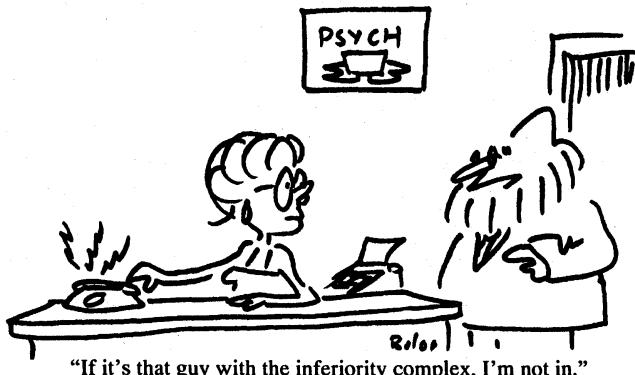
If we don't do something about the *real causes of violence, like poverty in this country*

If we don't do something about the *real causes of violence, like racism in this country*

My lawyers have informed me that there is *no controlling legal authority*

Well, it's not "downtalk" just because of the falling accent. You know that old expression about people who "talk down" to you?—Stephen Cox

I'll have seconds on the Viagra, if you're paying — Lifestyle drugs are drugs that treat conditions not usually considered "diseases," such as baldness, mild obesity, and impotence. Treatment is optional and not expected to have an effect on general health or lifespan. Nevertheless, people want these treatments for improved quality of life, especially when they are paid for by somebody else as in a taxpayer-funded "free" health care system. The increasing availability of lifestyle drugs poses an ever greater threat to the viability of these government programs.



An interesting article appeared in the June issue of *Modern Drug Discovery* on this subject, from which all the quotes that follow were derived. David Gilbert, a fellow at Britain's Office for Public Management and author of the Scrip report *Lifestyle Drugs, Who Will Pay?* notes that "No healthcare system in the world can cope with lifestyle drugs. Decision makers need a sensible framework to determine whether or not to include these drugs in formularies. The boundary between a lifestyle need and a health need is socially constructed." A good example is drugs that make you feel good. John Werry, a leading New Zealand expert on psychiatry, believes that many adults taking antidepressants do not have a psychiatric disorder, but a personality variation. People take these drugs not to treat a disease but to correct a "natural shortcoming." The demand for "free" health care is unlimited and people are starting to agonize over it as the availability of new lifestyle drugs is beginning to soar.

Viagra has inspired a great controversy in Europe. Britain's secretary of state for health declared that only those who "really need" Viagra should have it paid for by the state. But in a "democracy" where everybody votes for their own wish lists to be paid for by everybody else, how do you decide who "really needs" the drug? Viagra might even be considered a "recreational drug." In actual fact, Viagra sales in Britain are tiny because the government will not reimburse for it and because laws prohibit advertising of drugs to consumers. Over the next few years, however, the Internet will make hash of the restrictions on advertising.

The availability of lifestyle drugs merges with the issue of pharmaceutical drug prices. Lifestyle drugs, like drugs to treat disease, are expensive and the system of third party

Egalitarian socialists will try to prevent people from purchasing these pharmaceutical drugs with their own money so as to "equalize" everybody at the level of government program availability.

payers adds immensely to the costs. Greg Whatley, a pharmacist at Rite Aid in Grants Pass, Oregon says, "Pharmaceutical companies do not base prescription drug prices on what a cash-paying customer can afford, but rather at the level that a third-party payer is able to bear. Customers paying cash represent only ten to twenty percent of the total volume of prescriptions dispensed in Oregon. If third parties dissolved, prices would plummet to what the market could withstand."

To make matters even more complex, it is profits that pay for the pharmaceutical research that generates all these new drugs. In most European countries, the government is the largest purchaser of pharmaceuticals, using its immense bargaining power to negotiate (or coerce) the prices of drugs down. The end result is far fewer profits for drug companies and less revenue available for research. William Steere, Pfizer's chair and CEO says, "Between 1975 and 1994, the United States was responsible for nearly half of the new major drugs. In contrast, the United Kingdom produced 14

percent, Germany seven percent, and France three percent. By 2002, it is predicted that European pharmaceutical companies will supply only five of the world's top-selling drugs."

Those who cannot tolerate "two-tier" health care systems (i.e., in which those who have more money can buy more and better health care or lifestyle care) are sure to be disturbed over the threat to their "equal" access to "free" health care posed by all those expensive new individual choices. Their usual response is to attempt to close down choice by restricting advertising, for example. What happens when the "free" system can no longer provide enough to maintain the fiction of "equal access?"

The greatest danger will probably come from the extreme egalitarian socialists who are likely to try to prevent people from purchasing these pharmaceutical drugs with their own money so as to "equalize" everybody at the level of government program availability. This has already happened in the case of Medicare, which has regulations denying those over 65 who "qualify" for Medicare from freely contracting with doctors for treatments of their choice in Medicare-covered diseases. Durk and I keep telling the alternative/complementary medicine folks that the last thing they should want is to have alternative medicine become respectfully included (i.e., monopolized) by government health care systems such as Medicare. That could be the end of freedom of choice in alternative medicine.

— Durk Pearson and Sandy Shaw

Homeschoolers s-w-e-e-p — The top three winners in the 73rd National Spelling Bee were all homeschoolers. Do you suppose all those bureaucrats who resisted the "risky scheme" of home schooling back in the early 1980s when it was starting to catch on (even arresting a few parents) can spell E-A-T C-R-O-W? I didn't think so.

— Alan Bock

Counterintelligence — The Clinton Administration became the most paranormal administration in history when two lost hard drives full of nuclear secrets appeared behind a copier at Los Alamos Nuclear Laboratory in New Mexico. If you remember, it wasn't that long ago when the subpoenaed billing records of the Rose Law Firm appeared shortly after the statute of limitations expired.

Only a bureaucrat would think it's a good idea to store unencrypted top secret documents on a hard drive. Hard drives are notorious for their portability and their ability to be duplicated in milliseconds. At least back in the early days of espionage, we made spies bring a little camera.

If I had some intelligence I didn't want transmitted, I sure as Hades wouldn't put it onto a hard drive. It'd be stored in an enormous leather-bound volume of parchment, the script would be in hieroglyphics, guarded 24 hours a day, and lit only by candlelight. If someone wanted to steal it he would need a forklift.

— Tim Slagle

Another donut, please — The Imperial City, Washington, D.C., offers a prime example of how well government can run things if it really has the opportunity. Congress runs the place fairly directly. So how is it doing, especially since the government manages to spend about

\$2,500 per capita on health care, compared to a national average of around \$1,000? Well, let's see: it has the highest poverty rate in the country (about 28 percent) and the highest out-of-wedlock birth rate at around 64 percent. The District's infant-mortality rate is the highest of any large city in the country, the AIDS rate is the third highest, and the cancer rate is the seventh highest. Yeah, give us all some of that!

— Alan Bock

The great impostor — Like most other thinking people, I am chronically at a loss to understand the weird phenomenon of William Jefferson ("Bill") Clinton. It is a phenomenon as strange and unaccountable as those stories about the woman in Kansas who was sitting on her sofa when she was vaporized by spontaneous combustion, or that village in Texas that was deluged by frogs falling silently from an empty sky.

Any reference to Clinton-like phenomena in the literature of the past is worthy of attention as a possible source of insight into the strange visitation that we call "Bill." If we can discover entities that have exhibited similar characteristics, if we can identify some pattern in events and motives, then we may, perhaps, be able to solve the Clinton riddle.

I was therefore very excited when I recently uncovered descriptions of an historical personality who bears an uncanny resemblance to the man who currently stalks the White House grounds. I found his semblance and analogue in the title character of A. J. A. Symons' classic of investigative writing, *The Quest for Corvo* (1934). Corvo — "Baron" Corvo, real name Frederick William Rolfe — was a writer who lived during the Edwardian period. He spent his life pretending to be a variety of things he wasn't. Incapable of working for a living, he existed mainly by defrauding gullible friends. While deluding others, he also deluded himself, cherishing among many other fantasies the idea that he should rightfully be elected the Pope of Rome. Well, and why shouldn't he? It's only a little more ridiculous than Clinton's fantasy about being qualified to serve as President of the United States.

Symons contacted various people who knew Frederick William Rolfe, one of whom furnished the following insight-

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ful description and analysis. It applies with uncanny accuracy to impostors of all kinds, up to and including the above-said "President" Clinton. It will do well enough for a political obituary, too. We may say of Clinton, as the following account says of Rolfe, that:

He had a very clear and discerning eye for outside values and superficialities — and little else. . . . Forms, manners, colours, sounds, shapes, and, beyond, a region of vague uninteresting shadows — a sort of spiritual and intellectual myopia — there, I hold, you have the key. . . . There was in him little pride, in the better sense of the term. He did not disdain to beg. In fact he seemed to consider that he had a right to expect assistance and favours from those in a position to grant them — I have heard him say so. As to gratitude — less said the better.

There was a sort of ruthless selfishness in him which led him to exploit others, quite regardless of their interest or feelings or advantage. . . .

Take him all in all, he was not very human: he was a sort of sub-species. He must have been very tough and elastic, or he would have been utterly crushed and destroyed by the opposition and enmity he met with, and did so much to excite. Was there an element of greatness in him to account for this? Or was it perhaps something more analogous to that appalling saying of Parolles: "If my heart were great 'twould burst at this"?

This tells us a good deal about Mr. Clinton; unfortunately, it does not reach as far as an interpretation of his wife. *There we have a phenomenon that may never be explained.*

— Stephen Cox

Riddle me this — In the hopes of burying knock-knock jokes, let us start a new tradition: What's the difference between a right-wing bigot and a left-wing bigot? To get the ball rolling . . .

- A right-wing bigot uses four-letter words; a left-wing bigot, four-syllable ones.
- A right-wing bigot chews tobacco; a left-wing bigot chain-smokes it.
- A right-wing bigot has a website; a left-wing bigot, a six-figure book deal.
- A right-wing bigot receives an unemployment check; a left-wing bigot, tenure.
- A right-wing bigot thinks *The New Republic* is "run by a bunch of Jew liberals"; a left-wing bigot thinks it's "controlled by an elite of white male neocons."
- A right-wing bigot admits he's a bigot; a left-wing bigot tells you *you're* the bigot.

— Barry Loberfeld

Chickenhawks — When the Israelis pulled their troops from southern Lebanon a couple of months before the deadline, I called a friend in the Israeli consulate to ask what was up. He could barely contain his glee. Not only had the thing been done quickly, efficiently and neatly, reflecting a certain level of competence in the planning, but it put pressure on the Lebanese semi-government to demonstrate a greater level of independence from Syria, and notably weakened Syria's bargaining position vis-à-vis the Golan Heights. In short, from the Israeli perspective, it was a coup. What about all the Hezbollah spokesmen who were crowing that it was a great defeat for the Israelis and showed the perseverance of the Arab militias, demonstrating that Israel wasn't

invincible, I asked. Let them babble, he replied. We never intended to stay there forever, we probably stayed too long, the Israeli people wanted out, and we were able to do it in a way that inflicted a little embarrassment and a few minor wounds on our adversaries. They know who won this round.

Somebody should have gotten to Charles Krauthammer, the comfortably Washington-based Israeli warhawk, who lamented in the neoconservative circle jerk called *The Weekly Standard* that this was proof positive that Israel had lost the will, the spark, the drive, to keep up the struggle against its unrelenting enemies. Ah, Zion, thy days are numbered.

It strikes me that this is a more widespread phenomenon than is often acknowledged that the denizens of the Imperial City want to keep wars and conflicts going long after those on the ground are ready to find a way to resolve them. Watch for handwringing over the possibility that Israel and Syria might find a way to resolve conflicts now that old Hafez Assad has croaked (though I wouldn't expect it anytime soon and wouldn't be surprised to see backsliding until the Syrian succession is sorted out). And if the meeting between the two Kims in Korea leads to the beginning of a resolution of that old conflict and maybe even the beginning of a withdrawal of the increasingly superfluous U.S. troops, look for the national security nuts to be terribly concerned.

— Alan Bock

Disorder in the court — On June 7th, Judge Thomas Penfield Jackson approved the final judgment proposed by the plaintiffs in *U.S. v. Microsoft*. Most of his order dealt with (and rejected) Microsoft's request to deny the remedy of breaking MS in two. Judge Jackson's order — riddled with gaffes including a market definition that excludes Macs, Linux, and anything other than Intel machines — was reminiscent of the infamous Star Chamber trials.

Judge Jackson's reasons for denying Microsoft's motion were most instructive. He asserted "Microsoft as it is presently organized and led is unwilling to accept the notion that it broke the law or accede to an order amending its conduct." What were his grounds for concluding that this company was going to commit contempt of court regarding an order to change its conduct?

"First, despite the court's findings of fact and conclusions of law, *Microsoft does not yet concede* that any of its business practices violated the Sherman Act. Microsoft officials have recently been quoted to the effect that the company has 'done nothing wrong' and that it will be vindicated on appeal." (Emphasis added)

In plain English, Judge Jackson is punishing Microsoft for having the audacity to disagree with him about its culpability — and to appeal his holy writ. For that *lèse-majesté*, Microsoft will be punished with vivisection.

"Second, there is credible evidence that Microsoft, convinced of its innocence, continues to do business as it has done in the past and may yet do to other markets what it has already done in the PC operating system and browser markets."

In other words, Microsoft had egregiously continued to do things that were perfectly legal until this order. Where did they get the idea that due process of law protects them

until final judgment? Not in Judge Jackson's court.

Judge Jackson shows his knowledge of practical politics in this reasoning on why he approved the remedy proposed by plaintiffs. "Plaintiffs won the case, and for that reason alone have some entitlement to a remedy of their choice." Not in the Anglo-American system. The remedy under the rule of law is decided by the judge, not chosen by the prevailing party.

He added, "Moreover, plaintiff's proposed final judgment is the collective work product of senior antitrust law enforcement officials of the U.S. Department of Justice and the attorneys general of 19 states, in conjunction with multiple consultants. These officials are by reason of office obliged and expected to consider — and to act in — the public interest. Microsoft is not." It appears that the insights of public choice theory have not penetrated the chambers of this Bush appointee. Is he not aware of the hyperpolitical nature of the Clinton Justice Department, and the ties of many of the attorneys general to the centimillionaire tobacco litigators? Apparently he has forgotten the blood of the 84 Waco vic-

In plain English, Judge Jackson is punishing Microsoft for having the audacity to disagree with him about its culpability — and to appeal his holy writ.

tims of other law enforcement officials of the Justice Department.

He also observed "The final judgment proposed by plaintiffs is perhaps more radical than might have resulted had mediation been successful and terminated in a consent decree. It is less so than that advocated by four disinterested amicus curiae." Ah, the Golden Mean. This is the essence of the modern growth of the state. Party 1 proposes a modest increase in state power, Party 2 counters that a much greater increase is needed, and the decisionmaker splits the difference.

Antitrust law has been an archetypal deviation from the rule of law since its modern inception in 1890 with the Sherman Act. Vague rules, politicized enforcement, huge windfalls for the connected private bar. All these have come together in *U.S. v. Microsoft*. The Tariff of Abominations has a sister in the Lawsuit of Abominations. — Martin Solomon

Take our secrets. Please. — The most remarkable aspect of the flap over the disappeared "nuclear secrets" from the Los Alamos National Laboratory is the sheer, breathtaking level of incompetence it displays. These hard drives, if we are to believe the news reports, contained all the information the Nuclear Emergency Search Team (NEST, isn't that cute?) would need to disarm a wide variety of U.S. and Russian nuclear devices including detailed designs of almost every nuclear weapon known to exist. And they were held in a vault to which 86 people had access, but there wasn't even a "sign-in" system for 26 of these guys. The disappearance was noted May 7 but maybe the last time anybody remembers seeing the drives in the vault was April 7.

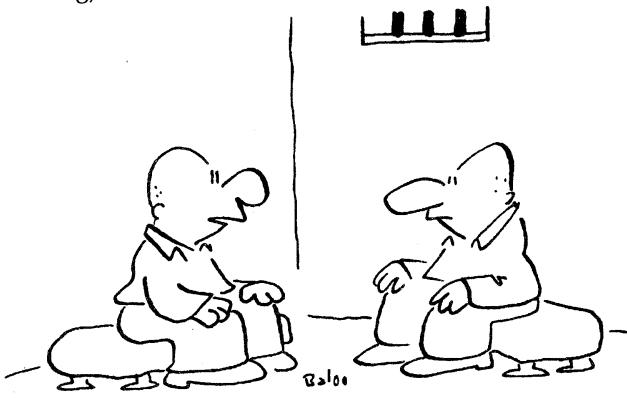
Maybe the disappearance was earlier, maybe it was later. But the underlings didn't report to their bosses for at least a couple of weeks, and then the notification to higher-ups in the Department of Energy didn't come until weeks after that. Can these guys do anything right?

The *Orange County Register* printed a cool letter from a Santa Ana private investigator who noted that he had kept all kinds of secret stuff, sometimes under order from a U.S. District Judge, and had never lost a thing. It takes a certain amount of attention, he said, but it's just not all that difficult. He offered to keep nuclear secrets (if there still are any) for free.

Chances are this isn't such a big deal really. More than likely most of the really bad guys in the world already knew most of the stuff on those hard drives, and maybe it would be better to stop pretending to keep secrets and operate on the theory that what is paid for with taxpayers' money belongs to the public and shouldn't be involved in any kind of classification system at all. But if you're going to have a security system, couldn't you at least run it with a modicum of competence?

And these guys want to rationalize the economy, cure the mistakes of the free market and make things just hunky-dory on the Internet. Right. — Alan Bock

Waging war on the FDA — There has been an exciting development in our continuing battle with the Food and Drug Administration. As we explained in the April *Liberty*, the FDA is still refusing to comply with the unanimous January 15, 1999 decision of the U. S. Court of Appeals for the District of Columbia in *Pearson & Shaw et al. v. Shalala et al.*, in which the Court ruled the FDA's prohibitions on truthful health claims to be unconstitutional. The Court ordered that the FDA consider the use of disclaimers when a health claim is potentially (but not inherently) misleading, rather than banning such health claims in their entirety. Since that decision, we have been trying to compel the FDA to comply with the First Amendment, the Nutritional Labeling and Education Act of 1991 (NLEA) and the Dietary Supplement Health and Education Act of 1994 (DSHEA), which allow vitamin manufacturers, under certain circumstances, to provide truthful nutritional claims about their products. As we pointed out in our briefs and as the Court noted in its decision, the First Amendment favors increased information rather than enforced silence when information is judged by the government to be inadequate (e.g. potentially misleading).



Now, we have been joined in this battle by the Grocery Manufacturers of America (GMA), a gigantic trade organization representing companies such as Bestfoods, General Mills, Campbell Soup, and Coca-Cola, with total U.S. yearly sales of more than \$460 billion, roughly 100 times the yearly U.S. sales of the entire dietary supplement industry.

GMA has filed a Citizen Petition with the FDA strongly endorsing *Pearson*. The trade group criticizes the FDA for failing to implement the decision promptly and fully, and demands that the agency do so at once. The GMA also demands that the FDA discard its so-called "guidance" on significant scientific agreement, since (1) the FDA has yet to clearly define what it means by significant scientific agreement, and (2) its efforts to date are not following the intent of Congress, which was to increase the flow of information that accurately depicts the current state of knowledge rather than waiting until it had met the drug standard of evidentiary support.

Incredibly, the GMA's petition and the accompanying press release contain strong language in support of the First Amendment and not a single "compromise" of principle that one expects when large trade groups deal with a regulatory agency.

Of course, GMA is not motivated by its love of the First Amendment. Its members want to increase freedom of speech in the commercial arena because of the potentially immense profits to be made from truthful claims about foods.

We don't know whether it has occurred to them, but food companies might emulate the growth rates of high tech companies on the NASDAQ if truthful health claims could be made about their products. It would become profitable for food companies to invest much more money on research into the relationship between foods and disease. Foods would become "value added" products by the addition of important and useful health information.

It would also become profitable to develop new foods (using genetic engineering), such as fruits and vegetables that may contain much more vitamin E, omega-3 fatty acids or other healthful ingredients. This is the way to get public support for genetic engineering, with genetically engineered foods that are more healthful than their non-engineered counterparts.

The GMA asks that the FDA immediately withdraw and revise its unconstitutional disease claims rules and "apply

the principles set forth in *Pearson* to its regulation of food labeling." They warn that "[b]y failing to incorporate the *Pearson* mandate into its regulatory approach, the FDA threatens the market with

chaos and threatens to undermine its own guardianship of public health. *Pearson* and other precedents indicate that further attempts by the FDA to prohibit disease claims would not survive a First Amendment challenge. Thus, manufacturers could bypass the FDA petition process on the assumption that the FDA either would not challenge the claim or that the FDA's challenge might well fail, as it did in *Pearson*."

GMA also warns that unless the FDA embraces a free flow of truthful and nonmisleading information to consumers, "it will face constant First Amendment challenges that will further undermine the respect and authority that the FDA commands in its role as the protector of public health."

The FDA has clearly been in something of a panic ever since the *Pearson* decision came down. The past level of panic is probably nothing compared to what is likely to be going on at the agency now in the face of mutiny by the food industry. The FDA's obsessions (that disease can only be cured through swallowing and injecting pharmaceuticals, and that food and supplements have little or no value in preventing disease and maintaining health) are threatened. The continuous legal action and the spending to support it that is required to restrain a powerful agency have been quite a burden on those of us in the dietary supplement industry and the libertarian community who have been battling in court for the past several years to get the FDA to obey the law.

The surprise entry of the food industry into the battle has made victory more certain and more imminent — a wonderful development in every sense of the word.

However, not all the news from the front lines against the FDA is good. On June 13, Julian M. Whitaker, M.D., Pure Encapsulations, Inc., Durk Pearson & Sandy Shaw and the American Preventive Medical Association filed a Motion for Summary Judgment against the FDA in their suit challenging the agency's rejection of a health claim that saw palmetto may reduce the symptoms of benign prostatic hypertrophy. Not only did the FDA reject the claim, but it maintained that the saw palmetto health claim was a drug claim (requiring compliance with drug approval regulations), despite the fact that saw palmetto is a dietary supplement and the health claim meets the statutory definition of such claims. Thus the FDA continues to fight to maintain its pharmaceutical industry empire (and the hundreds of millions of dollars it gets each year from pharmaceutical industry user fees) by preventing dietary supplements from competing with prescription drugs.

The good news is that Congresswoman Helen Chenoweth-Hage and four co-sponsors have introduced The Consumer Freedom Protection Act (H.R. 4604). The bill amends "the Federal Food, Drug and Cosmetic Act to compel Food and Drug Administration compliance with the First Amendment to the United States Constitution and to protect freedom of informed choice in the dietary supplement marketplace consistent with . . . *Pearson v. Shalala*." The bill would codify the Appeals Court's decision in *Pearson v. Shalala*. Moreover, the bill requires that, if the FDA refuses a health claim and is subsequently reversed by the US Court of Appeals for the District of Columbia, the FDA must pay all ordinary legal fees and expenses out of its own budget!

But this is an election year and the politicos are busy, so it is unclear whether there is a chance for this bill to pass.

— Sandy Shaw and Durk Pearson

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Tribute

Peter McWilliams

by R. W. Bradford

Another casualty of the War on Drugs.

On June 14, Natalie Fisher went to Peter McWilliams' home, where she worked as housekeeper to the wheelchair-bound victim of AIDS and cancer. In the bathroom on the second floor, she found his lifeless body. He had choked to death on his own vomit.

As regular readers of *Liberty* know, Peter, a world famous author* and a regular contributor to these pages, was diagnosed with AIDS and non-Hodgkins lymphoma in early 1996. Like many people stricken with AIDS or cancer, he had great difficulty keeping down the drugs that controlled or mitigated those afflictions. He began to smoke marijuana to control the drug-induced nausea. It saved his life: by early 1998, both his cancer and his AIDS were under control.

In 1996, California voters enacted a law legalizing the use of marijuana by people, like Peter, who needed it for medical reasons. Peter was an enthusiastic supporter of the new law, both because he believed in maximizing human liberty and because marijuana had saved his life and was, indeed, keeping him alive.

But Peter was more than an advocate. After the Clinton administration announced it would ignore the state law and continue to prosecute marijuana users who needed the drug to stay alive, it remained very difficult for others who needed medical marijuana to get the drug. So Peter helped finance the efforts of Todd McCormick to cultivate marijuana for distribution to those who needed it for medical reasons.

His articulate advocacy of legalizing medical marijuana brought him to the attention of federal authorities, who got wind of Todd McCormick's attempt to grow marijuana for medicinal purposes and of Peter's involvement with it. And

it came to pass that in the early morning of December 17, 1997, federal agents invaded his home and business, and confiscated a wide array of his property (including his computers, one of whose hard disks contained the book he was writing). In July 1998 they arrested him on charges of conspiring to grow marijuana.

His mother and brother put up their homes as bond and he was released from jail to await his trial. One of the conditions of his bail was that he smoke no marijuana. Unwilling to risk the homes of his mother and brother, he obeyed the order. His viral load, which had fallen to undetectable levels, now soared to dangerous levels:

Unable to keep down the life-saving prescription medications, by November 1998, four months after my arrest, my viral load soared to more than 256,000. In 1996 when my viral load was only 12,500, I had already developed an AIDS-related cancer. . . . Even so, the government would not yield. It continued to urine test me. If marijuana were found in my system, my mother and brother would lose their homes and I would be returned to prison.

Peter's health wasn't all that was ruined. Unable to work because of the disease and facing mounting legal bills, he was forced into bankruptcy. But he didn't give up: he experimented with various regimens and eventually managed to keep his medication down for as long as an hour and a quarter, long enough for some of the medication to work its way into his system. But the process had weakened him to the point where he was wheelchair-bound.

His publishing venture destroyed and his assets gone, Peter focused on his upcoming trial. He relished the chance to defend himself in court: medical marijuana was legal

* He wrote several best-sellers, including some of the first books about using microcomputers, *How to Survive the Loss of Love* (which sold more than four million copies, several books of poetry (with total sales of nearly four million), and *Ain't Nobody's Business If You Do*, a brilliant analysis of consensual "crimes."

under state law and he believed a spirited defense could both exonerate him and help establish a legal right to grow marijuana for medical purposes.

Last November, news came that would have crushed a lesser man: the judge in the case ruled that Peter could not present to the jury any information about his illness, the fact that the government's own research concludes that marijuana is virtually the only way to treat the illness, or that using marijuana for medical purposes was legal in California.

Unable to defend himself against the government's charges, Peter concluded that he had no choice but to plea bargain. He agreed to plead guilty, in hopes that any incarceration could be served under house arrest, since sending him to prison, where he would not be able to follow his life-

I thought about the judge who had denied him his day in court and had ordered him to forgo the medication that kept him alive. I suppose he's happy, I said to myself, now that he's murdered Peter.

saving regimen, would be tantamount to sentencing him to death.

On June 11, there was a fire in his home, which destroyed the letters to the judge that he had acquired and the computer containing the book he was writing on his ordeal. Three days later, he died, apparently as a result of his inability to keep his medication down.

When I heard that Peter had died I was grief-stricken. I'd known him only for a couple of years, but that was more than enough for me to come to respect and love him. I became acquainted with him shortly after the drug police raided his home, the first in the series of calamities that befell him.

Three things about Peter were truly amazing.

Despite the government's persecution, which resulted in the loss of virtually all his property, his freedom, and ultimately his life, he never descended into hatred. Time and time again, he cautioned friends against falling victim to hate or giving in to the desire for revenge. "My enemy is ignorance," he'd say, "not individuals."

I was also astonished by his ability to focus on the future and not get depressed about the calamities that befell him. I spoke to him dozens, perhaps hundreds, of times during his ordeal, and I do not recall a single time when he even remotely sounded down or acted as if he were seeking my sympathy.

The third astonishing thing about Peter was his remarkable generosity of spirit. He always offered help and encouragement to others, no matter what his own circumstances were. A few months ago, I was contacted by a publisher

with a request to reprint an article of Peter's that had appeared in *Liberty*. The publisher was one of the few who routinely is willing to pay for reprint rights, so I called Peter with the good news, and asked him how much he'd like me to ask for his article. "Nothing," he said. "I want to encourage people to reprint my writing on the drug war." I reiterated that this publisher happily paid \$100 to \$200 for reprint rights, that it was very prosperous and that he could use the money. (By this time, Peter was so broke that he was asking friends to use his website as a portal to various shopping websites so that he would receive the small commissions that they offer.) But Peter would have none of it. "We are in a war of ideas," he said. "And I want my writing to have the widest possible effect."



I must admit that when I learned the tragic news of Peter's death, my spirit was not so generous as his. I thought about the judge who had denied him his day in court and had ordered him to forgo the medication that kept him alive. I suppose he's happy, I said to myself, now that he's murdered Peter.

I'm one of those libertarians who generally tries to look at government policies more as folly than as evil. But sometimes, the evil that government does transcends simple folly. Sometimes I have to be reminded that there is a real human cost of government. It happened when I learned of the government's killing of 86 people at Waco and its murder of Vicki Weaver at Ruby Ridge. And it happened with Peter, too.

Peter never wanted to be a martyr. But he wanted to live in a free country, where people respected each other's rights and choices, and he did what he thought was best to keep

One of the conditions of his bail was that he smoke no marijuana. Unwilling to risk the homes of his mother and brother, he obeyed the order. His viral load, which had fallen to undetectable levels, now soared to dangerous levels.

himself alive and to advance the cause of liberty. He was one of the most joyous people I've ever known, a hero in every sense of the word.

So rather than belabor his tragic death, *Liberty* will celebrate his life by publishing for the first time the full text of his address to the Libertarian Party National Convention in 1998. It's vintage Peter McWilliams: funny, wise, charming, intelligent, full of piss and vinegar.

I invite you to read and enjoy it — and join with other people of good will in celebrating the life of this good, kind, decent, generous, and brilliant man. □

Explanation

Why Liberty is as Much Fun as Medical Marijuana

by Peter McWilliams

On July 4, 1998, Peter McWilliams addressed the Libertarian Party National Convention.

Thank you, thank you very much. Good afternoon. Where are the Teleprompters? How am I expected to do a political speech without a teleprompter? You mean, I'm just supposed to stand here and say what I think and believe? What kind of political party is this?

I want to tell you about a pair of epiphanies that I had in 1996. The first happened in March of 1996 when I was diagnosed with both AIDS and cancer. I tell you this early on because I want your sympathy throughout the rest of this speech. When you mention AIDS or cancer, people are so afraid of their own death that they treat you very nicely.

Remember that. For example, I am going to demonstrate it here. I am going to show you how much sympathy this audience currently has. As an AIDS patient, if Bill Clinton had followed his campaign promise to start a Manhattan Project-style federal program to end AIDS, I would not have AIDS today.

Do you see how much sympathy I'm getting? Normally somebody saying that at a Libertarian event would be booed off the stage. Because, in fact, if Clinton had started his federal Manhattan Project-style cure for AIDS, I wouldn't have AIDS now.

I'd be dead.

It's the greedy pharmaceutical companies who wanted to exploit and profit from my misery and my tragedy who are keeping me alive today. Speaking of greedy manufacturers, tonight those of you coming to the banquet will receive a free copy of my book, *Ain't Nobody's Business if You Do*, as sort of a first course. I do this not because I like any of you, but because I get to hold this up on C-SPAN. That wasn't a shameless plug; the book is online, as all my books are, for free, at www.mcwilliams.com. So that was a plug to go online and read the book for free, please.

Back to March 1996. I was being pumped full of chemotherapy, which causes nausea, and radiation, which causes

nausea, and AIDS medications, which cause nausea, and none of the prescription antinausea medications were working. The nausea, however, ended instantly with medical marijuana. With one puff of marijuana, the nausea turned to hunger. Thank Mother Nature for that (Mother Nature is one of Nature's Gods, from the Declaration of Independence). Medical marijuana has been around for more than 5,000 years and it hasn't killed anyone.

It is astonishing how well it works.

And you have to understand how serious it is when you can't keep your medication down — it's not just uncomfortable, if you can't keep that medication down, it's not going to save your life. And that is the important point. We're talking about life and death when we're talking about treating AIDS and cancer. Half the people not taking the AIDS combination therapy — some 40 percent of all who try — do so because of nausea. This is a shame, because the AIDS medications are working so well for those who can tolerate them. I am one of them. But 20 percent stop because of nausea. I wonder how many of those 20 percent, if they had access to legal, inexpensive marijuana, would have that same problem. Every day people are denied cancer chemotherapy because the doctors stop treatment knowing that they will die of malnutrition if they go another day without eating. Nausea is an unsolved problem of medicine and marijuana is the finest antinausea medication known to science.

At the same time our leaders have lied about this consistently. Our leaders whom we trust, whom we look up to. From the Democratic president to the Drug Czar to the Republican leaders in Congress, in both the House and the

Senate. They have lied to us about medical marijuana. They have lied to us about the harm of marijuana. There is no more benign medicinal substance known to human beings. And we have been lied to about this. And so this was my first epiphany, watching my normal run to the bathroom, with one puff of marijuana, turn into a meandering raid on the kitchen. And with that epiphany I said, "I am not going to rest until medical marijuana is available to every sick person who needs it in the United States."

Epiphany two came exactly two years ago, probably today, when I lay in bed smoking marijuana — see, I hadn't

In this War on Drugs they are not stopping the battle and allowing the Red Cross on the field. In fact, they are shooting directly at the sick and at those who are trying to help them. And they are shooting to kill.

smoked marijuana for a couple of decades. I believed all those lies having to do with lack of mental, um, uh, clarity . . . and short term . . . where was I? Anyway, all of that nonsense is really a lot of nonsense and boy, do I regret those two decades I wasn't smoking pot. I can honestly say I was not a pot smoker until I started using medical marijuana. So there I was in July two years ago and I was smoking pot and boy, was I enjoying myself. And I was channel surfing, and I was smoking pot, and I was really grooving on this whole thing called chemotherapy. And I flip to these people talking, mostly men with pot bellies and t-shirts, and they would be talking and one of them would tell the truth, and I kind of sat there stunned — who expects the truth on C-SPAN?

So there I was watching, and one person would tell the truth, and then another person would tell the truth, and then another person would tell the truth. What on earth is going on, I mean, this must be really good pot. It turned out to be the Libertarian National Convention. I said, oh great. But then I thought, where is it, in Denver? Because you see, in 1993, when I completed *Ain't Nobody's Business if You Do*, I wanted to join and praise the Libertarian Party and in 1993 I called information in Washington, D.C. and there was no listing for the Libertarian Party. I called 800 information; there was no listing for the Libertarian Party. And I thought, as much as I love these people, someone who doesn't at least have an answering machine in Washington, D.C. can't be very serious about the whole political thing.

So you can imagine my epiphany when here, totally without my interference, the libertarians had matured into a political party. And then in the two years, the two years in which I have been single-mindedly working on medical marijuana, when I wasn't ducking bullets, the Libertarian Party got an entire office in Washington, D.C., until today, now, July 4, 1998, Washington, D.C., my two epiphanies meet in this speech before the Libertarian National Convention.

Although I have not joined the Libertarian party yet, I know I stand for a lot of [audience begins yelling for McWilliams to join the Libertarian Party] — remember, I

have AIDS! Come on; get that sympathy up, huh? Come on, back, back! Boy, it's like saying I haven't accepted Christ at a Christian Coalition meeting. Down! I never thought I'd tell a Libertarian to be less aggressive politically. I thought those were words you'd never hear out of my mouth.

I would like to suggest to you that you — not necessarily the party but you individually, maybe not as a party plank but more as a pet project, kind of a little Chia pet project — actively work for medical marijuana in this country. I have four reasons for this. The third one is in your own best interest, so listen up when I get to the end of number two. The first two are that I believe medical marijuana currently stands for the most hideous ongoing example of government interference in the private lives of individuals today.

The first reason: Medical marijuana prohibition is an outrage within an outrage within an outrage. The first outrage, of course, is the War on Drugs itself. Prohibition does not work, has not worked, cannot work, and anyone who says it can is either deeply delusional or is making money on the drug war.

The next layer of outrage is marijuana prohibition. Marijuana 61 years ago was unjustly criminalized based upon lies by the self-serving drug czar of his time to a Congress who lapped it up like milk because it was hot and they wanted to go home. It happened in the summer. And so they voted in the Marijuana Tax Act of 1937 after ninety seconds of debate. The prohibition has been unrelenting. More than 12 million Americans have been arrested for marijuana since that time. This is a plant that has never hurt anyone in 5,000 years in a country where 400,000 people die prematurely of cigarettes and 100,000 people die prematurely from alcohol. That this herb, this plant, this weed should be so illegal in this country that since the 1995 Omnibus Crime Bill, if you possess enough of it, our government will put you to death. If you don't think marijuana is still prohibited keep in mind that 645,000 people were arrested in 1996 alone, the most ever. That's one arrest every 48 seconds. Meanwhile we have a speaker of the house and a president and a vice-president who have all admitted to smoking marijuana. These are pothead baby boomers and it's outrageous that they should put their fellows in prison.

Finally, the outrage within the outrage within the outrage is the War on Drugs, unlike any war in American history, unlike any modern civilized war of the past two centuries. In this War on Drugs they are not stopping the battle and allowing the Red Cross on the field. In fact, they are shooting directly at the sick and at those who are trying to help them. And they are shooting to kill. A friend of mine named Todd McCormick was arrested for growing marijuana in his own home after Proposition 215 passed in California that allowed for cultivation. He had cancer nine times before he was 10. The DEA came in, destroyed his plants, and wants to put him in prison for the rest of his life, a ten-year mandatory minimum. Plus a \$4 million fine. That's shooting to kill. It's been going on for 11 months now.

As you know, the DEA and their bosom buddy, the IRS, have investigated me for 11 months now. The DEA and the IRS came into my home and they took away my computer containing a book on medical marijuana and a book critical of the DEA, which very quickly became three books critical

of the DEA.

Don't tread on this faggot.

You know, the only way to discharge the hate words of the bigots of the world is to embrace them. When I was growing up, queer was the worst thing you could possibly call anybody. I don't know where the word faggot was in my town, but queer was the worst. And then all sorts of people started calling themselves queers, all sorts of gay people, and now it's a perfectly acceptable word. You yell "Queer!" and they'll go, "What, yes?" And I think it's the same thing with faggot. It's like legalizers. That's the new demonized buzzword, like communist. If they accuse you of being a legalizer, please, don't resist. Say, "Yeah, I'm a legalizer, absolutely. I believe that everything should be legally sold in the free market, equally and open to competition. That's what I believe as a libertarian."

You know, of all the compliments I got for *Ain't Nobody's Business if You Do*, from people as diverse as Archbishop Tutu and Sting and Hugh Downs and Larry King, all those people were very kind, but the thing that meant the absolute most was when Milton Friedman, unasked, sent me a very nice letter, and Milton is a great hero of mine, and I know of many people in this room. If you're watching, Milton, know that we send you our love and Nature's God's blessings, from the Libertarian Convention. [Applause.]

When I say medical marijuana is the most egregious ongoing federal intrusion, there are, of course, incidents that are worse. There's Ruby Ridge, there's Waco, there's William Bennett getting his own children's show on PBS . . . These are greater outrages of the federal government going where it never should have gone in the first place.

You know, the DEA agents who came into my house and even the two federal prosecutors who would prosecute me and try to put me in prison for the rest of my life, they're patriots. They are doing something for their government, and they're doing it because they love America, because they

Prohibition does not work, has not worked, cannot work, and anyone who says it can is either deeply delusional or is making money on the drug war.

love the United States, because they think they are protecting and defending the Constitution of the United States. They believe this, they just misunderstand the facts, and they're caught in a bureaucracy that won't teach them. These are ordinary, decent Americans. Anybody who's willing to go into covert operations and put their lives on the line like that for their country, is a hero.

So here's William Bennett, on the other hand, who I think is personally culpable for this entire mess we're in right now. The fact that the man would ride through a Republican administration, first of all leeching off of the NEA, and then he went to the Education Department, and then he ingratiated himself very carefully, just like Iago misleading

Othello, with Bush as Othello, and Bennett as Iago, and Lady Liberty there [points to large replica of Statue of Liberty onstage] as Desdemona.

About now young people are saying, "What the hell is this guy talking about?" [Member of the convention yells, "That's because they went to public schools."]

I don't know why libertarians have this image as being dry and kind of living in desert climates and being on a ranch all day, I don't know what this is all about because libertarians have the best sense of humor of all. We can laugh at everything! Because if we're not enjoying the moment, what the hell is there? It's a very Zen party.

So, William Bennett is personally responsible for the fact that needle exchange was not put into effect 10 years ago.

If they accuse you of being a legalizer, please, don't resist. Say, "Yeah, I'm a legalizer, absolutely. I believe that everything should be legally sold in the free market, equally and open to competition."

Ten years ago the studies were there showing that needle exchange significantly reduced the spread of AIDS and at the same time did not increase the use of drugs. Bennett at the time said yes, of course, we care about the AIDS epidemic, but we care about the signal we're going to send our children more. He personally fought for and got not only not federal funding for needles, but also got them made illegal. As a direct result of him, 200,000 heterosexual people in this country now have AIDS. It is about the only way AIDS got into the heterosexual population. One-third of all AIDS cases now are from drug use or their partners. Sixty percent of all new AIDS cases next year will be female partners of those 200,000 people who got it intravenously and will pass it on to their lovers, wives and children, often without even knowing it.

Thank you, William Bennett.

Ten years later, the government finally admits that, yes, indeed, needle exchange works, it doesn't make drug use go up, and it certainly reduces the spread of AIDS. Who in the entire administration fought the hardest and even went to the Republicans in order to get federal funding for needle programs banned? Drug Czar Barry McCaffrey. So I move that we call heterosexual AIDS the Bennett/McCaffrey illness, or the BM disease.

We all know that William Bennett has been taking money from dark organizations so that he can continue to perpetrate the War on Drugs so the dark organization can continue to prosper. One of those is the Partnership for a Drug-Free America. Bennett is bribed. You sit in his office, and all day long these platinum Halliburton cases go in full and they go out empty; they go in full and they go out empty. They're full of éclairs.

Have you seen that man? I'm fat, but he's obese. Not that I have anything against obesity. If you're fat you're fat, so what? What I hate is hypocrisy. Here this man cannot stop

putting food in his mouth and he wants to tell me to stop taking the medicine that is saving my life and put me in prison if I don't.

William Bennett personally went to Arizona and convinced the Arizona legislature that two-thirds of the people's will should be overruled by new legislation. So, for all the people who have been suffering in Arizona for the past two years who could have had relief were it not for Bill Bennett, thank you very much again, Mr. Bennett.

I mean, I've read the Bible, too, and I know that gluttony is punished in the Bible, the very same Bible that Bill Bennett points to to support his "moral" attack on gays and just about everyone else he doesn't agree with.

• and put a knife to your throat if you are given to gluttony.
[Proverbs 23:2]

• for drunkards and gluttons become poor, and drowsiness clothes them in rags. [Proverbs 23:21]

• a companion of gluttons disgraces his father.
[Proverbs 28:7]

• Cretans are always liars, evil brutes, lazy gluttons.
[Titus 1:12]

One Biblical punishment for gluttony is to be stoned to death. As long as it's not done with rocks, this can work. In some African tribes, the punishment for any crime is to sit and smoke marijuana endlessly — marijuana smoke is forced into the small tent so that all the criminal can do is breathe marijuana for the prescribed period of time. It is the cure for all crimes.

Where's my, I had my medicine here [takes out golden Art Deco cigarette case]. The nice thing is, if you're gay — I'm a gay libertarian, I'm one of those laissez fairies — you get to carry around delightful things like this: a cigarette case

Libertarians have the best sense of humor of all. We can laugh at everything! Because if we're not enjoying the moment, what the hell is there?

that Gary Cooper gave Marlene Dietrich for a good, [clears throat] well, anyway, for a good time. So I'll have it there just in case I need it, but I know you won't mind. So, gluttony is punishable by stoning to death, or being cut off from one's people. I believe that that will be the fate of William Bennett; he will be cut off from his people. There's no need to punish the drug warriors; they are already punishing themselves.

Reason number two: unlike any other issue currently in political play, public opinion polls are outrageously in favor of medical marijuana and almost every politician vigorously opposes it. Public opinion polls show that somewhere between 65 and 80 percent of the population, but never below 65, favor marijuana use under a doctor's supervision. They do that even though all five living presidents and Nancy Reagan said it was a hoax, even though C. Everett Koop said it was a hoax. People still believe that if a doctor says it's okay, it's okay, and if you're sick it's okay to take medicine, and we make exceptions when people are sick.

Compassion has not been beaten or tricked or propagandized out of the American people. It is still there and we can appeal to it.

The drug warriors have been so opposed to marijuana, especially medical marijuana, they have done it on the record, and they have done it recently. In December, the National Academy of Sciences Institute of Medicine report will come out. This is the one that McCaffrey spent a million dollars of our tax money on, about the only good federal expenditure last year, if you ask me. And he took that money and he used it for a study that was going to last 18 months, and he's been hiding behind that ever since. He won't talk about the medical marijuana issue, he'll say, "We've turned that over to the doctors. Let them decide." Well, we know pretty much what the doctors are going to decide. They are not under federal control, like the National Institute of Health, or NIDA, National Institute of Drug Abuse (groan) and so they will come up with an honest report.

What report did the Institute of Medicine issue in 1982? In 1982 it determined that the prohibition of just regular marijuana, not medical marijuana, was doing more harm than good and it should be legalized at once. The same august body of independent scientists is not going to reach the conclusion that under a doctor's care, under a physician's instructions, you can't take marijuana? It is inconceivable to me for that to happen. So sometime around the end of the year, the beginning of next year, McCaffrey will be in a very tight place. Because there's 18 months of videos of him saying, "I'm not talking about that, I'm turning that over to science and we're going to let science decide." So science will decide, then what? Stick around; it's going to be the best show in town.

I invite you to be not just ringside seat holders, but direct participants, because, boy, this has been fun the last two years. It's not just public opinion polls, it's been reflected in the polling booth. As you know, in California 56.4 percent of the population voted for medical marijuana. That's more than voted for [California Attorney General] Lungren, who's been trying to suppress it. In the same election more Californians voted for Proposition 215 than voted for Bill Clinton.

Point number three: Many of you are asking, as libertarians do when pondering deep moral issues, "What's in it for me?" You see, the Libertarian Party can embrace a political cause that is in very, very dire need of friends, and by embracing, there's a marvelous line from Shakespeare, by embracing the two make more than the one. Or is that Milton Friedman? Anyway, I think there is a synergistic possibility here between medical marijuana and the Libertarian Party at this particular juncture of time. Because when medical marijuana is truly accepted for what it is, we will see a phenomenon that makes Viagra's phenomenon seem limp. You know, I kind of think of the Libertarian Party as a kind of political Viagra.

On October 19, 1997, the Society for the Study of Neurosciences published a report based on scientific evidence from four universities. It began, "New research shows that substances similar to or derived from marijuana, known as cannabinoids, could benefit more than 97 million

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Dissent

In the Matter of the Killing of Vicki Weaver

by Alex Kosinski

On August 20, 1997, the state of Idaho filed a criminal complaint against FBI sniper Lon Horiuchi for manslaughter for killing Vicki Weaver in the notorious confrontation at Ruby Ridge, Idaho. The court ruled in favor of Horiuchi's attorney's argument that he could not be charged with the crime on grounds of immunity under the Supremacy Clause of the Constitution, which protects federal bureaucrats from prosecution by states, provided the employees acted objectively reasonably. Idaho appealed the ruling.

On June 14, the Ninth Circuit issued a ruling supporting the trial judge's decision. Judge Alex Kosinski, a member of the three-judge panel that issued the decision, wrote a particularly eloquent dissent.

[W]e conclude that the second shot violated the Constitution. We recommend that the circumstances surrounding the second shot be reviewed by the appropriate component of the Department of Justice for prosecutive merit.

—U.S. Department of Justice, Office of Professional Responsibility.¹

Besieged by a platoon of FBI agents with high-powered rifles, two armored vehicles and a helicopter, the suspects at Ruby Ridge posed no immediate danger. There was no chance they could escape and take hostages. There was plenty of time to call out a warning, and there were many occasions to give the suspects a chance to surrender. Instead, FBI Agent Lon Horiuchi shot and killed Mrs. Weaver.

A Senate Committee, the Justice Department's Office of Professional Responsibility and a prior panel of this court all have concluded the shooting was patently unconstitutional.² Because the majority's contrary ruling creates a square intracircuit conflict and throws a monkey wrench into our law governing the proper use of deadly force, I strongly dissent.

I.

The facts here are largely not in dispute. The one key factual dispute cuts against the majority's conclusion. While the majority claims Horiuchi was unaware of Mrs. Weaver's presence behind the door,³ there is evidence that he should have known, which could make his decision to shoot blind through the door objectively unreasonable:

However, even if Horiuchi's judgment on the necessity to use deadly force was supportable, we believe that his second shot was taken without regard for the safety of others near Harris. Although Horiuchi could not see behind the front door of the cabin, he had reason to believe that someone might be on the other side when he took his second shot. At trial he testified that it appeared that Harris "was trying to hold the door open or moving somebody out of the way" when Horiuchi fired. When asked if he "knew there was somebody behind the door," Horiuchi responded that he "wasn't shooting at the individual behind the door." However, by fixing his cross hairs on the door, when he believed someone was behind it, he placed the children and Vicki Weaver at risk, in violation of even the special Rules of Engagement: If any adult male is observed with a weapon prior to the announcement deadly force can and should be employed if

the shot could be taken without endangering any children.... In our opinion he needlessly and unjustifiably endangered the persons whom he thought might be behind the door. (from Report of the Ruby Ridge Task Force, Department of Justice)⁴

Six Deputy U.S. Marshals, dressed in camouflage gear and armed to the teeth, came onto the Weaver property in the dead of night, without announcing their presence or wearing visible identification. They got into a shootout which left one deputy and the Weavers' son dead. More than thirty hours later, FBI agents surrounded the Weaver cabin, which was located in the middle of the forest, far from any bystanders; they overflew the area by helicopter several times. The FBI agents did not announce their presence nor did they give the occupants an opportunity to surrender. Instead, the agents remained concealed and watched the

Besieged by a platoon of FBI agents with high-powered rifles, two armored vehicles and a helicopter, the suspects at Ruby Ridge posed no immediate danger.

cabin through the scopes of their rifles. Those in the cabin first learned of the FBI's presence when Horiuchi opened fire.

Horiuchi fired two shots. The first was arguably justified by what he claims was a menacing gesture from Mr. Weaver in the direction of the helicopter. How Horiuchi could tell the man was threatening the helicopter is a bit of a mystery, since Horiuchi admitted that he had no clue where the helicopter was. ("I don't know where the helicopter was, sir, I would be guessing if I told you where it was." [Excerpt of Testimony of Lon T. Horiuchi, *United States v. Weaver and Harris.*])⁵

But Idaho is not prosecuting Horiuchi for that shot. Rather, it is the second shot — fired some twenty seconds later — that is the basis of the state's prosecution. When Horiuchi was taking aim for this shot, the three people who had ventured outside the cabin were running headlong toward it. They were facing the cabin and away from the helicopter. They were not aiming their weapons. They were making no menacing gestures. Running for their lives, they threatened no one. As the Department of Justice investigators observed: "[E]ven giving deference to Horiuchi's judgment, we do not find that the second shot was based on a reasonable fear of an immediate threat to the safety of officers or others."⁶ The DOJ investigators relied on Horiuchi's own words in concluding that he acted unreasonably in taking the second shot: "In a statement Horiuchi prepared later that evening, he explained that, just before Harris entered the cabin, he 'stopped at the door looking for either the helicopter or where the shot came from' Thus, even Horiuchi does not characterize these movements as threatening or as provocation for the second shot."⁷ Yet, Horiuchi calmly took aim and shot to kill. That he aimed at Harris, thinking it was Mr. Weaver, but actually killed Mrs. Weaver does not help Horiuchi. His confusion as to the target only

proves he was reckless in pulling the trigger.

What justification can there be for shooting a man who is completely surrounded by heavily armed law enforcement agents? The sum and substance of the majority's reasoning is as follows: "Had [Horiuchi] hesitated for even a few seconds or called out a warning . . . Harris could have fled into the cabin, taking up a defensive, armed position."⁸ ("he was running to a place where he could rearm, regroup, and take up a defensive position");⁹ ("Once inside [the cabin] Harris could take up a defensive position where he could shoot out, but the officers could not shoot in without the danger of harming a child.").¹⁰

Since when does taking up a defensive position justify the use of deadly force? Taking a defensive position may have kept the suspects from being apprehended right away, but it would have posed no immediate threat to the officers. Missing from the majority's justification for the shooting is any indication that, once inside the cabin, Harris would pose an immediate threat to life and limb. Absent a threat, the FBI agents were not entitled to kill; rather, they should have employed one of the many other measures at their disposal, such as:

- Announcing themselves and demanding a surrender
- Commencing negotiations
- Waiting until the inhabitants ran out of food
- Shutting off water and electrical service to the cabin
- Sending in an armored personnel carrier to knock down various out-buildings and impress the inhabitants with the futility of resisting

Once the trigger is pulled and life is taken, all these options are foreclosed; the chance for a bloodless resolution is lost. Allowing the suspects to take a defensive position gives them time to think, to consider, to weigh their options, to calculate the risks to themselves and their children. It can lead to a peaceful surrender, as it did eight days later. It is therefore immensely troubling that the majority today holds — for the first time anywhere — that law enforcement agents may kill someone simply to keep him from taking up a defensive position.

This conclusion runs contrary to a long line of deadly force cases, all of which hold that only an immediate threat to life and limb will justify an intentional killing by law enforcement agents (review of officer's use of force requires "attention to the facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.");¹¹ ("Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.");¹² (Police "may not shoot to kill unless, at a minimum, the suspect presents an immediate threat to the officer or others, or is fleeing and his escape will result in a serious threat of injury to persons.")¹³

Horiuchi claims he was entitled to kill Harris to prevent him from shooting at the helicopter from inside the cabin. But killing Harris was not even remotely necessary to ensure the safety of the helicopter. To begin with, while Horiuchi may have heard the helicopter's engine, he did not see it or know where it was. Idaho does not seem to dispute that Horiuchi heard the helicopter, but the Senate Subcommittee

expressed doubt. At the very least, there is conflicting evidence. Randy Weaver testified that "all was quiet" at the time of Horiuchi's first shot. Moreover, "Weaver maintains that, had they heard a helicopter at this moment, they all would have run back to the cabin immediately."¹⁴ All factual disputes must be resolved against Horiuchi at this stage of the proceedings.¹⁵

During his direct examination in the Weaver criminal trial, Horiuchi implied that he had a general idea as to the location of the helicopter:

Q: When you saw the activity in the house area, could you tell from the sound where the helicopter was at that particular time?

A: Generally, sir, it was either behind me or to my right or to . . . my left.

Q: You couldn't see the helicopter at the time you saw the . . . activity, is that correct?

A: No, sir, once the activity started, I was concentrating on the three individuals that came out of the building, not the helicopter.¹⁶

However, on cross-examination, he admitted that he had no clue as to the helicopter's location:

Q: The helicopter was behind you?

A: I don't know where the helicopter was, sir, I would be guessing if I told you where it was.¹⁷

He had no reason to believe that it was hovering within range of small arms fire from the cabin. Quite the contrary: During a reconnaissance mission earlier that day, he had observed the helicopter pilot taking precautions. According to Horiuchi, the helicopter "popped over the hill low and then came back over."¹⁸ Horiuchi presented conflicting testimony about whether he thought the helicopter was in danger. At Weaver's criminal trial, he claimed the helicopter "wasn't necessarily out of rifle range" during the reconnaissance flight he took. But on cross he was impeached by a statement that he made previously to the effect that the helicopter "stayed well out of [rifle] range" during his flight.¹⁹

There was plenty of time to call out a warning, and there were many occasions to give the suspects a chance to surrender. Instead, FBI Agent Lon Horiuchi shot and killed Mrs. Weaver.

The helicopter had also flown several other missions over the area without incident.

Moreover, Horiuchi was in radio contact with the FBI command center and could have called out a warning. At oral argument, Horiuchi's counsel represented that the agents were under orders to maintain radio silence. Counsel did not provide record support for this assertion and it turns out not to be true, as one of Horiuchi's fellow agents did use the radio to alert the FBI command center that individuals outside the cabin were on the move: "I believe it was Special Agent Love in Sierra 1 position who saw them coming out at the same time, pretty much the same time I did, and he radi-

ed back to the command post that three individuals had come out of the building."²⁰ Horiuchi testified that the only reason he didn't radio himself was that a momentary malfunction caused Agent Love to "beat [him] to the punch."²¹ At the time he fired, Horiuchi knew that the helicopter pilot had been warned that there were people outside the cabin, and that additional warnings could be given if necessary. In the time it would have taken the three to run into the cabin, take positions at the windows and commence shooting, Horiuchi could have warned the helicopter to move out of range. While an officer need not exhaust remote alternatives

What justification can there be for shooting a man who is completely surrounded by heavily armed law enforcement agents?

before resorting to deadly force,²² his failure to employ an obvious non-deadly alternative can make his use of deadly force unreasonable.²³ (Inquiry into reasonable non-deadly alternatives is important to establishing that deadly force was necessary to prevent escape).

But put all else aside and consider only Horiuchi's admission that he made no separate decision whether to take the second shot: "I had already made that determination after that first shot, so if I saw him again[,] I was going to shoot at that individual again."²⁴ Horiuchi's testimony, which the majority overlooks, is crucial in light of *Hopkins v. Andaya*,²⁵ where we held that the justification for the use of deadly force, once established, does not continue indefinitely. If circumstances change and the threatened danger abates, deadly force may cease to be reasonable. As the DOJ investigators observed, "the circumstances which justified the first shot were significantly changed by the time the second shot was taken. There had been no return of fire or further threatening action, there had been no surrender announcement, and most significantly, the targets were retreating into the cabin."²⁶ The majority creates a direct conflict with *Hopkins* by holding that law enforcement officers are entitled to gun down a suspect even after he no longer poses an immediate danger to anyone.

There is another big problem with Horiuchi's second shot: He was aiming at the wrong target. The individual he claims to have observed holding a long gun and looking menacingly in the direction of the helicopter was Weaver, not Harris. Horiuchi then observed three people — two of them similarly dressed males — running toward the cabin. In his testimony, Horiuchi admits he could not tell the two men apart; in fact, he shot the wrong one. The DOJ investigators recognized the same problem: "Horiuchi also confused his targets. He erroneously believed that the last man returning [to] the cabin [w]as the man he had originally tried to shoot. Thus, Horiuchi never saw Harris, the target of his second shot, take any threatening action toward the helicopter."²⁷

Any suspicion Horiuchi had that Weaver might shoot at the helicopter could not be attributed to Harris simply because he was nearby and dressed alike. The matter would

be different if Horiuchi had reasonably believed he was in the grips of a firefight.²⁸ But Horiuchi makes no such claim, and by adopting its "defensive position" rationale, the majority recognizes that this was not a firefight. While we will not lightly second-guess decisions made by law enforcement officers in the heat of battle, this was not the heat of battle and caution was therefore appropriate.

The Senate Subcommittee expressed a similar view:

We do not want in any way to hamstring the police officer involved in a hot pursuit or close range confrontation with a dangerous criminal. Those women and men have to make snap judgments every day, and we have no wish to increase their personal risk by requiring undue hesitation before they protect themselves. But in the case of the snipers on Ruby Ridge, no such personal or immediate danger existed. When Horiuchi fired, he was in a concealed, safe and remote firing position. He had time to think before he shot, time to be briefed before he was deployed, and time to calmly plan his actions. Under those circumstances, what Horiuchi saw as Weaver, Harris and Sara fled back toward their cabin — where one child (two, as far as law enforcement officers were aware) and one infant were present — gave him insufficient justification to fire his weapon.

It is not our purpose to urge (or to urge against) prosecution or other sanction against Agent Horiuchi. But it is the Subcommittee's firm purpose to make sure that in the future, in similar circumstances, inappropriate and unconstitutional deadly force like the second Ruby Ridge shot will never again be used.²⁹

A menacing gesture by one of the individuals outside the cabin did not give Horiuchi the right to gun all of them down in cold blood.

I also find it highly significant that Horiuchi, alone among the agents surrounding the cabin, considered the danger serious enough to open fire. Even after Horiuchi's first shot rang out, Harris and the Weavers were not peppered by bullets from the other sharpshooters hidden in the hills above the cabin. As the DOJ Report observed, "Many of

It is immensely troubling that the majority today holds — for the first time anywhere — that law enforcement agents may kill someone simply to keep him from taking up a defensive position.

the sniper/observers saw three people running to the cabin after the first shot. None reported any action that could immediately be interpreted as threatening to the helicopter or the sniper/observers."³⁰ If Horiuchi was justified in shooting, all the other FBI sharpshooters must have been derelict in holding their fire.

Finally, I return to the immovable fact that the occupants of the cabin were given no opportunity to surrender before deadly force was unleashed against them. Giving a warning and opportunity to surrender is not just an aspirational goal; it is a required step before deadly force may be used. It is true that we have qualified this requirement with such

phrases as "where feasible,"³¹ but this does not mean warnings can be dispensed with whenever they would be inconvenient. A warning and an opportunity to surrender must always be given before deadly force is used, unless doing so would materially increase the danger to law enforcement personnel or bystanders. This contemplates a narrow class of

A menacing gesture by one of the individuals outside the cabin did not give Horiuchi the right to gun all of them down in cold blood.

cases, such as where the suspect has opened fire, pulled a gun, or credibly threatened vulnerable targets.

It is conceivable that Horiuchi was entitled to take his first shot without giving a warning. The Senate Subcommittee expressed doubt on this score: "Although we are not prepared to conclude that the first shot was unconstitutional, we are concerned for several reasons that the perception of an imminent threat to the helicopter was not what caused Horiuchi to take the first shot . . ."³² But thereafter neither Harris nor Mr. Weaver nor anyone else connected with the cabin was shooting or even aiming weapons at any vulnerable targets. To become a threat again, as Horiuchi supposedly feared, they would have had to enter the cabin, take their places at a window and start shooting. This interval gave Horiuchi plenty of time to shout out a surrender demand. The majority doubts that Horiuchi could have been heard,³³ but Horiuchi testified that he was near enough to hear voices from within the cabin³⁴ (agents heard "screaming, a single male voice" from their positions). It is therefore likely that a shouted warning from one or more of the agents would have been heard by the three as they fled toward the cabin. Or, Horiuchi might have alerted the helicopter or one of the armored transports to call out a surrender demand using loudspeakers. At the very least, this is a disputed fact that must be resolved against Horiuchi at this stage of the proceedings.³⁵

Nor was this the only interval when a warning could — and should — have been given. FBI agents had staked out the Weaver cabin since earlier that morning, while the shooting took place in late afternoon. Obviously, those involved in the operation had ample time to give the necessary warning before deploying agents with shoot-on-sight orders. The Special Rules of Engagement, which have been criticized by everyone including FBI Director Louis Freeh,³⁶ were indeed shoot-on-sight orders.³⁷

Many who have looked at the second shot have speculated that it was the patently unlawful Rules of Engagement that may have been responsible for Agent Horiuchi's action, rather than the make-shift justification he cobbled together later. Because the Rules have been found to be unconstitutional by virtually everyone who examined them,³⁸ Horiuchi's counsel explicitly declined to rely on them to exonerate his client:

The Court: If your client is relying on [the Rules of Engagement] as a part of his justification, we have to deal

with [them].

Mr. Hoffinger: He's not. And let me make that very clear.... He's not relying on the Rules of Engagement to . . . justify his conduct.³⁹

Even after Horiuchi and his team had taken their places around the cabin, approximately half an hour passed during which the Hostage Rescue Team members could have called out a warning and given those in the cabin a chance to surrender. It was wholly unreasonable for Horiuchi to open fire, knowing that the civilians at whom he was aiming were unaware of the danger and had no chance to surrender rather than die.⁴⁰ That all the other sharpshooters held their fire tells us all we need to know on this score.

II.

As the majority recognizes, the standard for granting a motion to dismiss on grounds of Supremacy Clause immunity is whether the officer's actions were objectively reasonable.⁴¹ Precisely the same standard applies to qualified immunity claims in police brutality cases.⁴² ("Under the Fourth Amendment, police may use only such force as is objectively reasonable under the circumstances.")⁴³ The identity of language is no coincidence; it reflects the fact that the question, in both types of cases, is exactly the same: Did the agent's conduct violate the Constitution? Our cases, as well as those from the Supreme Court, make it clear that law enforcement officers may not take human life unless they reasonably believe that doing so is necessary to prevent death or injury to officers or to bystanders. Here, there were no bystanders; the operation took place in the middle of nowhere. And there was no legitimate threat to the agents as they were concealed from view hundreds of yards away from the cabin.

This case is therefore quite different from *Clifton*, on which the majority relies. In that case, federal agents stormed

It was wholly unreasonable for Horiuchi to open fire, knowing that the civilians at whom he was aiming were unaware of the danger and had no chance to surrender rather than die.

the cabin of a suspected drug dealer.⁴⁴ During the raid, it looked as if the suspect had shot one of the agents. An agent who sees a colleague felled before his eyes obviously has a reasonable fear he might be next. Even then, Clifton gave the suspect an opportunity to surrender by twice shouting for him to halt and each time waiting to see if he would comply. Only when it looked like the suspect would reach the woods, where he might escape and take hostages, did Clifton fire.⁴⁵ Here, Horiuchi shot — and then shot again — without giving the suspect a chance to surrender. Nor did Horiuchi believe that the suspect had just shot a fellow officer; there had been no shooting on the property for over thirty hours. As the Senate Committee that spent many months investigating this incident concluded, Horiuchi's second shot was objectively unreasonable:

We do not believe that there is any credible evidence that the three individuals who were running into the cabin presented a threat of grievous bodily harm or death to Agent Horiuchi or anyone else. The three were running for the cover of the cabin. They had not returned the sniper's fire and, according to Horiuchi's trial testimony, they were running faster than when they emerged from the cabin. The FBI had not previously considered the Weavers and Harris a significant threat from within the cabin. The FBI had decided to accept the risks posed by these suspects as they remained in their cabin, in making plans to negotiate with them while they remained inside. The helicopter had taken several flights earlier in the day, and the Weavers had not shot at it from the cabin. The second shot, therefore, was not objectively reasonable.⁴⁶

The Department of Justice rejected Horiuchi's justification for the second shot in even more categorical terms:

We find Horiuchi's explanation of the threat and necessity of the second shot speculative. Based on the facts known and the actions of the subjects, we do not believe it was reasonable to perceive an immediate threat as they ran back into the cabin. Once the family was back in the cabin, the potential threat to the safety of the helicopter and law enforcement personnel was more remote than when Horiuchi had earlier believed that the armed male was about to position himself to shoot at the helicopter. Although we believe Harris and the Weavers knew that law enforcement personnel were present, no call out or surrender announcement followed the first shot.

The subjects were never given a chance to drop their arms to show that they did not pose a threat. The subjects simply did what any person would do under the circumstances: they ran for cover. . . . Although we agree that Harris and the Weavers could have fired from inside the cabin, we do not believe that this potential, especially considering the circumstances of the this [sic] case, warranted law enforcement to perceive an immediate threat. Since the exchange of gunfire at the Y [30 hours earlier], no one at the cabin had fired a shot. Indeed, they had not even returned fire in response to Horiuchi's first shot. Furthermore, at the time of the second shot, Harris and others outside the cabin were retreating, not attacking. They were not retreating to an area where they would present a danger to the public at large or take members of the public hostage. Instead, they were retreating into a cabin and within rifle shot of well equipped law enforcement personnel. Finally, as we discussed below, prior to this time, law enforcement personnel had not viewed the presence of Weaver and Harris in the cabin as posing a particular threat. In our view these facts undercut the immediacy of the threat that Harris posed to Horiuchi and his colleagues.⁴⁷

Our own court considered this question in *Harris*, a case involving the same incident. *Harris* was the Bivens action brought against Horiuchi and other federal agents for injuries suffered as a result of the shooting. Horiuchi argued that he was entitled to qualified immunity, raising the same "defensive position" argument the majority embraces here: "Horiuchi asserts that the shot he fired while Harris was trying to return to the cabin was objectively reasonable because Harris presented a greater danger when he was in the cabin than when he was outside. . . ."⁴⁸ *Harris* categorically rejected this argument:

Law enforcement officials may not kill suspects who do not pose an immediate threat to their safety or to the safety of

others simply because they are armed. Whenever practicable, a warning must be given so that the suspect may end his resistance or terminate his flight. A desire to prevent an armed suspect from entering the place he is residing because it may be difficult to persuade him to reemerge is insufficient cause to kill him. Other means exist for bringing the offender to justice, even if additional time and effort are required. When Horiuchi shot Harris, without any warning, as he was retreating toward an area of safety, he acted in a patently unreasonable manner that violated clearly established law. That the conduct at issue violated Harris's constitutional rights should have been plain to any reasonable officer.⁴⁹

The majority tries in vain to distinguish *Harris* by arguing that the panel there "did not consider many facts apparent on the record in this case, such as Horiuchi's belief that the armed man was a threat to the helicopter."⁵⁰ But any threat to the helicopter could justify only Horiuchi's first shot — which he took after he allegedly saw one of the men look menacingly in the direction of the helicopter. Once the man started running toward the cabin, the immediate threat to the helicopter ceased. The helicopter could have been warned to move out of range, if such warning were even necessary.⁵¹ Neither this fact, nor any other, distinguishes this case from *Harris*.

The majority also suggests that Horiuchi is entitled to more latitude because different standards should apply to claims of Supremacy Clause immunity than to those of qualified immunity.⁵² This might be a plausible argument but for the fact that precisely the same test applies as to both: Did the officer act constitutionally? I don't understand how an officer could have acted unconstitutionally for purposes of qualified immunity and yet constitutionally for purposes of Supremacy Clause immunity. Either the officer's actions complied with constitutional norms or they did not. Nor do I see how the standards can be disaggregated conceptually. What protects an officer from civil and criminal liability is the lawfulness of his actions. But if the officer's actions are found to be unlawful, it is difficult to see how or why the

In an effort to protect a defendant who lost his head and acted in a patently unconstitutional manner, the majority has materially weakened the standard that heretofore constrained all law enforcement personnel.

Supremacy Clause would stand in the way of a state's legitimate interest in the enforcement of its criminal laws.

The majority creates a square conflict with *Harris*, and with many of our other cases that strictly limit the circumstances under which an officer may use deadly force.⁵³ Perhaps most troubling, the opinion waters down the constitutional standard for the use of deadly force by giving officers a license to kill even when there is no immediate threat to human life, so long as the suspect is retreating to "take up a defensive position." This has never been the law in this circuit, or anywhere else I'm aware of — except in James Bond movies. Because the 007 standard for the use of deadly force now applies to all law enforcement agencies in our circuit —

federal, state and local — it should make us all feel less secure. In an effort to protect a defendant who lost his head and acted in a patently unconstitutional manner, the majority has materially weakened the standard that heretofore con-

Because the 007 standard for the use of deadly force now applies to all law enforcement agencies — federal, state and local — it should make us all feel less secure.

strained all law enforcement personnel in the Ninth Circuit. Because I fear this change in our long-standing law, I must register my dissent.



Liberty presented Judge Kosinski's dissent exactly as it was published, except that, in hopes of increasing its readability:

(1) we incorporated various explanatory notes into the text and moved all source notes to "Notes" at the conclusion of the article and;

(2) we added a very brief source note at the end of the lengthy paragraph quoted on page 1.

Source Notes

1 United States Department of Justice, Report of the Ruby Ridge Task Force to the Office of Professional Responsibility of Investigation of Allegations of Improper Governmental Conduct in the Investigation, Apprehension and Prosecution of Randall C. Weaver and Kevin L. Harris, June 10, 1994, [hereinafter "DOJ Report"] at Section IV.F.4.

2 See *Harris v. Roderick*, 126 F.3d 1189, 1203 (9th Cir. 1997), cert. denied sub nom. *Smith v. Harris*, 522 U.S. 1115 (1998).

3 Maj. Op. at 6278-80.

4 DOJ Report, note 1 supra, Section IV.F.3.c.(3) (footnotes omitted).

5 No. 92-080-N-EJL [hereinafter "Horiuchi Testimony"] at 259 (June 4, 1993).

6 DOJ Report, note 1 supra, at Section IV.F.3.c.(3) (internal quotation marks omitted).

7 DOJ Report, note 1 supra, at Section IV.F.3.c.(3) (footnote omitted).

8 Maj. Op. at 6274 (emphasis added).

9 See also id. at 6275.

10 Id. at 6274.

11 See, e.g., *Graham v. Connor*, 490 U.S. 386, 396 (1989).

12 *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

13 See also *Harris*, 126 F.3d at 1201.

14 The Federal Raid on Ruby Ridge, ID: Hearings Before the Subcomm. on Terrorism, Technology, and Government Information of the Senate Comm. on the Judiciary, 104th Cong., First Session, at 1115 (1995) (Appendix, Ruby Ridge: Report of the Subcommittee) [Hereinafter "Senate Report"].

15 See *Morgan v. California*, 743 F.2d 728, 733 (9th Cir. 1984).

16 Horiuchi Testimony, note 3 supra, at 67-68 (June 3, 1993).

17 Id. at 259 (June 4, 1993).

- 18 Horiuchi Testimony, note 3 supra, at 191 (June 4, 1993).
 19 Id. at 258 (June 4, 1993).
 20 See Horiuchi Testimony, note supra, at 77 (June 3, 1993).
 21 Id.
 22 See *Forrett v. Richardson*, 112 F.3d 416, 420 (9th Cir. 1997).
 23 See *Brower v. County of Inyo*, 884 F.2d 1316, 1317-18 (9th Cir. 1989).
 24 Horiuchi Testimony, note 3 supra, at 107 (June 3, 1993).
 25 958 F.2d 881, 887 (9th Cir. 1992)
 26 DOJ Report, note 1 supra, at Section IV.F.4.
 27 DOJ Report, note 1 supra, at Section IV.F.3.c.(3).
 28 See *Clifton v. Cox*, 549 F.2d 722, 729 (9th Cir. 1977).
 29 Senate Report, note 5 supra, at 1120.
 30 DOJ Report, note 1 supra, at Section IV.F.3.c.(3).
 31 See, e.g., *Forrett*, 112 F.3d at 420.
 32 Senate Report, note 5 supra, at 1116.
 33 Maj. Op. at 6274.
 34 See Horiuchi Testimony, note 3 supra, at 13 (June 3, 1993).
 35 See *United States ex rel. Drury v. Lewis*, 200 U.S. 1, 8 (1906);
Morgan, 743 F.2d at 733.
 36 See The Federal Raid on Ruby Ridge, ID: Hearings Before the Subcomm. on Terrorism, Technology, and Government Information of the Senate Comm. on the Judiciary, 104th Cong., First Session, at 1087 (1995) (statement of FBI Director Louis B. Freeh).
 37 See Senate Report, note 5 supra, at 1111.
 38 See id.; *Harris*, 126 F.3d at 1205.
 39 Audio Recording of Oral Argument in *Idaho v. Horiuchi*, No. 98-30149 (before the 9th Circuit Court of Appeals, recorded in Pasadena, California, June 9, 1999).
 40 Accord *Harris*, 126 F.3d at 1203.
 41 Maj. Op. at 6272.
 42 See *LaLonde v. County of Riverside*, 204 F.3d 947, 959 (9th Cir. 2000).
 43 (citing *Graham v. Connor*, 490 U.S. 386, 397 (1989)).
 44 *Clifton*, 549 F.2d at 724.
 45 See id.
 46 Senate Report, note 5 supra, at 1119 (citations omitted) (emphasis added).
 47 DOJ Report, note 1 supra, Section IV.F.3.c.(3) (footnotes omitted).
 48 126 F.3d at 1203.
 49 Id. at 1204.
 50 Maj. Op. at 6279.
 51 See pp. 6265-67 supra.
 52 See Maj. Op. at 6279-80.
 53 See, e.g., *Forrett*, 112 F.3d at 420; *Hopkins*, 958 F.2d at 887.

"Why Liberty Is as Much Fun as Medical Marijuana," by Peter McWilliams (from page 24)

Americans who experience some form of pain each year." Ninety-seven million Americans! Marijuana has the unique property of filtering out pain while allowing the sense of touch and the sense of pleasure to pass through. All other analgesics that work beyond the level of aspirin work by suppressing feelings overall. Marijuana filters out only the bad stuff. So imagine those 97 million people turning around and asking, "Why?" People who have been in intractable pain for years, for decades, asking, "Why didn't I have this medication before now? Why was this kept from me?"

And they'll look to the Democrats: guilty. They'll look to the Republicans: guilty. They'll look to the Libertarians [imi-

at what is and say there is great harm being done and we must stop it because we can stop it and we can stop it now — these are my heroes, my friends, my compatriots.

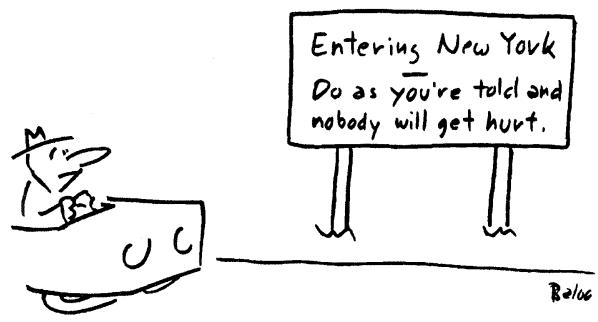
You know, on C-SPAN those bars, those great pillars of the Capitol Building [indicates a replica of the Capitol Building onstage behind him], it almost looks like I'm standing in front of prison bars. And I look there and I think, that's where the federal government wants me for the rest of my life for taking my medicine — prison. And so I ask you who are the beacons of liberty in this country, and I ask you in the name of her, that Lady Liberty there [indicates model of Statue of Liberty]. (I'm gay, but that woman turns me on. In fact, she is only one of three women I've ever been inside. My mother told me that joke. She stole it from Woody Allen.) I ask the Libertarian Party to take this healing herb and use it to heal, [a baby cries] yes, you too, we'll be doing it for you,

that baby crying in the corner there, we'll be doing it for you, our children, and I ask you to take this herb, this healing herb, and I ask you to heal the body politic with it. And I ask you, Lady Liberty, to once again lift your shining lamp above the golden door. [Takes a joint out of the golden cigarette case and holds it to his mouth].

"Hey, lady, got a light?" □

tates inhaling from a joint]: "We told you so!" If the Libertarian party has the gratitude of those 97 million people, and believe me they will, we can elect everybody to every office everywhere.

And finally, I ask you to support medical marijuana now because it is the right thing to do. I am tired of people thinking that libertarians don't have morality, that they don't have values. That's a lot of hogwash. Libertarians are the only politicians with values. "I won't physically harm your person or your property without your consent. Therefore, I am a moral person." And for those who choose to go above and beyond that, who choose to work for change, to make the government more moral, more accountable, more "right," who look



The Greatest Generation?

by Merrel Clubb

Tom Brokaw got it all wrong.

I belong to the "greatest generation," the World War II generation eulogized by Tom Brokaw in his book *The Greatest Generation* (1998). Born in 1921, I volunteered for the United States Navy on April 23, 1942, only to spend most of my combat time as a shore fire control officer in the Pacific, making amphibious landings and fighting with either the army or marines. I am a member of the great generation that, even before we were formally engaged in World War II, refused entry to a shipload of Jewish refugees, forcing them to return to Europe, some eventually to Hitler's gas chambers.

After entering the war, my generation burned, bombed, and otherwise destroyed the lives of countless, often innocent, people caught up in a total war all over the world: Europe, Africa, Asia, and islands in the Pacific Ocean. Members of my generation destroyed hospitals, killed and mistreated civilians, tossed hand grenades into houses and cellars — "just in case"—where civilians as well as soldiers might be hiding. Men of my generation bulldozed dying men into holes with the dead. In the Pacific we sometimes buried the dead with their penises or testicles in their mouths.

Men in my generation shot at and killed enemy airmen parachuting from burning planes, strafed men struggling in the water after their ships had been sunk, strafed lifeboats full of men from bombed and sinking ships (as George Bush, the last President from my generation, may have done, according to a "naval action report" published in *Harper's Magazine*, September 1993, pages 44-45.) Men of my generation killed enemy POWs in cold blood. On Iwo Jima I observed men of my generation killing wounded Japanese struggling painfully up through holes from underground caves which had been blown up. And we shot wounded Japanese soldiers rather than take them prisoner. We regularly killed enemy soldiers attempting to surrender — so efficiently, I remember one time on Guam, the higher command

pleaded that prisoners be taken so that information about Japanese strength on Orote Peninsula could be obtained.

Men of my generation cut off the ears, and sometimes a hand or other appendage from dead Japanese as souvenirs. We knocked or cut out gold teeth from the jaws of the dead, but also occasionally from the jaws of the still living as their bodies thrashed about, until on one occasion on Peleliu a marine took pity and shot a suffering man to put him out of his misery (as described by E. B. Sledge in *With the Old Breed*, 1981). Collectors of gold teeth were not always depraved men, for I remember on Iwo Jima a bright-eyed young officer, whom any mother would have been happy to have for a son-in-law, proudly show me a small bag of gold teeth he himself had collected from the jaws of dead Japanese.

Men of my generation sometimes placed Japanese skulls on posts as decorations, or cut off Japanese heads, then boiling the flesh off so they could send the cleaned skulls to sweethearts back home, as illustrated in a famous (at least then) photo reproduced in *Life* magazine. On another occasion someone in the Pacific sent a letter opener carved from a Japanese leg bone to President Roosevelt (who was too squeamish to accept it.)

The practice of not taking prisoners in the Pacific was widespread, partly because the Japanese did not believe in surrendering, often shooting their own men who appeared to be giving up to the enemy, and partly because those who did seem to Americans to surrender often carried grenades which they exploded, killing both themselves and their would-be captors. But sadism and ghoulishness, though not so common, were not uncommon either. And if asked today,

most men who engaged in acts of savagery would not want to talk about it to their wives, children, grandchildren — or anyone else — and might not even remember, for over time we tend to blot out memories such as strafing lifeboats, shooting surrendering enemies and dying men, and all the worst and most disturbing aspects of our actions during the war. I know I remember little of what I did during the fighting on Makin, Guam, and Iwo Jima.

But all this is not to say the Japanese did not engage widely in similar and even worse acts of wartime savagery, for they were even more barbaric, as illustrated by their systematic savage treatment of POWs in southeast Asia, Japan, and elsewhere, and by their cruelty and brutality during the Bataan death march and later in Manila after MacArthur

Men of my generation placed Japanese skulls on posts as decorations, or cut off Japanese heads, then boiling the flesh off so they could send the cleaned skulls to sweethearts back home.

landed on Luzon, and by Japanese germ warfare experiments carried out on live human beings, including prisoners of war, at the infamous Unit 731 in Manchuria, to mention only a few examples.

Nevertheless, this does not condone the evil that men of my greatest generation were capable of during World War II. It has been acknowledged that terror bombing entire cities does little to win wars, and for the most part in Europe we kept to what was euphemistically called precision bombing. Yet my generation fire-bombed and virtually destroyed some sixty cities in Japan toward the end of the war, including a huge section of Tokyo in one night when over 100,000 people died. And although there are those who still see the atomic bomb raids as necessary to end the war, the general consensus today among historians who have studied the primary documents from 1945 and others relating to the use of the bombs and the end of the war is that the bombs were not necessary to end the war or to save American lives, that there were other possible ways of ending the war known to President Truman and his advisors which were never pursued. Those two bombs, for which my generation is responsible, unnecessarily killed upwards of 400,000 people, including many who died horrible deaths from radiation poisoning.

But many of our worst acts of individual savagery were not limited to World War II, for recently evidence has come to light that men of my great generation fire bombed and strafed hundreds of South Korean civilians in 1950 and 1951 during the Korean War. And there is evidence, too, that we massacred 300 or more South Korean women, children and old men under a bridge near No Gun Ri early in the same war; that such an atrocity is possible on the part of Americans was confirmed by a later generation at My Lai during the war in Vietnam.

My generation provided the ideas and the leadership that

guided our country, not only during World War II, but for nearly the next fifty years, if we arbitrarily take President George Bush as representing the end of the influence of my generation on national affairs.

Atrocities at Home

Members of my generation shattered democracy as we once knew it in this country. Soon after we entered the war, we deprived thousands of Americans of their rights by sending them to Japanese-American Internment Camps. Shortly after the war Congress, infused with newly-elected members from my generation, passed laws establishing the Atomic Energy Commission, the National Security Council, and the Central Intelligence Agency, all staffed and controlled by members of my great generation, who were responsible to virtually no one except an unelected few running them, and whose policies and actions were shrouded in secrecy. In creating these agencies, we destroyed the kind of open government envisioned by the framers of our Constitution, an open arena where issues could be freely debated in full public view.

Our new form of semi-democracy had begun earlier in late 1942 with the creation of the Manhattan Project and with the secrecy, perhaps understandable at the time, surrounding my generation's construction of the first atomic bomb. But in our semi-democracy, civilians of my generation made the decision to use atomic bombs on two Japanese cities with no serious consultation at all with the military leaders charged with conducting the war, namely, the Joint Chiefs of Staff and the commanders in the field, General MacArthur, Admiral Nimitz, and General LeMay. All (with the exception of General Marshall, one of the Joint Chiefs) later decried the use of the bombs. Thus, the decision to release atomic bombs on two almost defenseless cities was a political decision made in secret by a small group of government civilians and, one might add, with no input from Congress representing the American people on political matters.

After the war, members of my generation embarked upon a military "catch-up" program in the 1950s that culminated in the largest military buildup in history under President Reagan, always insisting to the American people that we were behind the Soviets in building nuclear weapons, in spite of the fact that, according to the best evidence, we were almost always ahead, far ahead. For example, in 1950 we had 350 nuclear warheads to the Soviet's five, and in 1960 about 18,000 to 1,700. How many nuclear warheads would it have taken to destroy Russia?

At the same time, members of my generation in the AEC created a nuclear testing program that tended to stifle any dissent and criticism from the American people or their representatives in Congress. The first plutonium bomb had been secretly tested in 1945 with no consideration of the effects radioactive fallout might have on American citizens living downwind of the test, and further tests of bigger and better nuclear bombs had taken place at Bikini in 1946 with a similar lack of concern about the effect of radioactivity, this time on thousands of servicemen, mostly sailors, involved in the tests.

Then, in 1951, the AEC initiated a long series of atmospheric nuclear tests at its Nevada testing site, some of the bombs exploding so close to the ground that huge clouds of

radioactive fallout showered the farms, ranches, and small towns downwind from the tests in Nevada, Arizona, and Utah. This fallout led ultimately to hundreds of deaths from cancer, not to mention the earlier deaths of some 5,000 sheep, which should have alerted the AEC, if it had not already known, to the dangers of radioactive fallout. Instead, those of my generation in the AEC embarked upon a huge program of denial, a campaign of misinformation and lies, that the threats from the tests to the public were not dangerous, that radioactive fallout was harmless, even when they knew better. Eventually, atmospheric nuclear tests were driven underground by the Limited Test Ban Treaty with the Soviets in 1974, but not before the AEC on numerous occasions intentionally released radioactive materials over populated areas of our country, one of the most well-known from the Hanford reactor in eastern Washington in 1949.

By not informing the "downwinders" of the dangers of radioactive fallout possible from nuclear bomb tests and of the release of radioactive material from reactors, members of my generation in the AEC were in effect using those downwinders as guinea pigs in medical experiments, experiments which had been declared crimes against humanity by our own American judges in the Nuremberg Trials in 1947.

And by ignoring further such trivialities as crimes against humanity and international law, my great generation conducted many more medical experiments on live Americans, shades of Japan and Nazi Germany. An earlier generation had, of course, already begun such experiments back in 1932 in the "Tuskegee Study of Untreated Syphilis in the Negro Male." But my generation continued this experiment, unknown to the 399 African-American participants, even after a cure, penicillin, was discovered in the early 1940s. Many of the Tuskegee African Americans died, went blind or insane.

Later, from 1945 to 1947 my generation injected terminally ill patients with bomb-grade plutonium at various medical centers in New York, Tennessee, San Francisco, as

Terror bombing entire cities does little to win wars, yet my generation fire-bombed and virtually destroyed some sixty cities in Japan toward the end of the war, including a huge section of Tokyo in one night when over 100,000 people died.

well as at the University of Chicago and the University of California; some of those injected were not terminal, as evidence revealed in 1995 showed. During the Cold War, my generation conducted many other medical experiments: the CIA, run by members of my generation, authorized a series of secret tests on unsuspecting soldiers, and even its own employees, to find out if they could be brainwashed when fed mind-altering drugs; we injected 751 pregnant women in Tennessee with radioactive iron to find out the effects on their fetuses; we fed young boys in a state school radioactive iron and calcium to see what would happen; we exposed 200 cancer patients to high levels of radiation in Oak Ridge,

Tennessee; we irradiated the testicles of prisoners in Oregon and Washington to see what effect it would have on their sperm; we sent military personnel near or to ground zero of nuclear tests to see if there would be any effect from ground radiation on them — all such medical tests having been defined earlier as crimes against humanity.

Members of my generation, of course, were involved in every event that occurred during our time: an unnecessary Korean War; the witch-hunts of McCarthy and the House Un-American Activities Committee; the Cold War loyalty program, which destroyed numerous careers; the FBI's maintenance of dossiers on people J. Edgar Hoover considered

My generation was not the greatest generation nor was it the worst. We in my generation were simply human, with all the good and bad qualities common to every human being.

disloyal or disapproved of, including presidents of our country; the CIA's tracking the actions of American citizens travelling abroad; the Bay of Pigs fiasco; a futile war in Vietnam where the lives of over 58,000 young American men were uselessly wasted, not to mention the lives of more Vietnamese; the Iran-Contra debacle, which, if President Reagan can be believed, illustrated how even the President of the United States could be kept in the dark in our new democracy by his own National Security Council, and so on. Yes, my generation must be "the greatest generation."

Of course, my generation did win the war in the Pacific and helped to win the war in Europe; and it has produced many fine, sometimes great, men and women, and ideas. We have set in motion important social changes with far-reaching results in our society. We have made great contributions in art, in literature, in science, and in technology, but there is no point in my embarking upon yet another litany of specific illustrations. The U.S. remains a great country in many ways: we have freedoms and rights not found in many other countries, and we are still a democracy, even though not quite the democracy we of my generation supposedly fought for.

There is a point, however, in suggesting that no generation in our history can be thought of as the "greatest." A book such as Tom Brokaw's Panglossian *The Greatest Generation*, though well intentioned, does a disservice to all generations in our history, both past and current. Other generations have fought and won wars: the Revolutionary War, the Civil War, World War I. Other generations have made equally outstanding contributions to the development of society in many different ways. We have reason to be proud of every generation in our history, but we also have reason to be shamed by every generation in our history, for in every generation the government and individuals in the government have committed egregious acts against groups in our society and against other countries in the policies they have pursued: slavery, segregation, the treatment of Native Americans over the years, the subjugation of women come

continued on page 53

Analysis

Who Really Burned Los Alamos?

by Robert H. Nelson

Bureaucratic blundering was the immediate cause of the fires in New Mexico. But Forest Service policy makes conflagrations like Los Alamos inevitable.

Last December, the Los Alamos National Laboratory identified "wildfire as the greatest threat to Los Alamos operations." Just last month, Diana Webb, the chair of the Los Alamos Ecology Group, told a meeting of concerned citizens that "It's not a matter of if but *when* wildfire will again threaten the Lab, Los Alamos and surrounding areas. We can't stress this enough."

Los Alamos was not alone in facing a large fire hazard. In 1998, Barry Hill, associate director of the Government Accounting Office, testified to Congress that an "increasing number of large, intense, uncontrollable, and catastrophically destructive wildfires" were being seen across the West. As a result of past fire suppression, "vegetation [had] accumulated, creating high levels of fuels . . . and transforming much of the region into a tinderbox."

This was not news to forestry experts. In 1994 the National Commission on Wildfire Disasters had already warned of "an extreme fire hazard from the extensive buildup of dry, highly flammable forest fuels." In their current incendiary condition, new forest fires posed a constant risk of becoming "so hot and fast-moving that control by human means is impossible." The Commission recommended immediate and drastic measures to address the widespread danger to lives and property across the West.

However, such expert warnings, as the entire nation learned last month, were not heeded. At Los Alamos, an uncontrollable fire burned more than 35,000 acres, required the evacuation of 25,000 people, destroyed 260 homes, and spread to parts of the Los Alamos National Laboratory — where the first atom bomb had been built and many nuclear residues remain.

Conditions similar to those at Los Alamos exist today on about 40 million acres — more than twenty percent of the total area — of the National Forest system. Although the Los Alamos fire started as a prescribed burn on Bandelier

National Monument, the fire soon moved to the Santa Fe National Forest where most of the burning occurred. If this National Forest had not been a torch waiting to be lit, the Park Service errors in judgment would probably have proven harmless.

Unintended Consequences

In reality, National Forests throughout the West face a very high fire hazard because forest fires were suppressed for most of the twentieth century.

Smokey the Bear was wrong. Suppressing fire does not eliminate the risk of fire. It only postpones fire, as wood levels continue to build up. It is like a lottery where the pot continues to grow, as long as there is no winner. Then, when a forest fire does inevitably break out, if not suppressed rapidly, it burns much more intensely, posing a major danger to lives and property and doing much harm to the environment itself.

Interior Secretary Bruce Babbitt, Forest Service Chief Mike Dombeck and other top Clinton administration officials know all this. However, they are caught in a rigid ideological bind that has prevented them from taking effective fire preventive action for the past seven years.

Eventually, one of three things will happen to the excess wood that past fire suppression has left standing in western forests. It could be burned in small prescribed fires, as the National Park Service was trying to do at Bandelier. It could be removed mechanically by cutting down and physically carrying out the trees. Or it could be left to burn up in occa-

sional large and unintended conflagrations — which means more of the potentially catastrophic forest fires like the one that broke out at Los Alamos.

The Clinton administration has opted for the first option. Prescribed burning has become almost the official religion, the one proper way that forests must be cleansed of excess wood "naturally" (as if a fire deliberately set is "natural"). Forest managers have been under strong pressure to raise the levels of prescribed burns.

Yet, prescribed burning faces major constraints. There is always the risk, as seen at Los Alamos, that the fire will get

Forests have fallen from twelve million board feet per year to less than four million.

National environmental organizations want timber harvesting to fall further still. Some see harvesting of timber as a virtual evil in and of itself. The members of the Sierra Club voted in 1996 to press for a total ban on new timber harvesting of any kind in the National Forest system. Dependent on environmentalist support, the Clinton administration has shown little ability or inclination to resist such pressure.

With prescribed burning unable to do the job and mechanical removal foreclosed for political and ideological reasons, the de facto policy amounts to waiting for large and unplanned fires to burn. Many cities in the West have in effect been entered into a new national game of Russian roulette. It was just the bad luck of Los Alamos that it happened to catch the fire bullet this time around.

Last year, the wheel spun for northern California, where a prescribed fire set by the Bureau of Land Management got away and burned twenty-three homes. Even as Los Alamos was burning, another prescribed fire was out of control in Grand Canyon National Park, fortunately in an area free of structures, but postponing the opening of the North Rim to visitors.

The latest unlucky winner in the wildfire lottery is Colorado, where nearly 20,000 acres had been destroyed at the time of writing. Arizona, California, Florida and New Mexico have recently endured similar blazes. The toll this year alone from wildfires is up to 1.2 million acres — nearly twice the annual average. How much of this is due to the Clinton administration's inept forest policy? Politicians and the press rushed to heap blame on the superintendent of Bandelier National Monument, who it is easy to see in retro-

Smokey the Bear was wrong. Suppressing fire does not eliminate the risk of fire. It only postpones fire, as wood levels continue to build up.

out of control. Future federal forest managers are now bound after this experience to be much more cautious in this regard. More and more homes, cabins, resorts and other buildings are being located in heavily forested areas. The weather and moisture conditions also have to be just right, and there is a further serious problem of air pollution in many parts of the West. Finally, prescribed burning — with all the fire precautions necessary — is expensive. Hence, the overall level of prescribed burning in recent years has fallen far short of that necessary to clean western forests of their excess fuels and resulting fire hazard.

If anything is to be done, the Forest Service in many areas will simply have to bite the bullet and remove brush and other vegetation by mechanical means. In other words, wherever the wood is worth anything and can be sold, there will have to be a much expanded program of timber sales. The money earned and the timber supplies yielded may be incidental to the fire prevention goals, but it will be a timber sale nonetheless.

But that is where the problem for the Clinton administration comes in. In the very same week that portions of the Santa Fe National Forest near Los Alamos burned up, the Forest Service announced a new moratorium on road-building on 43 million acres of National Forests. It was yet another step in a virtual agency war on timber harvesting over the past decade. Since 1989, harvest levels on National

If the Clinton administration and the environmental movement continue to put a rigid ideology above common sense, we can expect to see many more fire disasters like Los Alamos in the future.

spect set a prescribed fire in unfavorable weather conditions at Los Alamos. He has now been put on administrative leave. It is an old story: blame the sergeants and let the generals go free.

But it was national policy that set the stage for the Los Alamos fire. If not this time, as local Los Alamos residents had already been informed, the forests around Los Alamos would still have had to burn another day, as long as their huge inventories of excess fuels remained. The only way to remove these fuels now — and the same holds true for many other places across the West — will be to go in and cut the wood for sale for whatever money it will bring.

If the Clinton administration and the environmental movement continue to put a rigid ideology above common sense, we can expect to see many more fire disasters like Los Alamos in the future. □



"Talk about being in synch with the Universe — Every Spring, he sheds!"

Between a Rock and a Hard Case

by Gene Healy

In the July *Liberty*, Timothy Sandefur made a powerful moral argument for allowing Elián González to remain with his American relatives. But should other factors be taken into account?

One of my textbooks in law school — civil procedure, I think it was — described a psychological study purporting to show that once a person has heard both sides of a debate, he usually comes away more convinced of what he already believed in the first place. If that's case, then maybe I shouldn't think much of the fact

parents can't take their children to live in totalitarian countries such as Cuba. You can either argue (a) that life in Cuba constitutes abuse or neglect; or (b) that the "best interests of the child" standard should be applied outside of its normal context (i.e., in custody disputes between two biological parents), to allow a third party to win custody as against a competent and nonabusive parent. But I cannot think of any way to make argument (a) or (b) without reaching the absurd result that Elián's little brother has to be forcibly liberated as well. Let's look at the problem from both angles.

The July issue of *Liberty* did nothing to change that, despite some fine pieces making the case for Elián liberationism. Timothy Sandefur ("Elián González and Dred Scott") writes with passionate conviction, but his fugitive-slave example just won't wash. I could be wrong, and doubtless someone will correct me if I am, but I don't recall that abolitionists ever got themselves into the nasty business of liberating slave children over the protests of their parents. Indeed, it would be surprising if they had, given that a central charge in the abolitionist indictment of slavery was that slaveholders had the power to break up slave families. As historian James M. McPherson notes, the "breakup of families was the largest chink in the armor of slavery's defenders. Abolitionists thrust their swords through the chink." McPherson gives several examples, among them that Harriet Beecher Stowe's novel *Uncle Tom's Cabin* "homed in on the breakup of families as the theme most likely to pluck the heartstrings of middle-class readers." To get a real parallel to the González case, you'd need a Dred Scott who wanted to return with his kids to slavery, and a passel of abolitionists who wanted the state to seize his kids.

Certainly some of the arguments put forth by Mr. Sandefur and others are quite compelling. The problem is, however, that every good argument that can be advanced for separating Elián and his father is equally valid as applied to Juan Miguel González's other son, Elián's infant half-brother.

There are two ways to make a principled argument that

Argument A: One can make a principled argument that bringing a child to live in Cuba constitutes abuse or neglect, thus overturning the presumption of parental custody. But that argument cannot be based on the fact that Elián González will have a lower standard of living there. Despite what Timothy Sandefur asserts in "Elián González and Dred Scott," it's clear that young Elián will have more than adequate food and shelter in Cuba. Elián's father, a stocky little guy, evidently eats well enough, and Castro won't let a "hero of the Revolution" like Elián go unsheltered or underfed.

Nor is the fact that the Cuban Constitution explicitly repudiates parental rights of any relevance to the abuse or neglect inquiry. In other contexts, we recognize that parents can cede certain parental rights in order to secure the kind of upbringing they want for their children. Those who entered the Branch Davidian "compound" knew that David Koresh claimed and would exercise authority over their families inconsistent with normal family life. And one would certainly have the right to take one's child to live in the sort of

arrangement once favored by certain Israeli kibbutzim, where children are separated from their parents and raised collectively. If we assume what may very well be the case, that Juan Miguel González is a dedicated commie who wants to raise a communist kid, then he understands that communism entails state interference with the family. Like a Davidian convert or an Israeli socialist, Juan Miguel González is voluntarily ceding parental dominion in order to raise his child in accordance with his wishes.

Instead, the case that childhood in Cuba constitutes abuse or neglect must center around the denial of the right to exit. Castro's denial of that basic right is one of the most salient differences between Cuba on the one hand, and the Branch Davidian community, Amish country, and kibbutzim on the other. A kid raised in Amish country, on a kibbutz, or with the Davidians has an eventual right to leave. Barring Castro's death, for which all good people fervently pray, a

When you start to invoke the concept of liberty as a rationale for state empowerment, you're asking for trouble.

kid raised in Cuba does not. Thus, Juan Miguel González is permanently alienating Elián's rights by deciding to raise him in Cuba.

One can make a very persuasive argument that this constitutes abuse. But if taking a kid to a country that denies the right to emigrate is abuse, it's abuse whether the kid is six years old, or eight months. If we can't let Juan Miguel González take Elián, we can't let him leave with the infant half-brother either.

Argument B: We reach a similar result if we argue that the "best interests of the child" standard should apply outside of its normal context. As noted above, in family law, the "best interests of the child" standard is generally applied to custody disputes between two parents. The inquiry for the judge is: is it in this child's best interest to stay with his mother, or with his father? Under normal circumstances, judges are not empowered to grant custody to a third party, even if such a grant would truly be in the child's best interest.

Some libertarians intimate that the general rule should be loosened, at least in this one case, to allow Elián's best interests to trump parental rights. There are two problems with this proposal.

First, it invites judicial tyranny. One of the great debates in legal philosophy is between rules and standards. Rules — abstract, cold, impersonal, formalistic and rigid — cabin in discretion. Standards — warm, fuzzy, personal and malleable — invite the exercise of arbitrary power. Distrusting political power and knowing men to be the corruptible wretches they are, libertarians opt for rules. The "best interests of the child" test is a standard, currently confined by a rule (presumptive custody to a parent, as opposed to a third party) that restricts the authority of officious do-gooders like children's advocates and social workers.

If we let the "best interests of the child" standard loose in Elián's case, can we bottle it back up again without a revolu-

tion in domestic child-custody law and permanent harm to parental rights? Perhaps we can. The Polovchak case, in which a 12-year old boy successfully defied his Soviet parents and got to stay in the United States, didn't lead us to Hillary Clinton's dream-world in which American children can divorce Mom and Dad. However, I wouldn't want to press our luck.

The second problem with "Argument B" is, once again, the "little brother" problem. Elián isn't the only González with an interest in liberty. It's in no child's best interest to be raised in a communist country. If the "best interest of the child" test demands that we take Elián, it also demands that we take his brother.

Is there any relevant distinction between Elián and his brother that makes it possible to argue for the freedom of the former, but not the latter? I can't think of one. It's true that, unlike his brother, Elián is old enough to express himself, and at one time voiced a desire to stay here. But that's not much to hang a distinction on. While with the Miami family, Elián González said he wanted to stay; now that he's with his father, he'll most likely say he wants to go back to Cuba. The problem of trying to figure out what Elián González really wants is much harder than the problem of trying to figure out whether Juan Miguel González's desire to return to Cuba is genuine. In general we don't automatically take six-year-old children at their word — they're insufficiently reflective and too easily manipulated. If they're not, then libertarians have made much ado about nothing in arguing against child-abuse witch-hunts all these years. Maybe all

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those kids were telling the truth when the shrinks got them to describe being raped by evil clowns with knives.

If there is no distinction that separates Elián and his brother, then each possible rule that can be articulated to govern this case generates an absurd result. But, strangely enough, I've yet to read a libertarian argument for Elián's freedom that bothers to articulate a general rule that should govern this case and others. When you start to examine what libertarians are arguing when they urge the separation of Elián and his father, it begins to look as though they are not in fact articulating any principle of general applicability. Instead, they're applying something like an ad hoc, totality-of-the-circumstances test preengineered to generate the outcome that most of them desire — that the kid gets to stay. "When a child's mother is fleeing tyranny, and she puts him on a raft, and she dies trying to get him to freedom, and he gets here on Thanksgiving, and he says he wants to stay . . . [etc., etc.] . . . , then that child gets to stay in the United States." It's odd for members of the political movement of

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Rumination

Sex and the City

by Sarah McCarthy

Rudy Giuliani joins the legion of public figures vilified for sex by the conservatives and feminists.

On the morning of Rudy Giuliani's resignation from the New York Senate race because of his prostate cancer, *The Wall Street Journal* ran an editorial by William Bennett calling for him to drop out because of his extramarital friendship with Judy Nathan. The Virtue Czar called for Giuliani to hang a scarlet "A" around his neck and slouch off into the sunset, despite accomplishments as mayor of New York City that Bennett acknowledges are "among the most impressive governing achievements of modern times."

Bennett dismissed the real problem, Giuliani's cancer, as a mere blip on the radiology screen next to the more important problem as Bennett sees it — searching out and destroying sexual sinners. I could not help but compare Bennett's uncharitable reaction to Giuliani's troubles with the announcement by Bennett's other chosen pariahs, the Log Cabin Republicans, who offered Giuliani heartfelt compassion.

After the Clinton uproar, one hoped that the sexual scandal hounds would have finally had enough, that their appetite for sexual purges would have finally been sated. But no. Who, besides William Bennett and a handful of social conservatives and an occasional feminist, could relish another such episode?

Bennett believes that the Gary Hart brouhaha, in which the candidate was chased through the streets by citizens of Salem posing as reporters, was a good thing. Hart, nabbed red-handed on a yacht known as the *Monkey Business*, was forced to withdraw from his presidential campaign, "affirming an important public standard," says Bennett. Well, I can understand that. After all, Hart was a Democrat.

But Rudy is a Republican, a member of Bennett's own party, and one who turned the worm-infested Big Apple back into a thriving metropolis, causing one to wonder what "public standard" it is that Mr. Bennett would like to affirm. That witchhunts are high points in the cultural life of a nation? That we consider hanging out with Judith Nathan more important than beating back the mob? That we are arrogant and presumptuous enough to understand the inner workings of the Giuliani-Hanover marriage? And that micromanaging this marriage is more important than say, revitalizing Times Square or civilizing the subways?

Does Mr. Bennett believe we should continue careening hell-bent down the road of making ourselves into a nation of sexual hysterics? That we should look upon sexual transgressions as a litmus test and the biggest blackball for presidential candidates, military officers and CEOs? Does he think that we should reaffirm a sexual standard that causes Supreme Court nominees to have their garbage cans ransacked and their videotape rentals scoped for pornography? That we should elevate sexually questionable jokes to the level of thought crimes that can destroy one's career? I have a thesaurus, but the only word I can come up with that describes America's recent preoccupation with sexual minutiae is "insane." Not only are we obsessed with these witchhunts, we seem comfortable exacting exorbitant punishments from transgressors.

I was horrified by the image of Clarence Thomas, who worked his entire life against great odds to become a judge, lying on the floor of his home in the fetal position, crying from the pain of the insane confirmation process which he had to suffer through. Even if Anita Hill was telling the truth — even if Thomas had, in fact, told her a couple of dirty jokes — should we cancel out a lifetime of achievement? Kill his career?

Shall we reaffirm the "public standard" that caused the first female bomber pilot, Kelly Flinn, to have her career reduced to rubble because she dated a man she thought was separated from his wife and then lied about it to her commanding officer? This woman lied about an affair, she'll lie about anything, bellowed the Rush Limbaughs and Bill Bennetts. This woman disobeyed orders, she'll disobey them again, they gloated, as they blackballed a woman from the "feminized" military. "What's a woman doing flying a B-52 bomber anyway?" roared Patrick Buchanan. This slutty loose cannon, went the right-wing scuttlebutt, is liable to do any-

thing. This nut might drop a 20-megaton bomb on Chicago!

And so, Bill Bennett wants us to reaffirm a "public standard" that says we are single-minded and simple-minded enough, yea stupid enough, to expunge Rudy Giuliani from public life, possibly ceding the New York Senate race to a Hillary Clinton?

It seems almost preposterous now, but I remember a time, back in the days before the puritanical Right and the

Insane as it may seem, there was a time in America, I'll say to the grandkids, when privacy existed, when people's career accomplishments were actually separated from their sexual lives.

feminist Left joined forces, before the joint triumph of sexual litmus tests and sexual harassment laws, when America was so outrageously laissez faire that I could actually do something as mundane as hiring chefs for our restaurant because they could cook well. There was a time in America, I will tell my grandchildren, when I could hire someone without contemplating whether or not he was a Romeo, but because he made the best soup. There was a short time in America, I will tell my granddaughter, when women were free. I'll tell her there was a time, sometime between the Victorian era and the 90s, when I could enthusiastically hire a female bartender and not worry that she was so delicate and offended that she might hear herself called "Honey" and bring down the house.

Insane as it may seem, there was a time in America, I'll say to the grandkids, when privacy existed, when people's career accomplishments were actually separated from their sexual lives, when you knew that your heart surgeon was there because of his surgical skills rather than because of the state of his marriage or on the basis of some jokes he told to

"Between a Rock and a Hard Case," from page 38

principle to find themselves on such muddy footing.

Of course, that isn't the only place for Elián liberationists to stand. I've been assuming for this entire argument that even the most principled libertarians blanch at the thought of resuiting Reno's Raiders for a predawn incursion aimed at tearing the youngest González out of the arms of his mother. (Or, less dramatically, preventing the family from leaving the country with Elián and his little brother.) But the argument from absurd results won't faze someone willing to embrace the absurd result. It's quite possible that some of you read the arguments in this essay and said: "Yeah, we need to free the baby brother too. So?" To those of you who fit into that category, I say: I admire your devotion to principle. I also want to keep you as far away from political power as possible. A state that invokes liberty to separate parents from children by force is a state without limits.

Liberty is the highest political end; indeed, it's the only political principle worth fighting for. But when you start to invoke the concept of Liberty as a rationale for state empow-

some nurses. Think of it. Suppose you go for heart surgery and get the guy who's number four in line? Number one was eliminated due to an affirmative action quota, two was a sexual harasser and three was an adulterer. The more litmus tests, the less quality job performance, whether it's heart surgery or public service.

If lust shall be a litmus test, I'd like to ask Bill Bennett about the other deadly sins. What about about gluttony, pride and sloth? Does Bennett think fat guys should be barred from publishing books?

It is time this overstuffed turkey be asked some serious questions about the state of his own soul, and if he, with all that excessive girth, should be still cluck, cluck, clucking about who should resign due to their sins.

As for Rudy Giuliani, I don't care if he's too sexy for the slow lane, too sexy for William Bennett or too sexy for the church guys. I don't care if he has a whole harem tucked away behind the pantry door. The only one who needs to be concerned with that is Donna Hanover.

And speaking of the church guys setting sexual standards, didn't the original church guy, Jesus, do just that a

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long time ago? When an adulteress was brought before him by an angry mob, didn't he ask who among them would like to cast the first stone? Well, Jesus, we finally have a volunteer! Bill Bennett has just stepped up to the plate with a truckload of rocks. □

erment, you're asking for trouble. You end up with a libertarian universalism that's inches away from slipping into libertarian imperialism. You end up, like Timothy Sandefur, musing about whether "the United States [should] declare war on Cuba to liberate it . . . [or] China." You end up quoting Abraham Lincoln to the effect that "no man is good enough to govern another man without that other's consent" — oblivious to the irony.

In their devotion to Liberty, Mr. Sandefur and other Elián liberationists have forgotten Liberty's necessary corollary: hostility to Power. They've made arguments the necessary implications of which would justify: (1) forbidding communists from emigrating with their kids; (2) forcibly separating those kids from their parents; and perhaps (3) invading communist countries to bring other kids the blessings of Liberty. I can't help but fear that the libertarian jihad this implies would end up dramatically expanding Power and constricting Liberty. Elián González is a sympathetic child with a compelling story. I don't want him to grow up with a tyrant's bootheel in his face. But I don't want my kid to grow up that way either. □

Analysis

Genocide: Good and Bad

by Oliver Becker

The West may not be able to tolerate mild apologies for the Nazi past from the mouth of an Austrian politician, but it can tolerate genocide when it is conducted by a powerful country with resources for sale.

Now we can finally all live in peace, quite assured that ours is a brave new world indeed. When the Austrians recently elected a coalition government which included the party of the "right-wing populist" and so-called neofascist Jörg Haider, we all saw how wonderfully the free and civilized nations of the world had learned their lesson: There shall be no contact with the extreme right, wherever it may raise its ugly head.

Not all American readers may be familiar with this man and his party, now deemed to be the premier threat to world civilization. So who is Jörg Haider?

In 1986, the then almost unknown Haider took over the helm of the centrist Austrian Freedom Party, then the junior partner in a governing coalition with the Social Democrats. Under his leadership, though, the direction of the party took an unexpected turn towards the right. Soon, the Social Democrats concluded that the coalition with the Freedom Party was no longer tolerable, and Haider found himself in the opposition, where he was able to draw huge crowds with a crusade against corruption leavened with a bit of wild right-wing rhetoric. So the astonished world came to hear that the old SS included some "pretty decent people" and that the Third Reich had had a "decent employment policy." These slogans, together with a program that promises everything to everyone, soon brought Haider the governorship of Kärnten, a small Austrian state, and eventually a position as equal partner in a coalition with the center-right "Austrian People's Party," governing Austria. Though Haider does not occupy a cabinet post, he is widely accepted to be the brains behind the party and the one who will determine its course in government.

And how did the world react to this right-wing menace?

Israel withdrew its ambassador from Vienna. The European Union suspended bilateral talks with the little nation. The Belgian secretary of state even called for a boycott of the Alpine republic. The German Chancellor, who as

leader of a nation with four million unemployed people had no other worries than the freely expressed will of the Austrian electorate, reminded his neighbor to the south that Europe was a community of people with the same values, and with Jörg Haider representing them they might not really fit in. And the United States, always the watchful guardian of world freedom, let it be known it was "watching events carefully."

So all is well. Free nations will not accept as a partner a country in whose government sits the party of someone who has shown sympathy with the Nazi regime.

The West's response to the threat in Austria contrasts in an interesting way with its policy a little bit further east. A few people still remember that just a few weeks ago there was a different story, buried somewhere down in the depths of the news: the story of Russia's assault on the free Republic of Chechnya, which only three years ago had won its independence from its Russian colonial master in a bloody war.

In the fall of last year, bombs had exploded in three Russian apartment buildings, killing 300 people. Without presenting a scintilla of evidence, Russian authorities blamed these bombings on Chechen "bandits" and started an invasion of the country. In the course of this assault, the Russian army virtually wiped out the Chechen capital Grozny, shellng it for weeks with weapons of massive destruction, ignoring the fact that in addition to some two thousand alleged Chechen terrorists (i.e. citizens of Grozny who bravely defended their homes), there were still about 40,000 civilians trapped in the city. Refugees who had been promised safe passage from the city were bombarded by heavy artillery.

According to survivors of the Russian onslaught, drunk Russian soldiers celebrated the conquest of Grozny with a spree of deliberate killing and looting, murdering at least 60 civilians in one neighborhood alone. Not being content with the annihilation of a city, the Russian juggernaut moved further into the Caucasus Mountains, setting villages aflame, torturing and murdering men, keeping captive their families.

But surely the virtuous leaders of the free world, who acted so decisively in the case of Austria, hesitated not for a second to stop subsidizing murder in Russia with billions of dollars in development aid every year?

Not quite. Expressing its general support for Russia's alleged anti-terrorist mission, the U.S. government let it be known that it thought Russia "overreacted" a bit. And the oh-so-courageous European presidents sent a human rights commissioner to Chechnya, who came back home without having come close to the places where massacres had taken

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place. Sanctions against Russia? "Not in our interest," was the unanimous proclamation of Western leaders.

So where was all the concern for freedom, the rights of minorities and tolerance that came so easily to their lips in the case of small and harmless Austria?

The truth is that when Western leaders face internal difficulties, they look for a cheap shot elsewhere. Austria is a small country with a record of good global citizenship and peaceful dealings with its neighbors that could be relied upon to be a willing sacrificial victim.

But what about Chechnya? Russia has oil to export. And billions of dollars to launder. And, of course, some dangerous weapons of its own. Opposition to the Russian genocide in Chechnya would actually demand of Western leaders the courage to stand by their loudly proclaimed convictions, something none of them has ever possessed.

So what lesson can we learn?

Despite constant talk of the meaning of morality in foreign policy, only one factor really counts when the leaders of Western democracies determine whose friendship to seek and whom to turn into a pariah on the world stage: the per-

ceived short-term interest of their own state, i.e. their own power machine. When push comes to shove, a "statesman" from Washington or Brussels still feels closer to his murderous colleague in Moscow than to a dying peasant in the Caucasian mountains, who happens to be poor and of a different religion. If Cardinal Richelieu and Chancellor Bismarck were still around, they would be smiling.

Which international law is valid for you depends on who you are. If you are a small nation whose electorate happens to have opinions somewhat unpopular in Western capitals, beware! The long arms of the law of the Bill Clintons and Tony Blairs are coming after you!

But as for powerful nations, even after a century of unparalleled murder, pillage and destruction by communist and fascist regimes, every modern-day Jack the Ripper in the guise of a mighty statesman, be he named Hitler, Putin or Stalin, can still do with his population as he pleases, provided he has something to offer to the West, especially if the people he kills are people Washington and Brussels happen to dislike. □

Letters, from page 6

("A Mind Is A Terrible Thing to Waste," July) is not the best forum to present all the intricacies of the free will versus determinism debate. Nevertheless, Peter Gillen, as a person with philosophical training, should know better than to attempt to refute a determinist's concern with moral responsibility by making statements such as, "If our minds are nothing more than computers . . . then it makes no more sense to hold a human being accountable for a crime than it does to prosecute a computer for crashing."

If there were good reason to believe that prosecuting my computer for crashing would affect its behavior, then prosecuting it would make a great deal of sense. That prosecuting it would, in fact, do no good is a function of its programming and, possibly, its lack of complexity when compared to the human brain, not evidence against determinism.

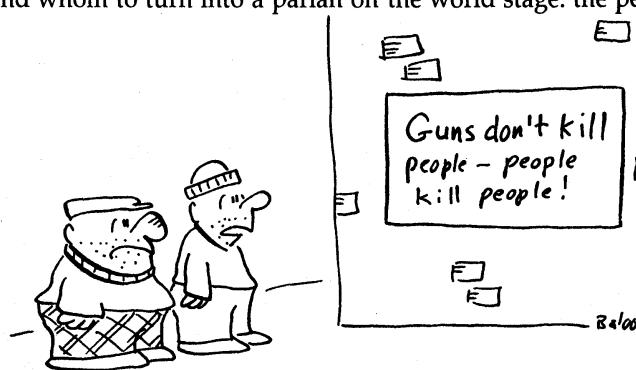
For myself, I suspect that determinism is false — but that is because I suspect that at a very basic level random processes are at work. However, I try to keep an open mind about it. And I suspect this sort of indeterminacy offers little comfort to the free-will ethicist.

Gordon Sollars
Kinnelon, NJ

Understanding Media 101

I'd like to correct a misunderstanding Michael R. Allen made in his review of my book ("Guilt-Edged Politics," July). He wrote that I criticized an article in the *San Francisco Examiner* because it quoted six anti-Helms people and no pro-Helms people, overlooking the fact that "The liberal *Examiner* staff is doing the free society a favor by writing negatively of a senator who supported the illegal bombing of Yugoslavia."

But I wasn't criticizing the *Examiner* for being anti-Helms. I criticized it for violating journalistic ethics by blatantly editorializing the news. If these anti-Helms opinions had appeared on the editorial page, I'd have had no complaint



"Oh-oh — they're on to us!"

Reviews

American Compact: James Madison and the Problem of Founding, by Gary Rosen. University Press of Kansas, 1999, 236 pages.

James Madison: Writings, edited by Jack Rakove. Library of America, 1999, 966 pages.

Liberty, Property, and Mr. Madison

Timothy Sandefur

What's disconcerting about Rosen's book is that it is revolutionary. For half a century, led by Madison biographer and New Dealer Irving Brant, interpreters have said that there are two James Madisons: a big government Madison and a small government Madison. The first showed up at the Constitutional Convention, arguing for an expanded federal government, which would subsume the states and build national highways. The second showed up, under the control of his friend Thomas Jefferson, in time to protest the National Bank, attack Alexander Hamilton in the newspapers, veto highway construction projects that even the strictest constructionist in the Senate had approved, and — perhaps because of his quaint libertarianism — almost lose the War of 1812.

This interpretation has survived for more than fifty years, partly because of the paucity of Madisonian scholarship. Books on Jefferson fill shelf after shelf, while Brant's six volumes remain the most extensive of the few Madison biographies. (Ralph Ketcham's one volume *James Madison: A Biography* is excellent, but leaves a good deal out.)

Madison was 5 feet, 4 inches and always wore black, so that he often got lost in Jefferson's tall shadow during his lifetime — and now he continues to do so in death. Whole generations of Americans know very little about James Madison, the greatest political thinker the Revolution produced, and certainly one of the most prolific. Of the four great documents of the era — the Declaration of Independence, the Constitution, the *Federalist Papers*, and Washington's Farewell Address — Madison wrote or helped write the last three.

But there are not two Madisons, and there never were, as even the most cursory examination of his writings discloses. The satisfying appearance of *James Madison: Writings*, edited by Jack Rakove for the Library of America, finally brings to the casual scholar a comprehensive single volume of Madison's writings. There, and in Rosen's book, one can see that Madison was a remarkably consistent political thinker. It is today's false political dichotomies that lead to charges of hypocrisy. Today's political science professors, reared on 20th century gospel that "the people" are oppressed by "the elite," or that property rights are different from — or opposed to — personal rights, or that

the federal government is a combination parent-and-insurance-company, see Madison's ideas as fractured, in a way that libertarians would recognize. Libertarians (who are Madison's intellectual progeny) are often accused of being "socially liberal" and "fiscally conservative," by those who ignore the consistency of the libertarian argument of self-determination. Likewise, Madison is ridiculed for what seem to be inconsistencies only to those who are themselves incapable of detecting Madison's unchanging political principles.

Fortunately, a number of recent books have sought to resurrect Madison. They are incomplete works: Lance Banning's *The Sacred Fire of Liberty* forcefully demonstrates Madison's consistency, but it closes just as Madison becomes president, leaving out some of the most interesting parts of his career. Likewise, Drew McCoy's masterful *The Last of the Fathers* provides a beautiful defense of Madison's work in his retirement — including his service in the dreadful "nullification crisis," probably Madison's most noble crusade. But a single book covering Madison's whole career is still wanting.

This is what Gary Rosen, an associate editor of the neo-conservative magazine *Commentary*, has sought to present in this slender volume. It delves deeply enough into abstract state-of-nature theory to turn away the average reader, and it is too brief to finish the work of rescuing Madison, but it is a magnificent book of integrity and intellectual honesty.

Democracy and Freedom

When it came to politics, James Madison was the greatest of the many geniuses who helped found America. Of course he hated tyranny, but unlike Jefferson, Paine, or Henry, Madison did not react with all the characteristic 18th century faith in "the people." Majoritarianism, which often held

sway with his compatriots, disconcerted the deeply educated Madison. He too well remembered the lessons of the Greek democracies, with their bloody redistributions of wealth, their periodic massacres of aristocrats, and the internecine warfare that finally left them helpless before the conquering Macedonians and Romans. While he believed the people were a safer repository for power than an aristocracy, he was never under the delusion that democracy was ideal. "Wherever the real power in a Government lies," he lectured Jefferson, "there is the danger of oppression. In our Governments the real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents. This is a truth of great importance, but not yet sufficiently attended to." As Ketcham explained, Madison's primary concern was not with political forms, but with the safeguarding of

one species of property and reward another species: where arbitrary taxes invade the domestic sanctuaries of the rich, and excessive taxes grind the faces of the poor...."

Madison's most famous writing is *Federalist 10*, an essay which reviews his concern that majorities will oppress minorities, and his belief that balancing one faction against another will serve to enlarge freedom. But even better is his essay "Property." Madison argues, like Locke, that the term property "in its larger and juster meaning" refers both to material possessions and one's opinions. Government should secure both against the interference of others, while not trampling on them itself. "[T]hat alone is a just government which impartially secures to every man, whatever is his own." Madison wrote this in 1792, at the height of what critics call his Jeffersonian phase. But in 1774, he had praised the Boston Tea Party, saying it was "necessary to instruct in the Art of defending Liberty and property." And in 1829, he would write, that "the rights of persons, and the rights of property cannot be separated. The personal right to acquire property, which is a natural right, gives to property, when acquired, a right to protection, as a social right."

To this, liberals would blanch, while conservatives would cheer. And yet Madison was even more concerned with the rights of conscience. One of his first public writings was a "Memorial and Remonstrance" against putting preachers on the government payroll, and in 1776, he persuaded George Mason to change his Virginia Declaration of Rights, so that instead of merely "tolerating" religion, it would unambiguously protect the "free exercise of religion, according to the dictates of conscience." So now the liberals cheer, while the conservatives groan. But all along, Madison is consistent.

Federalism

Rosen sees Madison's consistency in terms of Hobbesian/Lockean social compact theory. (He rightly notes that Madison was deeply troubled by Rousseau's version of this theory, and consciously used the word "compact" instead of "contract" to avoid being associated with it.) Locke had argued

that in entering the state of society, one could not give the government complete sway over one's life, but only the limited power of self-defense. And Madison believed that the social compact and the political compact were two separate things, so that although the American Revolution had overthrown the political compact to which the British Americans had formerly

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been party, the social compact remained, and bound them as a nation, permitting them to write a new constitution. These subtle distinctions were to serve Madison very well in the days of the nullification crisis, when Madison would desperately try to stave off civil war by showing how the Constitution was not a compact between the states — as Jefferson had embarrassingly insisted on calling it — but was itself a binding government.

This would seem to make Madison a big-government modern liberal, as opposed to the states'-rights conservatism popular today. But in fact, Madison very much believed in states' rights. In the *Federalist*, Madison had written that the powers of "the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." It was this vision of a strictly limited federal government that he served throughout his career. Accusations of inconsistency often focus on Madison's cooperation with Hamilton in erecting a strong central government — and then later opposing Hamilton on the National Bank and the idea of implied powers. But in fact, Rosen writes:

These indictments of Madison are based on a false premise. They assume that his "nationalism" neces-

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each individual's rights. "Madison had at the foundation of his political education a supreme emphasis on the *ends*, not the *means*, of government. Rule by one or by a few could be good if conducted justly, while rule by the many could be bad if not so conducted." This is another way he diverges from 20th century politics, with its mantra that "if the people vote for it, it's okay." Madison's consistency on this point led him to protect both the wealthy from the poor and the poor from the wealthy. "A just security to property is not afforded by that government, under which unequal taxes oppress

sarily implied the broad construction of national powers, that the Constitution was a meaningful reform only if animated by Hamiltonian principles of administration. From this perspective, it is not enough that both Madison and Hamilton sought a more energetic national government as the Articles of Confederation crumbled; it must be supposed as well that they were of a single mind as to the extent of the government's powers, its relation to the states, and the substantive ends of its economic policies. As Lance Banning has so ably demonstrated, this line of reasoning is insupportable. It turns the real but limited consensus among the Constitution's supporters into a monolith of thought and action. . . . Despite his concerns in this period about the feebleness of the national government, Madison never suggested that the solution lay in giving it a general and unrestricted authority to seek the public good.

All his life, Madison insisted that the American Constitution was entirely new, unlike any previous government ever formed. This new charter was "neither wholly national nor wholly federal." It left the states largely in control, but on certain national topics, the federal government was supreme. When, at 80 years old, he attended his state's constitutional convention, he would tell the delegates, "The essence of Government is power; and power, lodged as it must be in human hands, will ever be liable to abuse." It presented a dangerous

When it came to politics, James Madison was the greatest of the many geniuses who helped found America.

tool for those disposed to redistribute property, or control religious opinions. What Madison achieved at the Constitutional Convention was a federal government which would operate without interference on a limited number of national questions — but would leave the states to do the rest; a government which would protect the wealthy from the depredations of the poor, and

the poor from spoliation by the rich; which would both prevent an "establishment of religion," but also not "prohibit the free exercise thereof." How relevant is this view today? Rosen concludes, "As Madison feared, utility rather than constitutionality has become the ultimate test for public policy. As a result, one seldom hears it said anymore that the federal government simply lacks a constitutional warrant for a given program or regulation. The argument would be seen as little more than a diversionary tactic, prompted by the inability to block a proposal on policy grounds. For

Madison, by contrast, such limits were the deepest source of republican dignity, the bulwarks that he expected citizens to defend in order to remind themselves of their sovereignty."

Madison was a political engineer, who created a lasting engine from the principles of Locke, Hume, Smith, and his friends Jefferson and Hamilton. It is a shame that so few Americans know much about him — and even worse that libertarians often know little about him. Rosen's book is an excellent contribution, not only to Madison biography, but to the understanding of the American Constitution. □

Completing the Revolution: A Vision for Victory in 2000, by Robert D. Novak. The Free Press, 2000, 255 pages.

Reclaiming the Republican Dream

Stephen Cox

A lot of people dislike Robert Novak, probably because he's so smart. He is one of only a handful of commentators on American politics about whom that could ever possibly be said. For years I have watched CNN's "Capital Gang" — where Novak is ranged each week against such deep thinkers as Margaret Carlson, Mark Shields, and Al Hunt — for the sole purpose of watching Novak. (Why does the *Wall Street Journal* continue to lend its prestige to the egregiously ignorant and stupid Mr. Hunt? Is it because the publisher believes that every intellectual community should contain a slum?) Novak is virtually the only journalist in America who has sense enough to ask the obvious questions.

Consider his Cap Gang performance of June 10. Novak remarked, as no one else would think to do, that a certain Democratic senatorial candi-

date is a real left-winger. The other commentators, concerned only about the fact that the guy is a wealthy businessman who is spending a great deal of money on his election campaign, seemed aghast that anyone could possibly want to mention the man's political convictions. Hunt, who is always sneering about rich people, now decided that it was his duty to defend one of them. It was just plain silly, he opined, to try "to paint the former chairman of Goldman-Sachs as a left-wing socialist."

Novak's response was simple. "Why?" he asked.

Nobody else on the panel saw the point of that, but it went to the heart of the issue. The assumption that social class determines political behavior is, like many other socialist ideas, so commonly held among American journalists that most of them do not even know that they hold it. It was that assumption that they should have been analyzing.

Of course, any libertarian would

see the point. Novak, who considers himself a conservative, usually makes libertarian arguments, and he does so with much greater skill than libertarians can usually muster. On questions of political strategy, as well as political ideology, he has shown himself an acute critic of conservatives as well as modern liberals, Republicans as well as Democrats.

These are some of the reasons why I was interested in *Completing the Revolution*, Novak's not very kindly letter of advice to the Republican Party. Much of the book is a disgusted chronicle of the way in which the Republicans squandered the fruits of their electoral victory in 1994, when they reconquered the House of Representatives. As Novak says,

They have tended to abandon legislation or issues that are controversial or difficult, even if they are desirable. They have pulled away from term limits, from school choice, from opposing racial quotas, from the elimination of government departments, from radical deregulation. They have even pulled away from truly radical tax reduction, historically the Republicans' best issue (76-77).

Instead of rolling back big government, the Republicans let President Clinton regain the advantage and press on with what Novak does not doubt is his socialist program.

Clinton's priority, as Novak says, is "to make the great American middle class dependent on government, so that ordinary citizens will attest to this credo: 'I need government to get through my life.' . . . Clinton really believes that government can solve all problems. He adores government in all its internal complexities, and that is a very unusual trait" (63). Clinton's way of battling the 1994 "revolution" was to mount a "permanent campaign," not just to re-elect himself, but to rope the American middle class into one government program after another, thus ensuring his place as a Big Man in history.

This is pretty sick stuff, and the fact that it no longer seems to shock us is a measure of how far we've already fallen, intellectually. But why have the Republicans let Clinton get away with it? Novak's answers are those of a person who has spent his life researching

Washington personalities and psychopathologies. Some of his reasons are as follows:

1. Newt Gingrich wasn't up to his job. In early 1995, immediately after the Republicans' "revolution" began, Novak asked him about the rumors that he might turn his attention from Congress and run for president. Gingrich "said, 'Well, don't you think I've done all I can do here?' I almost fainted, because he hadn't done anything" (36).

2. The Republican leadership as a whole has been characterized by stupidity, ineptitude, and invincible ignorance. Witness presidential candidate Bob Dole: "He ran four national campaigns, each one worse than the one before. He learned "nothing" (47).

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These brilliant political strategists always "let the process drive them rather than driving the process themselves" (56).

3. Congressional Republicans imagined that they could intimidate Bill Clinton as the Congressional Democrats had intimidated George Bush; and when he wouldn't be intimidated, *they* were: "The intimidating factor of sitting across from the president of the United States was just too much to avoid giving away things" (40).

4. Republicans wanted to hang onto power as badly as Democrats, once they got some power; so they readily abandoned such controversial but potentially winning issues as Social Security reform, tax cuts, and (of course) term limits.

Novak's analysis is cogent, though one often feels that his brain-power is somewhat wasted on the simple-minded grandees of the G.O.P. Still, it's good to have him here to confirm that one's suspicions of them were true. One can also derive some comfort

from having him here to share one's pain, for he, too, suffers from the recurrent nightmare of every good person, the horror of visualizing life in 2001 with Al Gore enthroned in the East Room and the Democratic leadership, which is as red as any political formation north of the Straits of Florida, romping eagerly through the Senate and the House — and later the Supreme Court.

How can this catastrophe be averted? (*Sorry, mon frere, mon semblable*, it's not by voting for the Libertarian Party.) Novak's answer is again that of the Washington insider. I don't mean the kind of insider who trims and waffles and loses because of his pious faith in legislative compromise; don't mistake Bob Novak for Bob Dole. I mean the opposite kind of insider, the insider who puts his faith in dynamic legislation.

Some of the planks in his legislative platform (e.g., a certain kind of campaign funding reform that is just too tedious to discuss) strike me as unworthy of his intelligence. Some of them are perfectly sensible (elimination of racial quotas, privatizing Social Security), and he gives excellent advice about how to sell them. And some of them look good enough, if only they could be passed in the form suggested.

Americans have always had a weakness for a Single Tax, and Novak's notion — a national sales tax to replace all other federal taxes — is, in terms of quality, in the upper 99th percentile of all tax nostrums. A national sales tax would encourage saving and investment, it would be fair to both rich and poor, its size and nature would be clearly visible at point of contact, and it could be collected without intruding into the private records or affairs of taxpayers. Indeed, it could be collected with complete anonymity.

Yes, yes, it would still be a tax, and it could still be increased, and it could still be used to fund the National Endowment for the Arts. But it would be better than the income tax, that's for sure — so long as we didn't have an income tax *also*. The income tax would have to be abolished, and stay abolished. Hence Novak's idea of a constitutional amendment to abolish it.

Fine. But the chance of passing an

amendment to kill the income tax is a lot smaller than the chance of just passing a bill to start up a sales tax. So Novak's attempt to heat the Republicans' blood for the sales tax is likely, if it does anything at all, to give us two horrible taxes in place of one. He doesn't see that. Why?

What he does see, and see pretty well, is that the Republicans have got

The assumption that social class determines political behavior is, like many other socialist ideas, so commonly held among American journalists that most of them do not even know that they hold it.

to stand for something if they mean to get elected. It's not enough, as he emphasizes, that they attempt not to lose; they've got to aim at winning, and "winning" doesn't mean emerging victorious from the political equivalent of badminton. Nobody except Bob Dole cares whether the Bad Guys score two points less than the Good Guys. We want the Bad Guys to stop writing the rules.

So Novak's basic advice to the Republicans is to stop thinking small. If they don't stand up for a national sales tax, that's all right with him, but they need to stand up for large American principles and refuse to bargain them away.

What are those principles? Basically, they are the libertarian principles of limited government and individual freedom. Libertarians will quarrel with Novak over the exact interpretation of those clauses, but his strategic advice to the Republicans (and other opponents of the welfare state) is clearly right. He's trying to stiffen their backbones, so that the next time (that is, about 20 minutes from now) the Democrats come along with another socialist program and insist that everyone agree to it because it "helps the children," the Republicans will be able to say no, and mean it, and be able to explain why they mean it.

Novak thinks that if the Republicans follow that advice, the American people will listen to them, and vote for them. I'm not sure that I share this degree of faith in the American people, but it's worth a try, and nothing else in the electoral process is worth one. The strategy of No Compromise on the Big Ideas does seem to have worked in 1994, when the Clintons' socialized-medicine plan was killed in Congress, by popular pressure as much as by the Republicans themselves. Then, when the Republicans momentarily wised up, it worked again, in their Contract with America election win.

Novak's book is not written as effectively (alas) as Novak speaks; if it had been cast as a series of interviews and reminiscences, instead of a series of strategy arguments, it might have been a classic of American political colloquy. But there are interesting moments, especially when the author divulges some of the experiences he's had during his many years as a Washington journalist. (He is the author of America's longest-running

syndicated column.) He tells a story, for instance, about how Newt Gingrich, supposedly the wild man of the far right, "lost all stomach for the fight" against racial quotas when black congressman, former civil-rights leader, and fellow-Georgian John Lewis opposed him on the issue.

Gingrich then began to doubt himself and often raised the point of how he could make this fight on affirmative action if it was against the inclination of John Lewis (who, incidentally, was merciless in chastising Gingrich on every conceivable issue, including the Speaker's ethics and had compared him to Hitler) (168).

Occasionally, Novak tells a story that reflects well on someone. He says that Senator Phil Gramm once told him, "The longer I live, the more convinced I am that there are only two ideas in history: government and freedom. When government is the answer, the Democrats are in the ascendancy. When freedom is the answer, we are in the ascendancy" (223).

Sometimes, there's a ray of hope, even in Washington. □

American Dreamer: A Life of Henry A. Wallace, by John C. Culver and John Hyde. Norton, 2000, 602 pages.

Middle-American Quack

Bruce Ramsey

Henry Wallace was the fanatical New Dealer who almost became president of the United States. Largely forgotten today, Wallace was, his new biographers say, "the emblematic leftist politician of his time." He was a politician of ideas — mostly bad ones. The story of his rise and fall is a reminder that the New Deal did end, despite those who wanted it to go on and on.

Retired Senator John Culver, D-Iowa, and newspaperman John Hyde,

formerly of the *Des Moines Register*, have written a sympathetic book in *American Dreamer*. It is also well-researched and, unlike so many of today's ten-pound doorstop biographies, a pleasure to read.

Wallace was the cerebral son of a family that published *Wallaces' Farmer*, an Iowa agricultural paper. His father Harry became Secretary of Agriculture under President Harding. Harry Wallace had a fight with Harding's ambitious Commerce Secretary, Herbert Hoover, over price supports for farmers, and lost. Hoover wrote

that the elder Wallace was "in truth a fascist, but did not know it . . .".

Young Henry was fascinated with statistics and genetics, and founder of Pioneer Hi-Bred International, a seed company whose dividends would provide him an affluent retirement. He was also a mystic, a dabbler in oddball religions — the sort of person who would find God in a pail of milk. And he was a fanatic about ideas. The authors quote an anonymous friend

who said, "Henry would cut off his right hand for the sake of an idea — and yours, too, for that matter."

In the 1920s, young Henry was a tub-thumper for federal price stabilization for farmers. Later, after price supports failed under Hoover, Wallace championed production controls. No price-support program would work, he argued, until government forced farmers to cut production. In March 1933, Wallace got his chance when the

new president, Franklin Roosevelt, made him Secretary of Agriculture. That year Wallace ordered the plowing under of 10 million acres of cotton and the slaughter of 6 million little pigs.

The Quintessential New Dealer

The Agricultural Adjustment Act made Wallace czar of American agriculture, with the most power a cabinet member had ever had. The Supreme Court struck the law down, Congress reenacted it in a slightly different form, and production controls remained for half a century. It was a very political move. In 1936 Roosevelt ordered Wallace to keep cotton up at 12 cents a pound until election day, and Wallace did it.

Wallace became one of the New Deal's prophets, arguing in magazine articles and speeches that laissez-faire could not protect the farmer and the poor. His approach was in tune with the times. The authors note that reporters "never tired of noting that he walked to work, enjoyed cheese sandwiches for lunch, and wore rumpled suits." Presented with a lavish banquet in wartime Russia, Wallace surprised his hosts by asking for a glass of milk.

Wallace's big chance came in 1940, when Roosevelt decided to be "drafted" for a third term. Roosevelt dumped his vice president, John Nance Garner, and said he wouldn't run unless the convention instead picked Henry Wallace. The convention revolted — Wallace was too much of a leftist — but Roosevelt had his way.

Wallace was a dirty fighter. He branded the Republicans as "the party of appeasement." The election of the Republican candidate, Wendell Willkie, he said, "would cause Hitler to rejoice." Later, he said that though the Republicans were not friends of Hitler, "you can be sure that every Nazi, every Hitlerite and every appeaser is a Republican."

America's commitment to save Europe was a turning point. Henry Luce, publisher of *Life* and *Time*, published a long editorial predicting that the war would bring on "The American Century." Wallace, an avid internationalist, responded with a call for "The Century of the Common Man."

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Literature

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Roosevelt's war on business ended when the war broke out, and businessmen were invited into the government. But Wallace, who spent the war as a kind of central planner, continued to speak out for "economic democracy" and against "greed." Wallace went on a speaking tour. "By the time Wallace finished touring," the authors observe, "he had tossed about the word, 'fascist' so widely and provocatively that the *New York Times* decided the time had come for him to explain himself." He wrote an article for the *Times* asserting that "that virtually anyone opposed to his ideas could be termed a fascist."

In 1944 the question was whether Wallace would stay on the ticket. Roosevelt played coy. Wallace, thinking it was entirely up to Roosevelt, as in 1940, went off on a trip to Russia and China. When he returned, he learned that a revolt had begun among the Democratic kingmakers. They knew that Roosevelt was on his last legs, and that whoever was being nom-

Wallace was the emblematic leftist politician of his time. He was also a mystic, a dabbler in oddball religions — the sort of person who would find God in a pail of milk.

inated for vice-president had better be someone they could tolerate as president.

Roosevelt said his choice was Wallace, but made it clear the convention could choose whomever they wanted. On the first ballot, Wallace polled 429 versus 319 ballots for Senator Harry Truman and 327 for 14 other candidates. The other candidates' delegates went to Truman, and Wallace was out of a job. Three months after Truman took office, Roosevelt died, and it was the haberdasher from Missouri, rather than the leftist dreamer from Iowa, who became president of the United States.

Truman's Secretary of Commerce was Henry Wallace. It was one of Roosevelt's parting gifts. In that posi-

tion, Wallace pushed Keynesian economics and such central planning efforts as the Employment Act of 1946. But the big issues at war's end were what to do about the Bomb and Russia. Wallace was for cooperation; in a cabinet meeting he argued for cooperation with Russia about the Bomb. Someone leaked to the *New York Times* that Wallace had proposed "to give the secret of the atomic bomb to Russia." The report, which the authors believe was false, caused a stink. It was the

beginning of Wallace's downward spiral.

On March 5, 1946, Winston Churchill gave his famous speech at Fulton, Missouri, where he coined the term, "Iron Curtain." Wallace thought Churchill was trying to push Stalin into a corner. Though only Secretary of Commerce, Wallace kept speaking out on peace with Russia, apparently with Truman's blessing. But Truman eventually wrote in his diary that Wallace "is a pacifist one hundred percent. He

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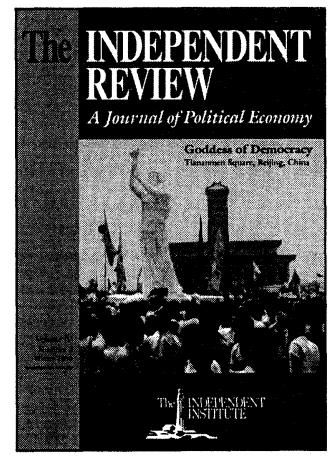
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wants to disband our armed forces, give Russia our atomic secrets and trust a bunch of adventurers in the Kremlin Politburo . . . The Reds, phonies and 'parlor pinks' seem to be banded together and are becoming a national danger."

Progressive Dissident

In September 1946, Truman fired Wallace, who then spoke to a left-wing rally in New York, saying, "We must make it clear to the administration that we, as progressives, would prefer the election of an out-and-out reactionary like Taft in 1948, to a lukewarm liberal." The rally was the beginning of the Progressive Citizens of America, which proclaimed membership open to all. "Roughly translated," the authors say, "this meant the PCA would admit Communists."

On January 4, 1947, other New Dealers to the left of Truman, including United Auto Workers leader Walter Reuther, Minneapolis mayor Hubert Humphrey, and Harvard professors Arthur Schlesinger and John Kenneth Galbraith, founded what became the Americans for Democratic Action. The ADA promoted New Dealism at home while supporting the Marshall Plan and denouncing Communism. Eleanor Roosevelt was the group's first speaker. Wallace was not invited.

Wallace was not a Communist. He called himself a "progressive capitalist" who believed in God. But there were Communists in the PCA. Its legal adviser, John Abt, had been a member of a Communist cell in Wallace's Agriculture Department in 1934. Wallace apparently hadn't known about it then, but in 1947 Wallace was asked if he cared that Abt's wife was publishing a magazine called *American-Soviet Friendship*. He didn't. He was in favor of American-Soviet friendship.

He was against the Marshall Plan, because it left out Russia.

In December 1947, Wallace announced his candidacy for president on what became the Progressive ticket. His major financial backer was Anita McCormick Blaine, heiress to the fortune of the *Chicago Tribune* — ironically, an America First paper that backed conservative Republicans.

An early Gallup poll gave Truman 48 percent; Thomas Dewey, 41 percent; Wallace, 7 percent.

The PCA became the Progressive Party. George McGovern (who provides an enthusiastic blurb on the dust jacket) was a delegate. Wallace did not write the party platform, and the authors say he "didn't like its call for public ownership of large banks, railroads, the merchant marine, electric power and gas utilities, and several industries dependent on public funding such as the aircraft and synthetic rubber sectors." It was, the authors admit, "a socialist platform."

It was not a good time to be cozy with communism. In February 1948,

One of his friends observed, "Henry would cut off his right hand for the sake of an idea — and yours, too, for that matter."

the Reds seized power in Czechoslovakia. A few days later the non-communist foreign minister, Jan Masaryk, fell from a three-story window and died. Wallace was asked whether he thought it was murder. He said he didn't know, and then added, "Maybe Masaryk had cancer."

If that wasn't enough, there was the episode of the "guru letters." Wallace had been enamored of a number of gurus in the 1920s and 1930s. He had written a number of naively credulous letters to Russian mystic Nicholas Roerich. In 1934, while Secretary of Agriculture, he wrote:

Long have I been aware of the occasional fragrance from that other world which is the real world. But now I must live in the outer world and at the same time make over my mind and body to serve as fit instruments for the Lord of Justice.

In 1940, a packet of this gibberish was given to the Willkie campaign. Willkie refused to use them, the authors say, because the Democrats threatened to out Willkie's mistress. But in 1948, the guru letters got into the hands of right-wing columnist Westbrook Pegler, who went public

with them and demanded that Wallace own up to them.

Wallace refused to answer. At a press conference other reporters demanded an answer. "I will not engage in any discussion with any stooge of Westbrook Pegler," Wallace said. Then H. L. Mencken of the *Baltimore Sun* stepped forth and said, "Mr. Wallace, do you call me a stooge of Pegler? If you won't answer the question as to whether you wrote those letters, tell us, at least, the reason you won't answer it."

"Because it is not important," Wallace said.

In a four-way race that included Truman, Dewey and Strom Thurmond, Wallace got 2.38 percent of the vote, and came in fourth. He carried just 30 precincts nationwide, most of them in black and Jewish areas in New York and California. To his credit, he had been a vocal opponent of racism.

On June 24, 1950, North Korea invaded South Korea. The United Nations Security Council (with Russia boycotting) voted to send military help to South Korea. The executive committee of the Progressive Party — John Abt, Lillian Hellman, Paul Robeson, and others — voted to oppose intervention.

Except Henry Wallace. "When my country is at war, and the United Nations sanctions that war, I am on the side of my country and the United Nations," he said. He resigned from the Progressive Party. It was effectively the end of the party and the end of Wallace's life in politics. He went back to live on his farm, where he could experiment with plant genetics and chicken breeding.

In 1956 he voted for Dwight Eisenhower, who he thought was better able to control the military than Adlai Stevenson. In 1960 he privately met with Richard Nixon. Kennedy invited Wallace to his inauguration and luncheon at the White House. In 1964 Wallace came down with Lou Gehrig's disease, and died of it in 1965.

He was a fascinating man, and in the field of plant genetics, a pioneering entrepreneur. But he would have made a dangerous president. After reading this book, my reaction was: Thank goodness Roosevelt stayed alive as long as he did. □

The Partisan Leader by Nathaniel Beverly Tucker. University of North Carolina Press, 1971, 392 pages.

The Politics of Honor

David Kopel

Having realized that the government in Washington, D.C., plans to destroy the constitutional republic, the American people rise up with their firearms to resist tyranny. This is the plot of a number of books published in the past few decades, most notably *Unintended Consequences* by Albert Ross. That book generated so much controversy that there have reportedly been several incidents of BATF agents "suggesting" that people selling the book at gun shows refrain from further sales. But the controversy involving *Unintended Consequences* is relatively small compared to what happened after the publication of the very first "Americans against their government" novel — *The Partisan Leader*, first published in 1836.

Written under a pseudonym by Nathaniel Beverly Tucker, a former judge, and then a law professor at William and Mary, *The Partisan Leader* is subtitled "A Tale of the Future" and set in 1849. By then, most of the American South has long since seceded from the Union, and is enjoying the prosperity resulting from free trade. Virginia, however, had chosen to stay in the Union, and is now beginning to regret the choice. President Martin Van Buren, first elected in 1836, is making himself dictator for life, destroying the sovereignty of the states; while maintaining the form of constitutional government, he is implementing direct military rule.

Like the novels of Sir Walter Scott, after which *The Partisan Leader* is consciously modeled, the book tells the

tale of family divided by political conflict. There are beautiful women who epitomize Virginia graciousness, gallant and honorable men, treacherous Yankees, and one man who finds himself torn between his honor and his oath of allegiance to the United States Army.

At the request of his friends, Tucker rushed *The Partisan Leader* to publication in time to influence the 1836 election. Tucker, though, thought Van Buren was unstoppable, and Tucker was right. "The Little Magician," as Van Buren was known, defeated several Whig candidates, winning about 51 percent of the popular vote, and a much larger share of the Electoral College. Van Buren carried about half of the South, including Tucker's Virginia.

And it turns out that Tucker was drastically wrong in his assessment of Van Buren's character and policies. When Van Buren lost the election of 1840 (in part because of outrageous lies such as Davy Crockett's claim that Van Buren wore ladies' underwear), he surrendered his office without incident.

Contrary to Tucker's prediction, President Van Buren was not anti-Southern. He fought for free trade, negotiating with other nations to eliminate tariffs on the import of American tobacco, a major crop of the South. He opposed the abolition of slavery in the District of Columbia, unless the slave states assented. And he was the first President ever to mention slavery in his inaugural address, urging that the institution be left alone.

And President Van Buren worked to shrink, rather than expand, the federal government. He continued his pre-

decessor's successful battle against central banking. Despite an economic depression (the Panic of 1837), Van Buren balanced every single budget. The national debt had recently been paid off, and he resisted all entreaties from the banking and allied interests that new debt be incurred. He also warned, correctly, that the creation of a permanent national debt would lead to oppressive taxation, and to "the prostitution of political power, conferred for the general benefit, to the aggrandizement of particular classes."

But *The Partisan Leader* had far broader significance than a single election. In *The Partisan Leader*, one finds a crystalline example of the mindset which, twenty-four years later, impelled the South to defend its honor by departing from the United States.

During the Civil War, *The Partisan Leader* was re-published, separately, in both the North and the South. In the South, the book was a version of *Why We Fight* (a popular book published during World War II explaining the significance of the war against fascism).

In the North, *The Partisan Leader* was republished and advertised as "one of the most astounding revelations of political treason and conspiracy that the world ever witnessed," as the book which "foreshadows with uncanny accuracy every event now transpiring. A work which exposes most completely the machinations and diabolical plans of the political demagogues who for so many years have been plotting the overthrow of the United States government."

The book is also an excellent distillation of Virginia ideology. The Virginia characters in the book hardly do anything without considering how a potential act will reflect on their honor.

To modern sensibilities, Tucker's presentation of the Old Dominion's attitude towards the proper place of women is unsettling. Decent women never express political opinions in mixed company. The only appropriate thing for a woman to do is to be "the wife of a Virginia gentlemen." Only the depraved women of the North write books or run boarding schools or get involved in political societies.

And where *The Partisan Leader* goes

most wrong is its analysis of slavery. Tucker repeats the platitude that Negroes are unsuited for freedom, just as whites are unsuited for slavery. In Tucker's world, the slaves agree. In one episode, a slave named Jack and two dozen of his fellow slaves, armed with firearms donated by their master, drive off a bunch of Yankee soldiers who showed up to free the slaves and to impose military rule on the whites.

The Northerners are criticized for

their inability to comprehend the "generous" spirit of the slaves. An early multi-culturalist, Jack's master reasons, "it may be that what is best for me is best for my friend Jack there, and vice versa; but as long as neither of us thinks so, why not leave each to his choice?"

Tucker's view about the supposed contentment of slaves with slavery was common in the South. A glowing review of the book in an 1837 issue of

the *Southern Literary Messenger* particularly commended the slavery sections as educational reading for abolitionists about the futility of their enterprise.

Yet the contrary evidence was clear enough: the slaves ran away whenever possible. Tucker should have known better, for own father, St. George Tucker, had been the leading abolitionist in Virginia, calling abolition his "dearest wish."

When the Civil War did break out, the Confederates would have won easily if their states had had the nerve to arm the slaves, and the slaves had fought for Southern independence. But of course slaves with guns rarely remain slaves, and the vast majority of slaves who did fight fought against slavery, and for the North.

While wrong about slavery, Tucker was prescient in many respects — not only in predicting disunion, but in

Notes on Contributors

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Resistance to a superior power may, however dangerous, sometimes be the only honorable choice.

understanding the ideology of the type of men who would lead a war against the Union. As the *Southern Literary Messenger* observed in an 1862 review of the brand-new reprint of Tucker's book, "Of all the deeds done in this war, those which ring loudest and longest in our ears, and of which we are most proud, are the daring, dashing exploits of Ashby, Morgan, Stuart and Forrest, all 'Partisan Leaders.'" Just as in *The Partisan Leader*, the hills of Southwestern Virginia were the scene of daring guerilla warfare against the federal army.

While slavery was an unworthy cause for partisans, there were other causes for which Tucker's characters fought: free trade (the Tariff of Abominations and the Nullification Crisis had taken place only a few years before), state sovereignty, and the original United States Constitution.

And Tucker reminds us of the genius of the authors of our Constitution. Their system of checks and balances was not limited to the division of

power within the federal government. Again to quote the *Southern Literary Messenger*, "The check must be extraneous to the government itself." That is why there is a First Amendment, so that the power of speech can check the federal government; that is why there is a Fifth Amendment, so that the power of property can check the federal government. That is why there is a Tenth Amendment, so that the power of state governments can check the central government. And that is why there is a Second Amendment, so that, if all else fails, the power of physical force can check the power of centralized tyranny.

Edgar Allan Poe praised another book that Tucker wrote in 1836, *George Balcombe*, as "the best American novel . . . its interest is intense from beginning to end . . . its most distinguishing features are invention, vigor, almost audacity, of thought." These traits also grace *The Partisan Leader*, although it is somewhat weighed down by the stilted language of the Southern heroes, who, like Ayn Rand's characters, launch into political expostulations at the drop of a hat.

Although *The Partisan Leader* is not currently in print, used copies of a 1933 reprint and a 1971 reprint (University of North Carolina Press) are available, and the book can of course be found at many high-quality libraries.

Thomas Jefferson, in a 1787 letter to Abigail Adams, wrote, "The spirit of resistance to government is so valuable on certain occasions that I wish it to be always kept alive. It will often be exercised when wrong, but better so than not to be exercised at all." Although Tucker's moral vision was severely impaired by his defense of slavery, the positive value of *The Partisan Leader*'s best moral instruction is that resistance to a superior power may, however dangerous, sometimes be the only honorable choice.

And for today's readers, enthralled with books about a coming war against the modern federal government, the devastating results of the Civil War are a reminder that when one moves from novels about resistance to actual warfare, not even the best novelist will foresee all the unintended consequences. □

"The Greatest Generation?", from page 34

most easily to mind.

Brokaw's *The Greatest Generation*, however admired by many of my generation and later generations, as he illustrates in his sequel, *The Greatest Generation Speaks* (1999), does a particular disservice to my generation because it gives a highly idealized picture of only a small number of individuals who fought in the war and of others who were related to it directly in some way. His book is not a realistic appraisal of my generation and it gives a false picture of the many men who fought the war, and implicitly, of the war itself. No one learns integrity from any war. There was nothing glorious about World War II, even if it might have been necessary. Undeniably, there were many fine men and women in the armed forces during World War II and many fine men among the relatively small minority who saw combat in all

its brutality. And many were able to maintain some sense of moral rectitude during the atrocities of war — but many were not.

A generation is made up of living men and women, and, it cannot be repeated too often, each of us has the capacity for both good and evil. Sometimes the good is in command; sometimes the evil explodes. It only follows that any one generation is also both good and evil in what it is capable of and that every generation accomplishes many good things as well as many not so good. My generation was not the greatest generation nor was it the worst, and there is no sense in exalting it any more than there is in overly demonizing it. We in my generation were simply human, with all the good and bad qualities common to every human being. And we performed accordingly. □

Letters, continued from page 42

at all. Editorials are supposed to be opinionated. But this article appeared in the news section and was written in the format of a news story.

It seems to me that whenever any segment of the media is making an effort to defend freedom, it's purely by accident. In other areas, such as gun rights, ecology, government regulation, and the tobacco issue, the prevailing media winds blow in the opposite direction — and I am referring to the news, not to editorials. The jubilant front-page main headline of an early edition of the *Examiner* last April 7 was: "3 smokers beat Big Tobacco." (This reminded me of the sort of headline that would have appeared on November 11, 1918: "Our Doughboys Beat the Kaiser.")

Allan Levine
San Francisco, Calif.

Drawn and Quoted

Thank you for reviewing Norman Podhoretz's *Ex-friends* ("Friendships Lost," July). There is a very good explanation for your reviewer's enjoyment: Norman Podhoretz is just great and everything he writes is readable — including no doubt his notes to the milkman.

As for his vanity — well, maybe he is as great as he thinks he is.

Your reviewer's agreement with Hannah Arendt that Israel should not have tried Adolph Eichmann is also quite right. What they should have done was summarily drawn and quartered him — while still alive — in a public square in Tel Aviv, and thrown his remains into a dumpster.

Anything else is sophistry. The Jews do not have to justify, qualify, or apologize for their right to exist.

This is the world, not a think tank.
Neil Elliott
Evanston, Ill.

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Terra Incognita

West Allis, Wisconsin

Avant-garde art from the Badger State, as reported in the *Milwaukee Journal Sentinel*:

Visitors to the 107-year-old State Fair Park will be greeted by a mosaic of an 8-foot Holstein cow, whose face was splotched with white cream, munching on a cream puff at the Greenfield Ave. entry gate. The mosaic, which cost taxpayers about \$18,000, was incorporated into the floor to comply with the Percent for Art Law, which mandates that .2% of money spent on state building projects be spent on art. The State Fair Park Board Chairman said, "This piece of art just fits with the whole theme of what we're doing."

Toronto

America's National Pastime has been exported to Canada, with curious consequences. From a report in the (*Toronto National Post*):

During a Toronto Blue Jay's game with the California Angels last week at Toronto's SkyDome, club personnel fired hot dogs at the fans with a cannon called the Hot Dog Blaster. The cannon packed enough power to shower fans with fragments of franks and bits of buns. Sarah Higginson, a vegetarian seated just above the visitor's dugout, did not care for the special entertainment. "If I get sprayed with meat, I'm suing SkyDome," she said. "I don't think they considered the whole vegetarian thing. What if I had my mouth open and a piece of hot dog landed in my mouth? I can't even walk by a hot dog stand without gagging. Imagine being sprayed by wiener shrapnel. I would've died."

Plymouth, U.K.

Innovation in the military defense of the British Empire, from *Reuters*:

British Royal Navy recruits are being ordered not to fire live shells. At the gunnery school in Plymouth, southwest England, gunnery mates check co-ordinates, line up a target and prepare to fire the shells, which cost 642 pounds sterling each. Then they shout "Bang."

United Kingdom

Another advance in military science from the Empire Upon Which the Sun Never Sets, as reported in *Soldier of Fortune*:

British admiralty instructions dealing with the storage of warheads and torpedoes: It is necessary for technical reasons that these warheads should be stored with the top at the bottom, and the bottom at the top. In order that there may be no doubt as to which is the top and which is the bottom, for storage purposes, it will be seen that the bottom of each head has been labeled with word TOP.

Madison, Wisconsin

Peculiar crime at the West Towne Mall in Madison, reported in the *Milwaukee Journal Sentinel*:

Police arrested a costumed Easter Bunny who punched her assistant after her assistant had pushed her, causing her to fall over her bunny head.

Honolulu

In the *Honolulu Advertiser*, Hawaii's latest measures to improve state employees' productivity:

State Sen. Rod Tam has introduced a measure to authorize state employees to take naps while on the job and to appropriate \$600,000 for "refreshments" for state employees. He told reporters that he "feels sorry for those who criticize others for their ideas," and asked, "Remember in history when people ridiculed the Wright Brothers for their desire to fly in an airplane? Well today we all fly."

Miami

Janet Reno remembers the good times among the people of her native Florida, from a speech to a group of women lawyers, as reported in the *Florida Bar News*:

"I am so glad to be home with all the people of the community I love, people who have touched my life in so many ways, with loving kindness, with joy, with support, and sometimes with anger and rejection."

Mill Valley, California

A small problem encountered by an environmentalist, reported by the *Seattle Times*:

Michael Reppy's attempt to call attention to the plight of whales and dolphins in Japan by breaking a trans-Pacific sailing record, ended after he sailed his boat over a pod of whales on his first day out, damaging the keel.

Portland, Oregon

Dispatch from the front in the never-ending crusade to rid our cities of vice, from the *Peninsula Daily News*:

As part of a campaign to rid a section of Sandy Boulevard of prostitutes, Jenifer Young, 40, pepper-sprayed a 15-year-old girl and her mother, whom she mistook to be practitioners of the World's Oldest Profession. Ms. Young reports she is being "pressured" by neighbors to resign from the local School Board.

United Kingdom

Progressive regulation of hiring practices in this Labour-ruled nation, reported by *The Sun*:

A Job Centre told two businessmen they couldn't advertise for "hard-working and enthusiastic" staff as the words would offend disabled people, thereby contravening antidiscrimination laws.

Hawaii

Hawaii's vehicle inspection is experiencing technical difficulties, from the *Honolulu Advertiser*:

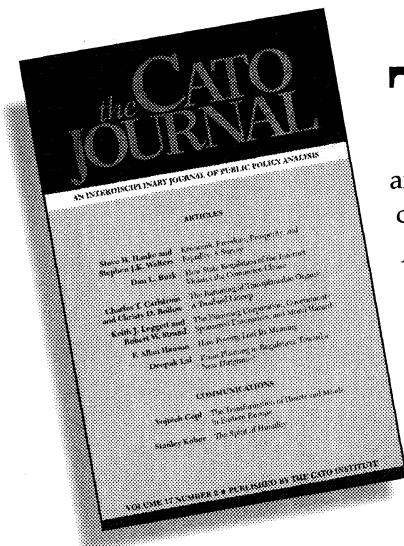
Drivers having their cars inspected in early January couldn't get stickers indicating that their cars passed inspection because the state Department of Transportation forgot to order the stickers on time. When asked about the problem of being stopped by police for failure to display the required sticker, State Highway Safety Manager John Levstedt advised, "It should be a very minimal inconvenience," and declined to comment further.

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JARS is edited by R. W. Bradford, libertarian writer and publisher of *Liberty*, Stephen Cox, author of many books and articles on Ayn Rand, Isabel Paterson, and libertarianism; and Chris Matthew Sciabarra, characterized by *The Chronicle of Higher Education* as "Rand's most vocal champion in academe."

The first issue was a milestone in Rand scholarship, and the second issue is just as exciting!

Gregory R. Johnson and David Rasmussen challenge Rand's defense of abortion on demand as inconsistent with her fundamental principles.

Stephen Cox explores Ayn Rand's ideas on the craft of fiction.

Kirsti Minsaas examines the role of tragedy in Rand's fiction, drawing lessons from Aristotle, Nietzsche, the Prometheus myth, and the Stoic idea of heroic calm.

Bryan Register criticizes Rand's theory of concept-formation, seeking relief in the work of H. H. Price.

Was Ayn Rand a feminist in spite of herself? Lisa M. Dolling reviews Gladstein and Sciabarra's *Feminist Interpretations of Ayn Rand*.

Is benevolence a selfish virtue? Tibor R. Machan reviews Kelley's *Unrugged Individualism*.

Robert L. Campbell reviews a new primer, Machan's *Ayn Rand*.

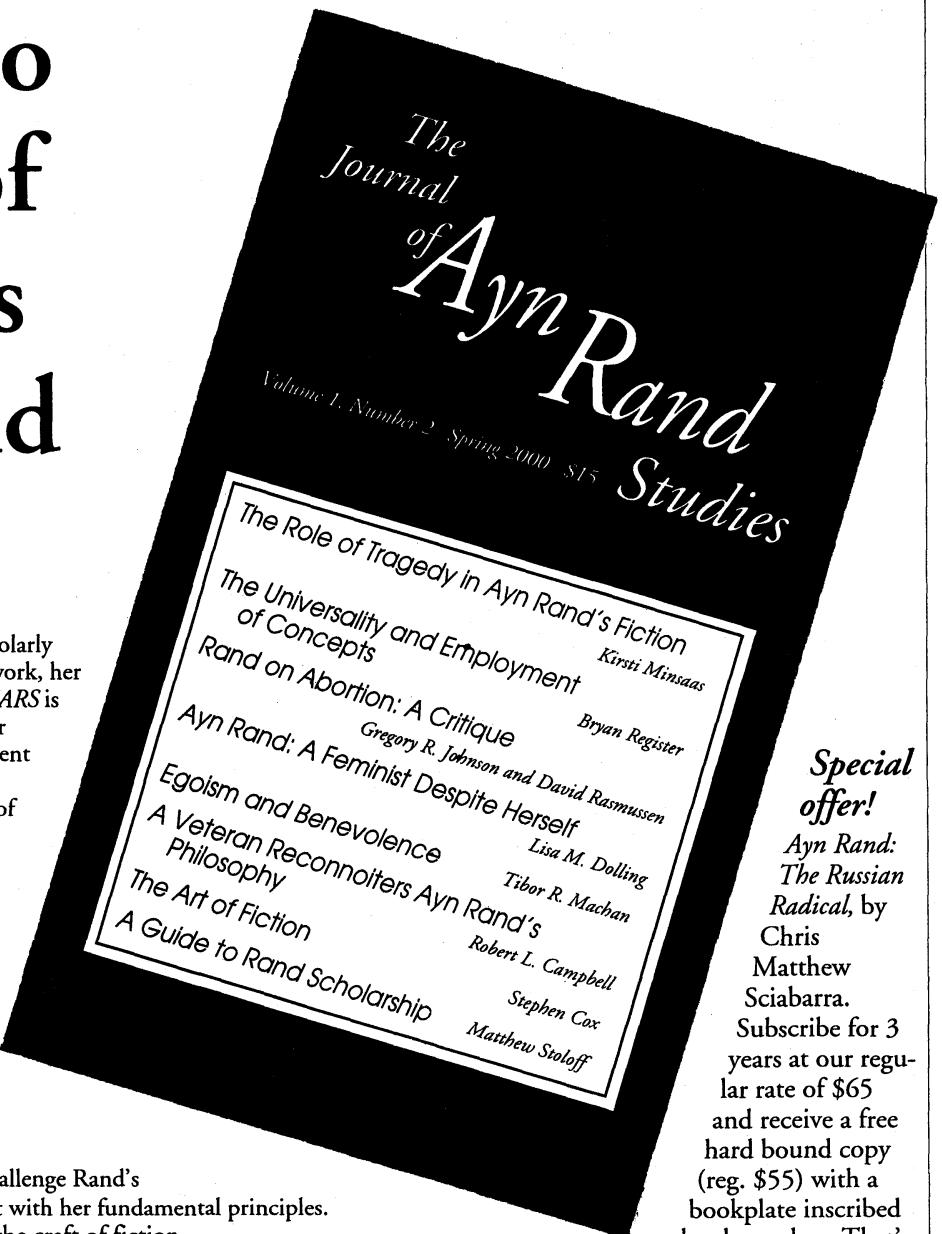
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