

# Liberty

October 2000

Vol. 14, No. 10

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## Neil Young: Rockin' for the Free World

### Guns and the Movies

*by William R. Tonso*

### American Justice Up Close and Personal

*by Logan Brandt*

### Why Socialism Failed in America

*by Bruce Ramsey*

### Politicized Science

*by Douglas Puchowski*

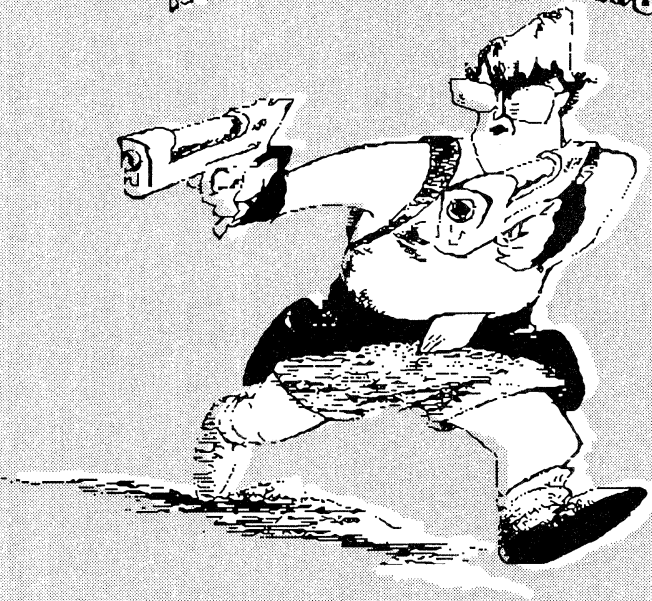
### The FBI's Pet Carnivore

A Deadly Threat to Your Privacy

*by Bart Kosko*

### E-MAIL RAIDER

ADVENTURES OF JANET RENO



**Also:** *Stephen Cox* wonders whether Christ really was a communist, *Bettina Bien Greaves* defends private property as the foundation of civilization, *Gene Healy* looks at the baddest heavyweight ever . . . plus other articles, reviews, & humor.

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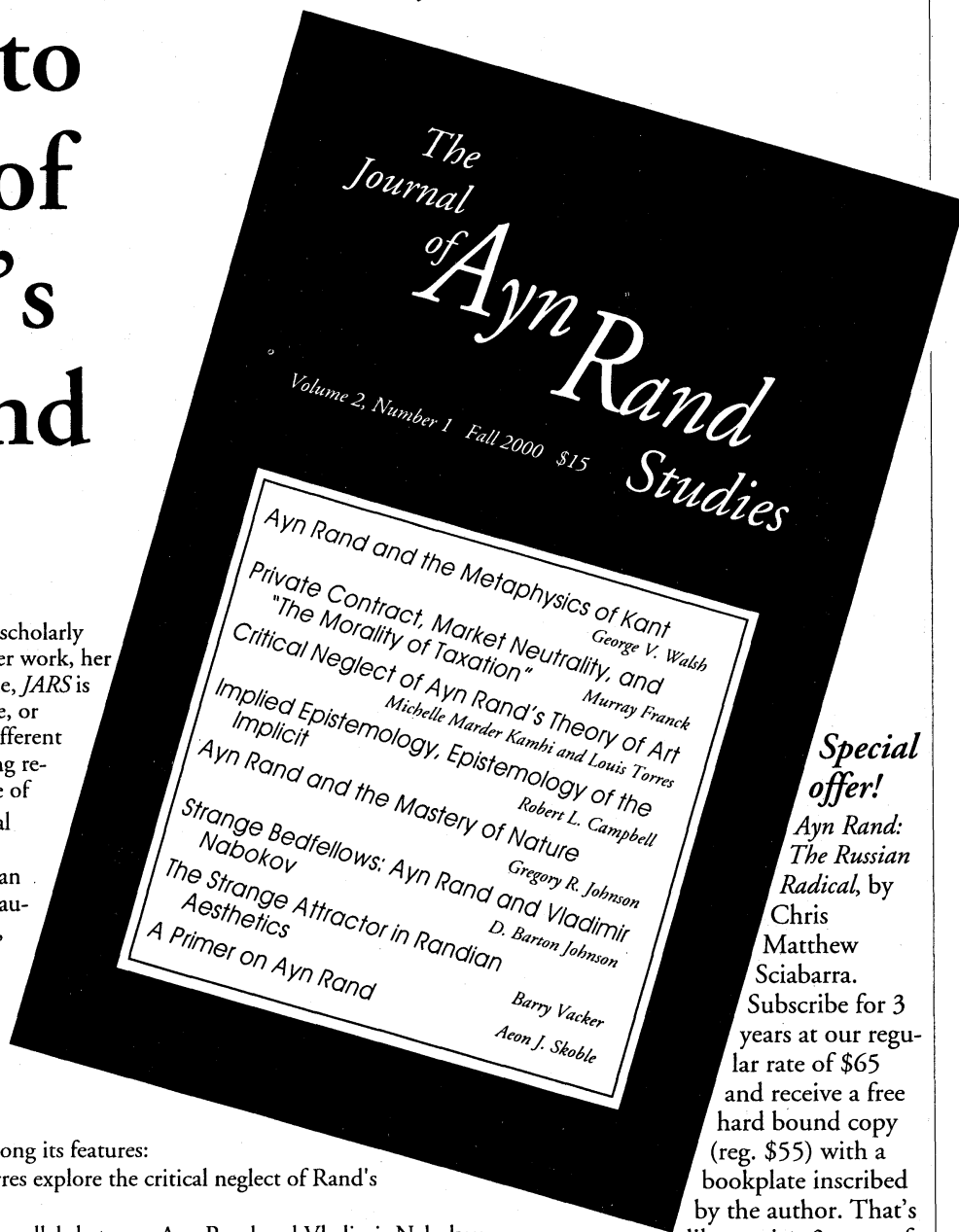
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# Inside Liberty

October 2000

Volume 14, Number 10

**4 Letters** Comments from the peanut gallery.

**7 Reflections** *Liberty's* editors have breakfast with Albert J. Nock, sing a paean to intellectual piracy, party with the East German bikini team, espy an eminent extolling the symbol of fascism, and track the polls on America's irrelevant politicians.

## Features

**21 The FBI's Pet Carnivore** *Bart Kosko* exposes the FBI's newest tool for invading your privacy.

**29 Rockin' for the Free World** *Sarah J. McCarthy* celebrates the liberating art of Neil Young.

**33 Logical Synapses, Sins of Omission** In last month's *Liberty*, Bart Kosko argued that Jesus Christ was a family-hating communist. *Stephen Cox* has a different view.

**35 Guns and the Movies** *William R. Tonso* looks at how Hollywood's portrayal of firearms has changed with prevailing political sentiments.

**39 American Justice, Up Close and Personal** *Logan Brandt* tells what happened when he tried to renew his driver's license.

**46 Heroes of Freedom** *Jim Powell* explores the lives and times of history's greatest defenders of freedom.

## Reviews

**51 American Socialism** *Bruce Ramsey* wonders why socialism has been tremendously influential in every Western country but one.

**53 A Life of Hard Knocks** *Gene Healy* looks at the skull-cracking story of America's most fearsome boxer.

**56 Taking Property Seriously** *Bettina Bien Greaves* tells why private property is the bedrock of civilization.

**59 Politicized Science 101** *Douglas Puchowski* explores the weird world of science under the influence of politics.



**57 Notes on Contributors** We round up the usual suspects.

**62 Terra Incognita** ¡Yo quiero realidad!

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# Letters

## Mistaken Identity

David Boaz (*Reflections*, September) has added a Libertarian column to David Horowitz's chart of the political spectrum. To my continuing dismay, once again Jesse Ventura, my governor, is listed as a libertarian. Please, just because he once claimed to be libertarian doesn't mean it is so. Since Jesse has been governor, he has been a ceaseless champion of government education, light rail and "smart growth" government land-use planning and control. In addition he favors state programs to promote economic development, job training and tourism.

Jim Rongstad  
Woodbury, Minn.

## Same Old Song

In his otherwise amusing take on Richard Boddie's nomination speech for Don Gorman at the LP convention ("In the Shadow of Disneyland," September), R.W. Bradford made my eyes pop when he cited the following lines as Boddie's "original verse":

Friends and fellow libertarians,  
come gather round people wherever you  
roam  
and admit that the waters around you  
have grown  
and expect that soon you will be  
drenched to the bone;

if your time to you is worth saving  
you'd better start swimming  
or you'll sink like a stone  
for the times they are a'changing.

While the first line is undoubtedly Boddie's own (and not much to his credit), the rest is taken almost word-for-word from the opening verse of Bob Dylan's classic '60s anthem, "The Times They Are A-Changin'."

Now, perhaps Bradford was chiding Boddie's shameless appropriation of classic song lyrics without proper attribution, but I don't think so. I wonder: What kind of timewarp was Bradford in during the '60s that he did

not immediately recognize the words Boddie spoke as Bob Dylan's? He must have spent too much time at NBI lectures and not enough time listening to the radio.

"The Times They Are A-Changin'" is a fantastic song, only one of the hundreds of wonderful songs which have helped make Dylan's reputation as arguably the best popular songwriter of the second half of the 20th century. Dylan is also the author of some of the most devastating anti-war songs ever written, including "Masters of War" and "With God on Our Side."

Kevin O'Reilly  
Chicago, Ill.

Bradford responds: O'Reilly's assiduous research has undone my carefully contrived cover story, so I may as well confess. Yes indeed, I spent the '60s as a cloistered inmate in an Objectivist monastery and am thus unable to recognize the lyrics of pop songs, even immensely popular ones, from that decade. Before Mr. O'Reilly's diligent investigation embarrasses me further, I may as well confess that I spent the '70s in an ashram in India, the '80s as an inmate of Werner Erhart's "EST;" the '90s, as monk in the Trappist monastery in Gethsemane, Kentucky.

## This Little Piggy Went to Washington . . .

I regard *Liberty* as a rare opportunity to read things written by people who actually think. In fact, my only quibble with you and your fine contributors was in your June issue, when Paul Rako characterized our drug warrior in chief as a pig ("McCaffrey's Brain on Drugs"). I must protest, since this is a gross and unwarranted slur upon a family of magnificent creatures.

In fact, Mr. Rako's (surely innocent) mistake prompted me to suggest that the Libertarian Party adopt the wild boar as its logo. If you examine the traits of the wild boar you'll probably be surprised by how much they have in

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common with libertarians. The wild boar has a stiff neck, a thick skin, a cast iron digestive system, lots of endurance, amazing maneuverability and sprint speed, the ability to live almost anywhere on almost anything, and is quite capable of defending itself. These are qualities that we all should aspire to, and as a logo the boar would have the added advantage of never being confused with a behemoth or a jackass.

Kurt E. Magens  
San Marcos, Tex.

### A Hero Walked Among Us

I first found author and activist Peter McWilliams at a Barnes and Noble bookstore in Boulder, Colo. in 1996. I was searching for something different from the current crop of ideological books that view political and moral questions from either a "right" or a "left" wing perspective. That's when I found McWilliams.

To this day I deeply regret that I was not one of the privileged people that had a chance to meet him, but in that bookstore I found the next best thing to the individual — his writings.

*Ain't Nobody's Business If You Do* was a political and moral awakening for me. My copy has been read, highlighted, and passed around to family and friends a dozen times over. I sent letters to the judge in McWilliams's defense. My required speech for my senior year of high school spoke out in favor of getting rid of consensual crime laws. My first major college paper this past year was about the origins of marijuana prohibition.

When I read about Peter McWilliams's death, I did something that I have rarely done in my life — I wept. Our nation and the world lost a truly compassionate person, someone who stood up for individual liberty. Even as the government sought to deny him of his own liberty and even his life he remained true to his libertarian convictions and that "My enemy is ignorance . . . not individuals."

Edward Brown  
Perham, Minn.

### An Exercise in Futility

I enjoyed Kosko's article "Jesus Christ: Family-Hating Communist" (September), but then I got to thinking about it.

When you ask a man what his religion is, and then you look through the

historical record under that label to discover what he believes, you have initiated yourself into a fool's errand. Such information is not there. A man's religion is what he truly believes. The only way to discover it is to watch what he does; the sole reliable evidence of religion is conduct. While it may be fun to paw through the historical record digging up stuff to toss in the face of the people who call themselves Christians, it is a meaningless exercise.

Kosko's essay is interesting reading, but his thesis is as meaningless and as misleading as reading the Constitution in order to discover how this country is governed.

Jack Dennon  
Warrenton, Ore.

### Having His Mind on Other Things

Bart Kosko distorts the evidence. To call Christ a communist is to label most of the world's vaguer thinkers as communists. Jesus simply had a set of unfocused and often contradictory ideas about politics and property, which he really had little interest in. As noted in the article, Jesus deemed the End to be arriving, and these were matters of little more importance than arranging deck chairs on the Titanic. Besides, Mark 10:25 is not in particular anti-capitalist. For starters, it covers all rich people, a large number of whom got that way by government actions. And it does not rule out going to Heaven — it just makes it as difficult as driving a camel through the eye of a needle. Jesus just didn't think much about these issues, and supposing we can distill a political philosophy out of his thoughts is just going beyond the evidence.

David Argall  
La Puente, Calif.

### A Man of the Spirit

Bart Kosko thinks Jesus was a communist.

But Jesus accepted as followers well-to-do as well as poor, and did not require them to give away their property. Moreover, he often lampooned those who made economic justice their top priority. In the Parable of the Vineyard Laborers (Mt. 20:1-15) the proprietor pays those who worked only an hour the same amount as those who have worked all day. In the

Parable of the Ten Talents (Mt. 25:14-29), more is given to the servant who has the most already while the one with the least has even that taken away — the very antithesis of socialism! He rebuked those who objected to the woman pouring expensive oil on his head instead of selling it and giving the money to the poor (Mt. 14:3-7).

Not only was Jesus not in agreement with those who sought to redistribute wealth, he also dissented with those whose primary concern was wealth accumulation — and for the same reason: the priorities of both are wrong. His whole emphasis was that seeking the kingdom of God is of completely overriding importance — and once you have found that, you need have no concern about material things because they will be added unto you (Mt. 6:23-33).

Thus neither the left nor the right has any business trying to conscript Jesus to its political agenda. His agenda was spiritual.

Martin P. Choate  
Los Angeles, Calif.

### Just Wild About Harry!

Now that the two Browne campaigns have been thoroughly raked over the coals ("Crisis in a Small Party," July), I would like to suggest that everyone brush off the dust and debris, consider the air as cleared, and get behind this candidate.

Harry is not only more presidential than any other current candidate but more presidential than any candidate you can remember in your lifetime. Roughly 99 percent of the time, when confronted with a hostile host or listeners during radio interviews, Harry turns snarling tigers into silent tabby cats — sometimes even purring ones. He has done his homework, run his laps, lifted all the weights and it shows. Harry is a champion.

We don't know if we will ever have a candidate of this caliber in the future. We don't know what might happen in the next four years to Bumper Hornberger or Russell Means or whoever. Right now, we have the best candidate the LP has ever had. Let's not blow it!

I do not believe that Harry has ever consciously intended to deceive anyone, neither in this campaign nor the previous one. No one is ever 100 per-

doing 100 percent of the time. Otherwise, we would never forget a phone number or lose our car keys. A friend who has known Harry for over three decades told me recently, "In the more than 30 years I have known Harry — and that includes in Switzerland and in Canada — I have never seen him do anything dishonest. Not once."

We all know what a rough, and sometimes nasty, game politics can be. Harry has been handling it with as much wisdom as anyone could possibly muster. What he has done from the beginning is his best. And it's the best best I've seen since Ron Paul carried the LP banner in 1988.

Harry is not the least interested in his own glory, nor is he chasing power for its own sake. When he tells audiences "I want you to be free," this really is what he wants. He wants all of us to live in a free country because *he* wants to live in a free country. Isn't this the way we all feel? Isn't this is what constitutes loving one's neighbor? You give what you want to get.

Not every libertarian is meant to take on the role of David against Goliath. We all have different talents and are at different stages of spiritual strength and maturity. Harry is at the stage where he can whirl that sling above his head, let loose and hit the target with no innocents getting bruised in the trajectory. He doesn't carp. He doesn't criticize. He doesn't accuse. He has only one target, and that target is the Philistine giant.

In ancient Israel, before people were so foolish as to want a king, there was no central government and no taxes, only the practice of tithing for God's work. Wouldn't you agree that freedom is "God's work"? If you hate Goliath, if you want his hands out of your wallet and his spies out of your life, it's time to put aside rancor and close ranks. As Russell Means pleaded at the convention, it's time for some *passion*. This isn't

just an election; it's a holy crusade. It's time to tithe.

Regardless of the apparent outcome this November, every piece of bread you cast upon the waters now will come back to you multiplied many times over in the future. I plead with every libertarian, and with every almost-libertarian, to think about all of this — and to get going. Freedom first! We can argue with each other later.

Joanna Parker  
Ocean Shores, Wash.

### Church, State and Liberty

John Engelman's letter (Letters, September) exposes the soft underbelly of libertarian policy: we presume society, for the most part, is composed of individuals with strong moral ethics. The framers presumed the same thing. I believe it was John Adams who said, "Our constitution was made only for a moral and religious people."

Engelman, however, seems to ignore the lesson taught by modern history: a society that can not handle liberty is even less capable of handling government and bureaucracy. Perhaps William Penn had that in mind when he said, "Those who will not be gov-

erned by God will be ruled by tyrants."

Grant W. Kuhns  
Carlsbad, Calif.

### Hey, What's a Little War Crime and Torture Between Friends?

Merrel Clubb ("The Greatest Generation?," August) was mistaken on two counts. First, the Tuskegee Study has already been the subject of a Presidential apology (unwarranted in my view) and an accusatory drama on HBO, *Ms. Evers' Boys*. The fact everyone seems to overlook is that in 1932 there was no effective treatment to combat syphilis. Wealthy victims of syphilis were given mercury compounds or other toxic substances. There was no way of knowing whether the nerve damage that appeared was due to the syphilis or the mercury or other poisoning. The subjects of the "Tuskegee Study" were probably better off because of the neglect they received, regardless of whether the neglect was benign or malicious. Remember, the general public did not have access to penicillin until after 1945. By this time, the Tuskegee group (and anyone else who had had syphilis

*continued on page 20*

### Q: How can you help the very *best* Libertarian candidates for Congress?

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# Reflections

**California Schemin'** — I just heard that Hillary Clinton is having a \$25,000-a-head fundraiser in Los Angeles just before the Democratic convention. That's a smart way for her to deal with that carpetbagger charge.

— Clark Stooksbury

**Finally** — The other day, I heard Bill Clinton complain that George W. Bush only got where he is because "his daddy was president," or words to that effect. I wish I'd paid closer attention and written down the exact quotation because it was freakish, perhaps even unprecedented: Clinton told the truth.

— John Haywood

**It's Pat!** — Pat Buchanan's campaign "is leaking air like a punctured Zeppelin," crowed Steve Dasbach, national chairman of the Libertarian Party. Dasbach's own candidate was not doing so well: Harry Browne was listed that day at 0.6 percent by the Rasmussen Poll. But Buchanan had indeed plunged like the Hindenburg from a previous apogee of 4 to 5 percent. At his moment of triumph in Long Beach, after finally receiving a nomination for President of the United States and choosing a black female running mate to show that he is absolutely not a racist, Buchanan had fallen to 0.9 percent. He had some interesting things to say and some cranky things to say, but nobody was listening. He had become a sideshow, a man who rails against perverts and battles against a quack.

— Bruce Ramsey

**Polling error** —

Marjorie Williams reported in the August 4 *Washington Post* that "In a recent poll by the Pew Research Center for the People and the Press, 54 percent of those questioned said that Bush 'has relied on family connections to get ahead.'" The other 46 percent said they had recently arrived from another planet.

— David Boaz

**Reach out and touch 37 people** — A friend of mine who works for Ameritech recently prepared a Doubletree Inn for an Al Gore stay. The Gore campaign required 37 hard telephones lines to be installed for a one night visit. So many lines had to be laid that fire doors were left propped open for a full week in advance and the cables had to be duct taped to the carpet, violating even the most conservative of fire codes. One can only imagine the cost, presumably picked up by taxpayers. I could see perhaps if this was a Presidential visit, but this was the Vice President. The standard two lines would suffice for the only two impor-

tant calls that might come through. Either: There is a tie in the Senate — we need your vote. Or: Mr. Clinton has been hit with a lamp — come back to Washington and take the oath.

— Tim Slagle

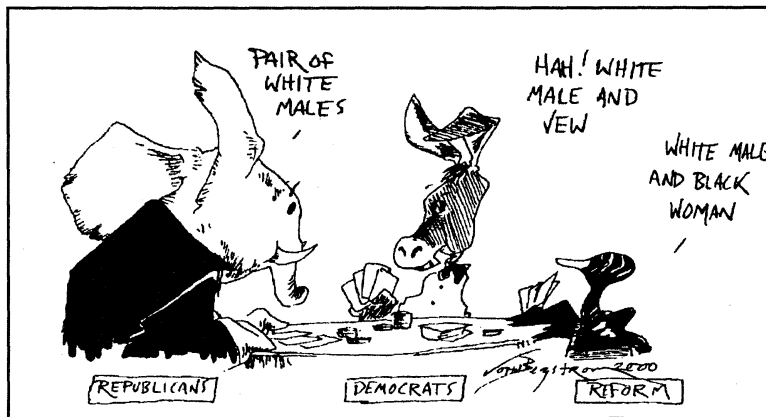
**GoreTax** — Democrat Presidential candidate Al Gore promises "a full range of targeted tax cuts." Hmm. If it's really a full range, it would be an unconditional tax cut, not a targeted tax cut. But Gore opposes unconditional tax cuts. There's no power for him in those.

— Sheldon Richman

**Get ready for President Cheney** — I have this sneaking suspicion that about 18 months from now, President George W. Bush will announce that being president is *boring*, with far more reading than he had anticipated, and resign to go fishing.

— David Boaz

**Potemkin convention** — At the Democratic convention just past, Al Gore's name was entered in nomination by his college roommate, an individual hitherto not known to be involved with his party. Rather than presenting a single reason for anyone to vote for his old roomie, he rambled on about what a swell guy Al has always been. He concluded with an amazing delusion. "We need a person with Al Gore's commitment," he said, "and we need a person with your heart, Al, because the office of the president represents every child on earth." I half expected the convention to break into that ole progressive Sunday school song. "Jesus loves the little children, all the children of



the world. . . ."

His nomination was seconded by a "Tennessean, a woman, an African-American, a citizen of this republic and a person who has had the privilege of working with Al Gore for more than 25 years" who had been given the "honor to second his nomination to be president of these United States." This was followed by another seconding speech, this one from his daughter, who talked about "my father, as a father." What a swell guy he is! A man who thought it important to "do your own physical labor and clean up your own mess . . . and I think his old-fashioned politeness is refreshing in today's world." At the conclusion of her well-rehearsed panegyric, Dad himself came out and hugged her. What a swell dad! If "all the children of the world" for whom Al Gore will presumably soon take responsibility turn out as well as she did, what a wonderful world this will be!

The next night, the new nominee was introduced for his acceptance speech by . . . his loving wife, whose introduction consisted almost entirely of a film of their courtship and family life.

Who else would you expect?

— R. W. Bradford

### ***No market for history*** —

Wildfires not only threatened the famous cliff dwellings at Colorado's Mesa Verde National Park; they also jeopardized artifacts stored there. It turns out that the park has warehoused two million artifacts (shards, tools, jewelry, etc.), some still lying in the crates where they were placed when they were collected in the 1930s. The materials that might tell us more about the fascinating people who lived in the cliffs from 600 to 1300 A.D. are gathered in boxes that no one ever opens.

There is a reason for this. As Richard Stroup and Matthew Brown report in a new study from the James Madison Institute, archaeologists hate markets. Their code of ethics states that archaeologists should "discourage, and should themselves avoid, activities that enhance the commercial value of archaeological objects. . . ." The purported reason is that commercial value leads to looting. And in the current "market" this is true. "Ethical" archaeologists do not participate, so only unethical providers — "pothunters" or looters — supply the market.

But it may be that the refusal to take advantage of commercial value is what holds archaeology back. Experts are forever complaining about not having enough money to investigate sites, interpret them, and showcase and more carefully preserve their findings. Mesa Verde's crates aren't unusual. The Museum of London has 10,000 items on display, according to the *Daily Telegraph*, but it has more than a million in storage, not even accessible to researchers. Two prominent archaeologists say that only 27 percent of the excavations sponsored by the National Science Foundation since 1950 have been described in professional journals.

The demand for antiquities is great, but the market for archaeological artifacts is a gray area wracked with regulations. The stigma attached to buying

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**How Environmental Regulation Prevents People From Protecting the Environment** — Environmental economist Rick Stroup explains how iron-fisted regulators provide powerful incentives against private landowners caring for the environment. (audio: A402; video: V402)

**The U.S. Forest Service: America's Experiment in Soviet Socialism** — The country's premier expert on the U.S. Forest Service, Randal O'Toole, tells a sad tale of excessive road building, clearcutting and the strangling effects of Soviet-style centralized decision-making. (audio: A403; video: V403)

**Environmental Religion in the Schools** — Author Jane Shaw explores how schools indoctrinate children in the New Religion of Mother Earth. In this religion, wealth and production are among the deadly sins. (audio: A404; video: V404)

**The Liberty Privacy Panel** — R.W. Bradford, Fred Smith, David Friedman and Doug Casey explore the privacy issues of the 21st century. (audio: A405; video: V405)

**Advancing Liberty in the Courts** — Washington Supreme Court Justice Richard Sanders explains how libertarians get more bang for their buck by supporting judicial candidates. You'll hear how one libertarian justice can make a huge difference! (audio: A406; video: V406)

**A Libertarian in Congress** — The sole libertarian in Congress, Ron Paul, on the art of building coalitions and on how he led the effort to slay the privacy-invading Know Your Customer regulations. Hear him recount the history of the Social Security number as an identifier, and learn how laws on immigration, welfare reform, and health care are shredding your privacy. (audio: A407; video: V407)

**Does the Libertarian Party Have a Future?** — R.W. Bradford makes a powerful case that the LP is failing to advance freedom, and suggests a controversial new approach that could lead to a political breakthrough. Judge for yourself whether the provocative strategy he outlines will propel the LP into the big leagues. (audio: A408; video: V408)

**Al Gore's War on Freedom and Mobility** — Al Gore hates the internal combustion engine. If he gets his way, America's cities will look a lot more like the cities of communist Europe, so says Randal O'Toole. (audio: A409; video: V409)

# Share the Excitement !

**Selling Liberty in an Illiberal World** — Fred Smith offers a revolutionary approach to spreading libertarian ideas, and explains how to frame issues for maximum appeal. (audio: A410; video: V410)

**Contracts and the Net** — The Internet will reshape contract law, argues David Friedman, at the expense of judicial power. Learn how netizens are developing institutions to allow for private litigation, and hear how arbitration and reputation loss are actually more potent on the Net than in real space. (audio: A411; video: V411)

**How to Write Op-Eds and Get Them Published** — Join former *Business Week* editor Jane Shaw, *Orange County Register* senior columnist Alan Bock and *Seattle Post-Intelligencer* business reporter Bruce Ramsey for a workshop on how you can air your opinions in the newspaper. Learn Jane's six points that will send you on your way to publication, and hear the one phrase which Ramsey says is taboo at his paper. (audio: A412; video: V412)

**What Does Economics Have to Do With the Law, and What Do Both Have to Do With Libertarianism?** — David Friedman explores how economics and law relate to each other and to libertarianism. (audio: A413; video V413)

**Urban Sprawl, Liberty and the State** — Urban sprawl may turn out to be one of the hot-button issues of the next election. Learn why environmentalists want you caged in cities, and how they plan to do it, with Jane Shaw, Richard Stroup, Fred Smith, and Randal O'Toole. (audio: A414; video: V414)

**My Dinner With James Madison** — Scott Reid views modern America through the eyes of a Founding Father. Our Madison discusses some little known alternatives considered at the Constitutional Convention, and why they would have been better for freedom. (audio: A415; video: V415)

**The New Liberty and the Old** — R.W. Bradford explains how fundamental changes are reshaping the libertarian movement, and forthrightly takes on the advocates of the non-aggression imperative. (audio: A416; video: V416)

**Using the First Amendment to Smash the State** — Durk Pearson and Sandy Shaw tell how they've used the First Amendment to wage total war against the government. Learn how they brought the FDA to its knees, and share their secrets for successful litigation. (audio: A417; video: V417)

**Making Terror Your Friend** — In a world overrun with authoritarian creeps, Doug Casey highlights the attitudes and techniques that set him apart from the controlled masses. (audio: A418; video: V418)

**End the Drug War or Forget About Freedom** — Alan Bock journeys to the heart of darkness in America's failed effort at drug prohibition. The casualties of the war, says Bock, are a lot of harmless people and your civil rights. (audio: A419; video: V419)

**Juries, Justice and the Law** — Fully informed jury activist Larry Dodge explains the history and the importance of jury nullification, including efforts underway to increase the power of juries. (audio: A420; video: V420)



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and selling artifacts discourages legitimate buyers and keeps the market from being a source of funds that could finance legitimate archaeological research. Right now, markets cause looting because nobody (not even a landowner whose property holds antiquities) can readily profit by, say, taking royalties from archaeologists (as a landowner would from oil drillers). Archaeologists get no revenue, pay nothing, and therefore provide little incentive to protect sites for proper research.

Stroup and Brown argue that a market in artifacts based on clear property rights could provide the funds to end the current negligence. The situation could change if markets were accepted and the regulations that discourage trade were minimized. Landowners could value potential archaeological sites the way they value other buried treasure such as oil or gold ore. Funds for archaeology would abound. Archaeologists could even write sale contracts to make sure that unusual artifacts could be recalled for further research as investigative techniques and other knowledge grows. Archaeological digs are fertile ground for private enterprise, if only the potential beneficiaries would recognize it.

— Jane S. Shaw

**Watershed election** — I am sick and tired of all of those people who don't believe that the race between Gush and Bore, er, Bush and Gore is of critical importance. This election will decide several critical issues:

- The Supreme Court. Al Gore will name two Souter clones while George Bush will emulate his father and name a Souter clone and a Thomas clone.
- Energy issues. George Bush is captive to the interests of Big Oil while Al Gore exclusively serves the needs of Occidental Petroleum.
- National pride. Al Gore will serve as a constant reminder of the shameful Clinton years while George Bush will recall a kinder, gentler time when we could be proud of our government.
- Foreign policy. George Bush will bomb foreign schools and hospitals in the name of combating terrorism and "national security," while Al Gore will bomb them in the name of democracy and "human rights."
- The Drug War. Al Gore, an admitted pot smoker, will hypocritically pursue a policy of domestic terrorism and foreign adventurism to combat drug use. George Bush will pursue the same policy less hypocritically since he has only

"failed to deny" his past illegal drug use.

So remember, in the coming fall election it is critically important that we join together to defeat the rich kid from the Ivy League school. Or do we elect the rich kid from the Ivy League school?

— Clark Stooksbury

**Breakfast of Intellectuals** — So there I was, enjoying a box of Honey Nut Cheerios (hey, it was half price, and it had a "free Dinosaur Chomping Magnet") when I read the following quotation on the back of the box:

The mind is like the stomach. It is not how much you put into it that counts, but how much it digests.

— Albert Jay Nock

Now Nock is my favorite libertarian thinker, but the last place I'd expect to find his writing is on the back of a cereal box. I was curious. Could there be libertarian moles hiding in the depths of the cereal box design department at General Mills?

So I decided to find out. I wrote to General Mills, explaining that Albert Jay Nock was my favorite writer, and that he was quite obscure. I asked how the quote came to be on the box, and where the quote appears in Nock's writings. I carefully did not mention the word "libertarian."

I received the following response from Susan Stewart of General Mills Consumer Services. "Thank you for contacting General Mills regarding Honey Nut Cheerios. We appreciate the time you have taken to share your comments. The information you provided will be carefully reviewed with other members of the product team. We hope you continue to enjoy the products and services offered by General Mills."

Now you will note that the response does not answer my question. Perhaps General Mills Consumer Services does not get many letters from people who actually read cereal boxes. Or perhaps the Nockian at General Mills has decided to cloak himself in mystery.

But hey, I did get a coupon for a free box of cereal.

— Martin Morse Wooster

**Teaching a new dog some old tricks** — On August 2, I got an e-mail missive from an old friend, who thought the emphasis in *Liberty's* coverage of the LP in our July issue was misplaced. "The problem with the Libertarian Party," he wrote, "is that its strategy isn't working. Something else is needed. Imagine if you were a tennis player and your strategy each year lost 6-0, 6-0. Or you were Floyd Patterson who trained two years straight 12 hours a day, totally abstinent, and then got knocked out by Sonny Liston in 15 seconds. Something's wrong. And it's not that they're diverting a few bucks nepotistically or incestuously."

My friend had a good point. The real problem with the Browne campaign is not its nepotism or misspending donor funds. It's the fact that it is using a strategy that is a proven failure. Sure, the campaign has presumably learned from its past experience and refined its approach a bit. But it's still using the same basic strategy: put most of your energy on talk radio, buy a few ads if you can afford them, and base your sales pitch solely on appeals to voters' individual self-interest.

To become a factor in American politics, a presidential candidate has to get 5 percent of the popular vote. That's ten times what Browne got in 1996. Incremental improvements



could achieve incrementally better results. Perhaps by some miracle, Browne could double his vote. As magnificent as this would be, it would leave the party where it was in 1980, invisible on the political seismograph.

Pointing out that Browne's strategy is doomed to fail, as my friend and I have done, isn't very satisfying to most libertarians because it doesn't answer a very important question: what strategy should an LP nominee use? Without an alternative, the Browne strategy wins by default: at least it can get 0.5 percent of the vote.

The alternatives offered by Browne's challengers didn't seem much better than Browne's. Gorman's idea of campaigning tirelessly with local candidates would generate less publicity and press coverage than Browne's approach. And Hornberger's "guerrilla" strategy of taking the campaign to swap meets and trailer parks . . . well, it's hard to imagine it would do even as well as Gorman's.

At least it was hard for me to imagine it amounting to

anything until August 14, when I got an e-mail from Ken Sturzenacker, who noted that the Browne campaign was going nowhere, and suggested several activities that Browne might try to get media attention. In addition to being chairman of the Pennsylvania LP, Sturzenacker was for years newswriter and news producer at WBBM-TV, the CBS network station in Chicago, so his suggestion merits our attention. (See box at the bottom of this page.)

It occurred to me that these are precisely the kinds of things that a "guerrilla" campaign would do. It seems possible that these sorts of stunts might generate some real publicity and interest in a campaign. In my judgment, each of these stunts is a longshot, and for all I know, all might fail.

But that doesn't mean the approach shouldn't be tried. It may be a longshot, but it does have a shot at success.

I would favor combining this approach with the strategy I proposed a year ago: focusing the campaign on legalizing drugs, the one issue that could conceivably provide a break-

## Go for it, Harry!

*Media advice for the LP nominee, from a long-time Libertarian activist and former television news producer.*

Today is the final day of the sixth week since Harry Browne won the LP presidential nomination. One-third of the LP's fall campaign is over. It is 12 weeks, 84 days, until the election. And today, I received a fundraising letter from "Harry Browne 2000" with bold copy across the length of the envelope:

### **Next Task: End the TV News Blackout**

You can end it, Harry! Go someplace and *do something newsworthy!* No television news editor in America is going to send a camera crew to take videotape of a talk show host talking to you on the telephone.

Create an event.

All those "business attire requested" people who show up at your hotel fundraisers? Invite 'em to join you in jeans, sneakers, and Harry Browne 2000 T-shirts, to work a soup kitchen with you for an eight to ten hour day. Let people see you sweat a little!

Walk through the Badlands of North Philadelphia with a hundred of your supporters after dark some Friday or Saturday night . . . and show America what the insane "War on Drugs" you're so fond of talking about has done to the inner cities. Make the media confront the reality of their enthusiasm for Barry McCaffrey. Or go take a tour of some of our federal and state prisons, talking to "prisoners of war," in the "War on Drugs."

Go embrace Steve and Michele Kubby, at their trial for the criminal offense of growing marijuana to relieve Steve's fatal illness.

Stand at a fence outside the Hanford Reservation in Washington and talk about government pollution of the land. Or the Six Mile and Van Dyke area of Detroit, near the Detroit City Airport, where it looks as if the Kosovo War were fought there, and the houses that do remain, each look like small federal prisons with their bars on the windows and doors.

Take off your jacket, roll up your sleeves, stick your

arm up to the elbow in the pollution in any of a dozen rivers or harbors the government claims to have cleaned up. Go stand on the beaches along lower Lake Huron, and talk about the *E. coli* bacteria that's prevented the beaches from being used all summer.

Go to Los Alamos and talk with the residents of the 200 homes destroyed by the government's land management practices. Go down to Waco, and spend the day helping to rebuild the church and living quarters there.

Spend three to four days in the West . . . and get the firefighting crews to tell you how much their training and budgets have been cut over the past couple of years . . . government management of the land!!! How many states are burning, Harry?

You should be able to get media attention in every one of 'em.

Get your "business attire requested" guests to listen with you to the stories of a group of homeschoolers about their experiences fighting the bureaucracies. Berkeley might be a good place to start. Go to some retirement or nursing home, anywhere, and ask the folks there how well they're living on Social Security or how well Medicare is taking care of them, and what they've got remaining to leave for their children or grandchildren.

And while you're at it, make sure the state and local LP candidates get invited.

One good event can get you media for three or four TV stations, two to four radio stations, and a couple of newspapers. Over two days, people can see you, hear you and read about you . . . all from one event.

Going places, *doing things*. Sharing the spotlight. Finding and highlighting stories that illustrate our ideas. It's what the big guys do, Harry. It's why they're getting the media attention . . . and you're not.

You've got only 12 weeks left. *Go create events!*

— Ken Sturzenacker

through. Drug legalization is strongly supported by a substantial minority of Americans and no other major party is willing to risk alienation of the anti-drug-freedom majority by supporting even modest drug-law reform.

We should remember that only one minor party ever became a major party, and it became a major party by embracing an issue that all the major parties were afraid to get near. The Republicans became a major party by opposing slavery, a legal institution that neither the Whigs nor the Democrats would challenge for fear of losing support in the South.

Of course, support today for ending the drug war is no where near as extensive as was support for ending slavery a century and a half ago. So the party that embraces this issue will not quickly find itself, like the Republicans, in control of virtually the entire U.S. government. But it could very well surpass 5 percent of the vote total, sailing over the "hurdle of irrelevance" and showing up on the political seismograph.

With few exceptions, past LP presidential campaigns have suffered from two different problems:

1) They've lacked the issues powerful enough to get support from even 1 percent of voters; and

2) They've lacked the resources (money, volunteers), the campaign management skills and/or a sufficiently articulate candidate to carry that message to the voting public.

Focusing on the Drug War addresses the first of these problems. Sturzenacker's suggestion addresses the second, by providing a means of leveraging limited resources.

— R. W. Bradford

### *You'll have to pry my cold dead fingers off my Krazy Glue™* — I was shocked, shocked.

The letter to the editor of *The Wall Street Journal* said that applying Krazy Glue™ to a bullet will defeat bulletproof vests. I need to be protected from Krazy Glue™! I demand that Krazy Glue™ and its use be licensed! Borrowing from personal experiences within The People's Republic of New York City, I suggest the following licensing regimen be implemented immediately in order to prevent a tragedy.

Those wishing to possess Krazy Glue™ should be required to obtain a licence. The licensing procedure should be as simple as it can be, consonant with the imperative of keeping Krazy Glue™ out of the hands of assassins. Applicants should submit, with their filing fee of only \$1,200, notarized copies of their birth certificates, passports, social security cards, driver's licences, voting cards, gas bills, light bills and deposit slips to Krazy Glue™ Control, a special police division. They should be finger- and palm-

printed, photographed, and required to provide proof of a strongbox, for secure storage of their Krazy Glue™. Once an applicant's background is thoroughly checked and his reason for wanting Krazy Glue™ is verified, he will be able to join the "Krazy Glue™ User's Club," to learn how to use Krazy Glue™ safely, and the importance of keeping it out of the hands of those who would abuse it.

If everything goes right, an applicant could be awarded his Krazy Glue™ license within a year or so. The cost of these procedures, training and safeguards will probably amount to no more than a few hundred dollars or so. Human life is priceless, so this is a small price to pay.

Just think of the good this procedure could do if enacted immediately! Think of the children whose lives we can save! Call your elected official today!

— Ivan Santana

**Telephone abuse** — Libertarians don't run to government for solutions to all problems, but their attitude doesn't require denying or ignoring a problem. Repeated complaining may be part of a solution. Perhaps the culprits can be shamed into desisting.

We all know about intrusive phone calls making sales pitches or seeking donations. Lately I have been getting such calls from recorded voices. That practice values my time less than that of any live human being whom the responsible company or organization might have hired. Some calls even have silence on the other end of the line. According to the August 7 issue of *U.S. News & World Report*, the explanation is not necessarily that some snoop is checking whether I am at home. More likely, some company or organization is making calls *en masse*; and if more calls are answered than was statistically expected and that the equipment or available personnel can handle, the surplus responses simply get disconnected. That practice implies that my time and trouble in interrupting my own activity and hurrying to the phone, as well as my uneasiness about who might have been calling and why, counts for nothing.

Recently I got a call from someone who, when pressed, said he was "Mike" from Parsons Technology. He had asked for "Leland" and persisted in asking whether he was speaking to "Leland." At first I thought the call might be from some old friend; but, growing suspicious, I answered that whether he was speaking to "Leland" or to "Mr. Yeager" depended on who was calling. "Mike" resented my making this distinction; after all, *he* was using *his* first name.

So intrusiveness gets compounded by deceptive familiarity and by argumentativeness.

I suggest that we all complain, and repeatedly, about these abuses of the telephone. Perhaps the culprits can be persuaded that their abuses are not even good business.

— Leland Yeager

**Ego in balance** — As if being the inventor of the Internet and savior of the ozone layer weren't enough, Al Gore has now officially taken responsibility for American economic performance.

In a recent interview with *USA Today* Gore took full credit for all policy measures that have "fostered prosperity," gloating that "those are my policies; I've helped to shape them."

Interestingly, Gore's megalomania may turn out to be



"I know how you feel, but I'm not sure it's possible to keep rocks from falling into the wrong hands."

good news for the American public: now that Internet AI is behind the wheel of the U.S. economy, can't we hold him financially liable when we hit the next recession? Can you say C-L-A-S-S A-C-T-I-O-N? Now that's what I call a "controlling legal authority." — Andrew Chamberlain

**Predicting the Libertarian vote** — Anyone who tries to predict how many votes a Libertarian Party presidential candidate will get faces a very difficult task. For one thing, almost no one is interested in the subject except LP partisans, who generally have difficulty separating their hopes for the ticket with its actual prospects — most Libertarians are habitually optimistic in their projections. For another, there's so little interest in what's happening at the margins of American politics that virtually no polls have been taken that include the names of the candidates of tiny parties like the LP. Indeed, so far as I am aware, the only national poll of voters on a LP candidate was the September 17, 1996 poll that *Liberty* commissioned, which reported Browne the favorite of 1 percent of likely voters.

There are two sets of factors that determine how well a Libertarian does: on the one hand, there are endogenous factors, like the quality of the candidate, the resources of the campaign, the strategic and tactical ability of its managers; on the other hand, there are exogenous factors, like the presence or vitality of other third party campaigns, the closeness of the major party race, and the degree to which voters are dissatisfied with the political status quo.

As the election year began, the exogenous factors were pretty grim for the Libertarian nominee, whomever might win the nomination. With no incumbent president, the race shaped up to be much closer than 1996's. Further, the Reform Party nominee would be Pat Buchanan, who had wooed millions of voters in Republican primaries, rather than the obviously shopworn Ross Perot. And worse still, Ralph Nader of the Green Party planned to run an active campaign and appear on the ballots of all states; he had man-

aged to get more votes from California in 1996 without campaigning than Browne had gotten from the entire country.

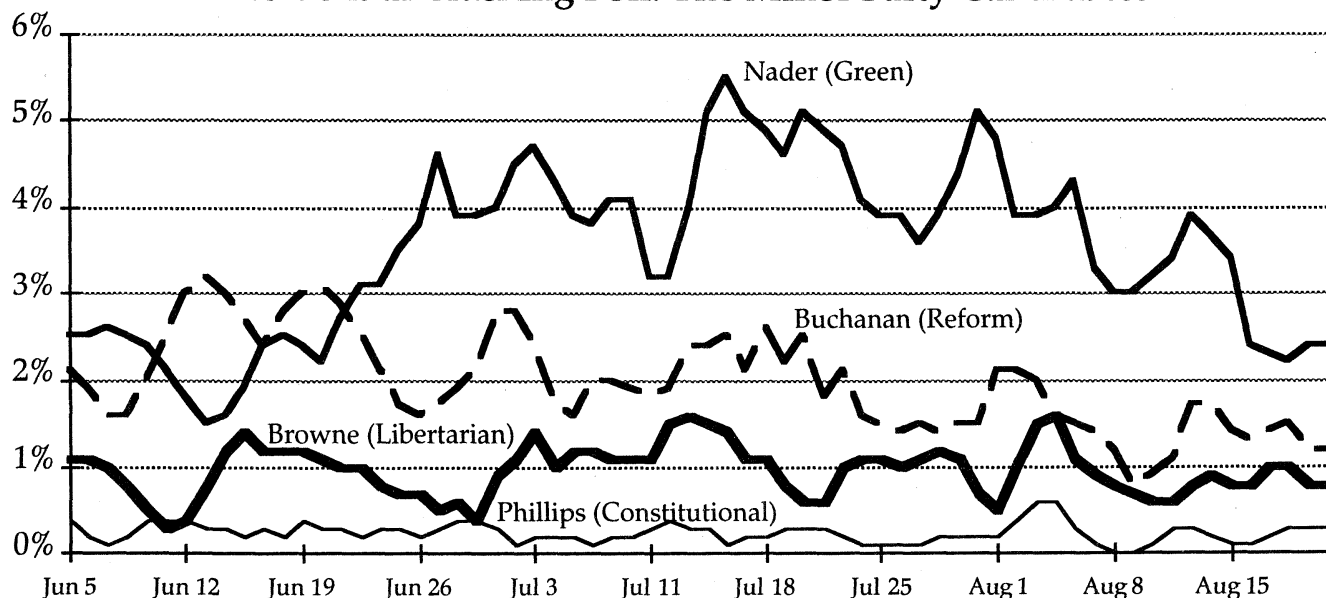
The endogenous factors didn't look much better. True, Harry Browne was running again and would almost certainly win the nomination, and Harry is perhaps the most articulate LP candidate ever. But Browne was planning a rehash of his failed 1996 campaign, using the same management, the same strategy, the same tactics and even the same slogan.

If I'd had to predict the LP's 2000 presidential vote at that time, I'd have suggested 350,000. Things got no better during the first six months of the year. There was some good news: George W. Bush pulled into a solid lead in the major party race and the campaign of Pat Buchanan failed to attract much interest. But the Browne campaign found it harder to raise funds — or at least to raise enough money to pay its bills — and had to close shop briefly. And it was rocked by charges from Jacob "Bumper" Hornberger that it had an incestuous relationship to the management of the LP and that it had misused funds.

But things began to look up at the convention, where Browne delivered a new speech. "We Believe in You" veered considerably from Browne's "Great Libertarian Offer," and seemed to signal a modest change away from the failed "Great Libertarian Offer" sales pitch. It also began to purchase television advertising. In early August, according to one fundraiser, it proposed to spend \$10,000 on television advertising each day through the election — a big change from 1996, when it spent less than \$9,000 on advertising during the entire campaign.

The challenge of trying to predict accurately the LP's vote total became a lot easier when Rasmussen Research began to include Browne's name in its daily presidential polls. Since June 15, Rasmussen has included minor party candidates in the surveys of likely voters that it conducts six days a week and reported the moving average of the previous three days.

### Presidential Tracking Poll: The Minor Party Candidates



Rolling average of three daily surveys of 2,250 likely voters. Margin of error  $\pm 2\%$ , with a 95% confidence level. Source: Rasmussen Research

The graph on the bottom of page 13 shows Browne's vote share through August 21.

It's dangerous to attach too much significance to the numbers. The poll has a margin of error of 2 percent, and Browne's highest share has been 1.6 percent. And it's pretty plain that most of the variation is statistical noise: obviously, support for Browne isn't routinely doubling and falling in half in a single day as the survey shows.

It also appears to be evident that Browne consistently and handily beats Howard Phillips of the Constitution Party, as he did in the 1996 election. More intriguingly, the Browne vote share seems to be on an uptrend. Indeed, on August 5th, Browne actually tied Buchanan for fourth place. It was Browne's best showing ever and Buchanan's worst to that date, and Browne hasn't equaled Buchanan since. But it holds out hope of a fourth place finish for America's self-proclaimed "largest third party."

But it's hard to know what to make of the data. For one thing, we have no track record to give us a clue about how the poll numbers correlate with the actual vote, or whether support for fringe party candidates tends to soften as an election approaches, or whether poll numbers tend to overestimate or underestimate fringe party vote totals.

Enough hedging. As of today, how many votes do I think Browne will get?

Four hundred fifty thousand. That's about half what the Rasmussen Poll shows him getting, and in 1996 he got about half what the Rasmussen Poll commissioned by *Liberty* showed him getting.

— R. W. Bradford

**Free minds and free music?** — Libertarians brim with "principle." Libertarian custom prescribes that basic concepts like individual rights be rigorously applied to policy questions until the sky clears, the waters recede, and we happily arrive at a unified theory of everything.

But is this how things really work? The response of many libertarians to the recent lawsuit against Napster shows that the libertarian policy machine works differently in practice.

Curiously, libertarian opinion of Napster falls mostly into two categories: "Napster is, like, kind of cool" and "no comment." Almost no libertarians have objected to the company's actions, which is puzzling. Napster's file-sharing business depends on intellectual piracy. Where is the outrage from libertarians who are normally such staunch defenders of private property? Their silence in the face of such brazen violation of property-rights is deafening.

The most common defense of Napster is that "sharing" music files is a "victimless crime," and doesn't hurt anyone.

Sure, downloading files on your home PC doesn't *feel* like theft. But existing copyright law clearly holds that it is. Artists and record companies operate on the assumption of copyright protection, and justice demands they be respected. The same libertarians who proclaim "taxation is theft" ought to be outraged to the point of rioting by Napster's theft-driven business model.

But the fact is they're not. And frankly, neither am I. The reason Napster doesn't seem criminal is simple: the emergence of the Internet has made copyright law unenforceable, and it has fallen out of line with our intuitions about ownership. Technological advances like the Internet allow for low-cost interactions that have never been possible before, and it's not surprising that the official libertarian rule book doesn't have a complete chapter for them yet. After all, there was no "libertarian position" on possession of nuclear arms before they existed, and some issues like abortion will be contentious forever. Friedrich Hayek's theory of morality as an evolving beast is working before our eyes as we discover whether intellectual property law can survive in a post-Internet world.

Since the shutdown of Napster, dozens of similar services have cropped up and are booming. There is no stopping digital file replication and transfer, short of a wholesale dismantling of the Internet. The real problem with Napster isn't widespread violation of property rights. It's that the definitions of those rights are outmoded and unstable in the Internet world. It's impossible to completely stop Napster-like file transfers, and intellectual property law needs to adjust to this new environment — along with libertarians' conceptions of property rights.

— Andrew Chamberlain

**Don't step in the gravitas** — The word of the month for July was "gravitas." Does Bush have it? Does Gore? Do their VPs?

I graduated *magna cum laude* from a private university with a BA in English, and I'm now a professional writer and editor. Yet I had never heard the word "gravitas" before. Nor, apparently, had my computer spell checker. Nor had the first dictionary I checked, though the second defined it as "seriousness or sobriety, as of conduct or speech." Based on that, I have misgivings about any major Democrat or Republican having "gravitas" — though their posturing makes it hard to tell.

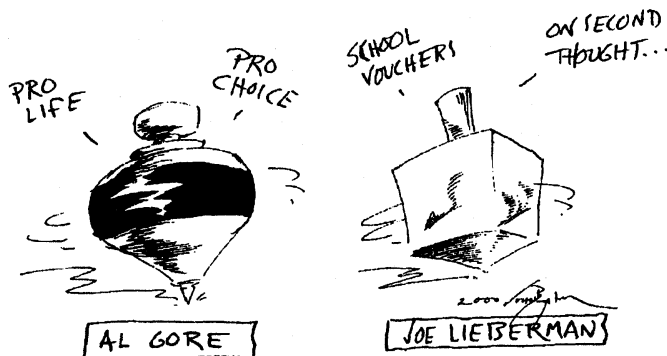
The lengthy discussions about "gravitas," however, bring to mind another word: obfuscation.

— John Haywood

**Catch-65** — When people want to campaign for some sweeping measure which has no hope of swift success, they often select a narrower aspect of that measure and focus all their attention on that aspect.

Most people support the legality of abortion, for instance, so the anti-abortion campaigners have selected "partial-birth abortion" as the more limited area where they can hope to make headway.

The same principle has now emerged in the campaign to end capital punishment for murder. Execution of murderers is popular, so the anti-execution crusaders have hit upon a narrower question: the execution of stupid people. Foes of the death penalty are now arguing that convicted murderers who score below 70 or 65 on an IQ test ought to be reprieved.





Some states have such laws on their books; in other states, legislation of this kind has so far failed to pass.

In all such cases, the prosecution has already had to convince a jury that the accused premeditated the crime, understood what he was doing, and was capable of understanding that it was wrong. The argument, therefore, is that even when all that has been proved beyond reasonable doubt, the murderer should be exempted from execution if he has a low IQ.

This argument comes from people who, in the overwhelming majority, take the position that IQ results are meaningless. They believe it would be grossly unfair for employers to use IQ tests in hiring, for example. But now they are arguing that life or death is to be determined by points in an IQ test.

We are in for years of interesting arguments about the IQ scores of convicted murderers. If it becomes accepted that scoring below 65 keeps you alive, violent criminals will become experts at scoring low, something that is, of course, easier than scoring high.

A person's IQ score normally fluctuates a little. If someone scores 66, then he'll ask for another chance to score lower. And if a second chance, why not a third chance? And if despite this a murderer qualifies for execution by one point, the anti-death penalty campaigners will raise the pitiful cry: "Killed [not because he butchered his mother with a rusty ax and then drank her blood, but] just because of one IQ point!"

The IQ limit will creep up, until we arrive at the natural culmination of this line of argument, which we might call Catch-65: by being stupid enough to get caught, the murderer demonstrates that it is unjust to execute him. This is a spectacular reversal of the old Spartan theory, which, as I understand it, was that the only crime for which you could be punished was being caught. According to tomorrow's theory, being caught automatically exempts you from punishment, so no one can be punished.

Our sense of fairness immediately tells us that this principle cannot be confined to murder. Once accepted, it must be extended to all crimes. Can we really square it with our consciences if we make retarded shoplifters do a week's community service, just the same as averagely competent shoplifters?

Exactly why is it wrong to execute someone who isn't very bright? If you think you know, just consider the case of double-murderer Rickey Ray Rector. He was executed in Arkansas in 1992, under the watchful eye of Governor Clinton, then running for president and determined not to step in deep Dukakis of the Willie Horton kind.

Legend claims that Rector left the dessert of his last meal, explaining that he was saving it for later. This tale has become emblematic of the campaign against executing stupid people. Yet to me the interesting thing is that Rector's stupidity was self-inflicted after the murder for which he was condemned to be executed. On the point of being arrested, he had shot himself in the head.

From the popularity of the Rector story with anti-death-penalty activists, it appears that this doesn't matter. It's wrong to execute a stupid person even if he wasn't stupid at the time of the crime. This conclusion points to the possibil-

ity of offering all condemned killers a choice: undergo brain surgery to reduce your IQ, or be executed.

Fairness requires that this principle too be extended to all crimes and misdemeanors. We could draw up a sliding scale: so much of a reduced penalty for every IQ point deleted by surgical intervention.

Now this seems to be taking us in a direction we may not want to go. Surely there's something perverse about letting people off the consequences of their conduct to the extent that they can prove they are unintelligent. How long will we wait before we see the first case of the condemned killer who challenges the constitutionality of some such law by pointing out that he is being discriminated against because of an involuntary genetic condition, high or average IQ?

Furthermore, it can be argued that the less intelligent the offenders are, the *more* severe should be the punishment they face for breaking the law — if we suppose that deterrence is the point, or a point, of punishment and that we have to shout louder to get the attention of someone who is, so to speak, hard of hearing.

— David Ramsay Steele

### *Extremism in defense of abortion/the right to life is no virtue* —

Having sat through a good portion of the major parties' conventions, I am struck by a strange phenomenon: both parties are captive of abortion activists who take a position on abortion that is held by only a relatively small minority of Americans. The Republicans insist that their candidates agree that abortion is wrong and should be illegal and vigorously prosecuted, even in cases of rape. The Democrats insist that a woman has a right to abort a fetus, even a half-born one. Most Americans abhor the notion that women should be prosecuted for early term abortions but are squeamish about late term abortion, and pretty much would like to see abortion

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illegal during the final 3 months of pregnancy and are downright disgusted by the notion of partial-birth abortion.

Yet the situation seems remarkably stable. The Republicans do precious little to enact their categorical anti-abortion agenda, sitting by idly as the courts strike down what measures it enacts. The Democrats push for partial-birth abortion with occasional success. But most Americans just yawn and decide how to cast their votes on different matters. The reason, I think, is that most Americans are more-or-less satisfied with the status quo: early term abortions are everywhere legal and the point at which killing the organism becomes unacceptable fluctuates from place to place, but is, they hope, about where they think it ought to be where they happen to live.

Meanwhile, the anti-abortionists, mostly deeply religious Christians, manage to have veto power over the Republican nominee, achieved by their willingness to vote in primaries, work for and give money to their party, and attend dreary party meetings. And the adamant pro-abortionists, mostly feminists and other "liberals," hold veto over the Democratic nominee, by voting in primaries, working and donating... and neither side is able to make much headway among the great, wise, and nearly indifferent middle.

— R. W. Bradford

**The biggest casino** — Bart Kosko's attack on conservative Christians (September) reminded me of just how foreign religion is to many people these days. In the 17th century, at the dawn of the scientific age, Blaise Pascal urged skeptics to make a cost-benefit calculation to determine whether to believe in God. If God exists, he said, eternal salvation will be the reward for believing, and the infinite benefits bestowed will outweigh any costs. Thus, doubters should bet on God.

I don't know how many skeptics Pascal won over with this logic, but philosophers have treated his formulation seriously (it's called Pascal's wager). Today's skeptics make the same calculation, but the terms have changed. They view the idea of an afterlife of any sort as an infinitesimally low-probability event compared with the knowable reality of everyday life. It carries minimal weight against the tedium of going to church, reading the Bible, saying confession, and so forth. There's much to be said for this version of Pascal's wager, but the new calculation makes religious faith so unfathomable to nonbelievers that it spurs ridicule of the sort that Kosko so blithely embarked on.

— Jane S. Shaw

**Vote for Barney!** — Since everybody has the right to vote, I think children should also, because as soon as "a child is conscious of itself, then it has to me an existence and a stake in what happens," as Gertrude Stein once observed. ("A Transatlantic Interview," 1946)

Though one great theme of the 20th century has been the elimination of unacceptable social discriminations, that revolution is not finished. One issue rarely confronted, to my recollection, is the current rule restricting the right to vote only to those above seventeen. Recall that a century ago women were forbidden to vote — that was why we witnessed the suffrage movement — and African-Americans in many states found it almost impossible to vote. Not too long ago the voting age was lowered from twenty-one to eighteen, on

the reasonable grounds that any one old enough to be conscripted into the military was old enough to vote. Both reforms depended upon the realization that certain groups of people, in the last case those between 18 and 20, were not, as we say, second-class citizens.

Think about it seriously, and you'll realize that there is no reason to restrict voting to those eighteen or over — no good reason at all. Not only are teenagers' lives affected by political decisions, they are, in general, are no less knowledgeable or passionate about electoral politics than their elders, and certainly no stupider, no less discriminating, or no less susceptible to vulgar appeals. Simply because the best preparation for adult voting is childhood voting, one result might well be a higher level of general citizenship. Since we don't discriminate by exempting teenagers from taxes, depriving them of the vote raises the question of whether any taxation is legitimate without the availability of representation.

Why hasn't this happened already, not only here but elsewhere? One universal truth is that young people, unlike other social minorities, lack an articulate spokesman who can represent their interests on a national stage year after year. Women remain women and blacks remain blacks though their entire lives, but teenagers inevitably grow up. The Libertarian Party would be wise to become identified with this issue, not only because it extends our principles about governmental nondiscrimination but because advocating the 12-year-old vote would bring us to the attention of every politically curious teenager in America. Consider making it a major issue along with drug legalization, prison depletion, term limits, and social security reform. I wrote about this before in these pages and, in truth, wish I didn't need to write about it again. Once the electorate is expanded to Americans as young as thirteen, as it should be, we might, of course, think about lowering it further.

— Richard Kostelanetz

**Investigations** — A special federal commission ruled that the federal government is not responsible for the deaths of 80 people at Waco, not responsible for the gay-bashing murder of a soldier in his Ft. Campbell barracks, and indeed not responsible for anything, ever.

— David Boaz

**What's in a name?** — This must be Murphy's Law of public relations. The clipping services show that not only did the Libertarian Party drop off the face of the media during the fractious Reform Party convention, the party lost control of its adjective. Everyone from pundits like the egregious Kevin Phillips to lowly wire service reporters started attaching the word "libertarian" to the non-Buchanan faction of the Reform Party.

In American political discourse, where words are defined by how your buddies use them, apparently, rather than by recourse to a dictionary, libertarian means "having no opinion or position." While the Reformers had no position on many issues of the day, that's different from having a libertarian position. According to former Reform honcho Jack Gargan, the Reform Party originally tried to focus on restoring the integrity of the institution of government without taking any positions on divisive social issues. But it's frequently social issues — drug prohibition, for example, or gun control, or affirmative discrimination — that lead to the corruption of the institution.

Or it may just be that libertarian has come to mean "nutty" in the context of American politics. This is derived logically, although it suffers from the same factual deficiency shown above. The "libertarian" faction of the Reform Party (the non-Buchanan faction) is associated with alpha-Nut Ross Perot. Libertarian = Perot, Perot = Nut, therefore Libertarian = Nut. QED.

— Brien Bartels

**Tobacco terrorism** — Federal authorities arrested 18 people in July and charged them with smuggling tobacco in order to raise money for Hezbollah, classified by the U.S. government as a terrorist organization, in Lebanon. Essentially, the group was buying cigarettes in North Carolina, where the tax is about a nickel a pack, and smuggling them to Michigan, where the tax is 75 cents a pack. Supposedly the group has been carrying out this scheme since 1996 and has sent somewhere in the neighborhood of \$1.36 million to Hezbollah in Lebanon.

I must confess, during all the debate and controversy over high cigarette taxes in the past, I never came up with the "it might finance terrorists" argument. Besides the inherent prejudice against high taxes on anything, I've mainly argued that high taxes encourage an illicit trade and illegal activity, as has been the case between Southern and Northern states at a low level for some time, in Canada, where they were eventually forced to reduce tobacco taxes a bit, and to some extent in California.

But it makes sense. Profits in the illicit drug trade can be huge, and historically they have been used to finance guerrilla movements, terrorist groups and some government intelligence and counter-intelligence activities. The difference between 5 cents and 75 cents a pack in taxes is not as large as the difference between the licit pharmaceutical price of cocaine and the illicit street price. But apparently it is large enough to make smuggling cigarettes attractive, not only to small-time criminals but to terrorists. Will governments get the message that high taxes can have unfortunate side effects? Or will they try to attribute this scam to something inherently evil in the chemical composition of tobacco?

— Alan Bock

**OldFaithful.com** — In July, National Park Service Director Bob Stanton nixed a plan that could have brought in \$300,000 annually to Yellowstone National Park and possibly even more financing in the future. Entrepreneurs at Yellowstone thought they would take advantage of a popular website showing live coverage of Old Faithful to bring in some funds. The Park Service's most popular website would display a banner with a link to a sponsoring corporation or individual's website in return for \$5,000. The banner would go up for six days. It was a creative solution intended to provide some funding for a park beleaguered by crumbling sewage systems, worn-down trails, and roads with potholes more at home on a bombing range than in a national treasure.

Two environmental groups were particularly vocal in opposition to the banners. Tony Jewett of the National Parks and Conservation Association called the plan the first step towards increasing commercialization of the national parks. Jon Catton of the Greater Yellowstone Coalition spouted sound bites, saying, "People want signs pointing them

toward Old Faithful, not Old Spice."

Apparently though, the environmental groups are immune to the harms of commercialization. The Greater Yellowstone Coalition lists over one hundred business sponsors on its website. The NPCA's website links to an online mall where visitors can buy from over eighty brand-name stores. Five to fifteen percent of the shopper's purchase benefits NPCA at no extra cost.

— J. Bishop Grewell

**All Things Not Considered** — The FCC is pushing to expand licensing of low-power radio stations and one of the most vocal critics is National Public Radio. How dare they, after all the grief Bill Gates took from the same network with accusations of stifling competition. In his defense, Sir William Gates never once tried to destroy competition through government regulation. The word "public" became synonymous with "government" long ago. Lately, it is becoming synonymous with "monopoly." — Tim Slagle

**Progress report** — Recently, George W. Bush announced the catch phrase that will serve as his campaign theme: "Renewing America's Purpose." Like many political slogans, it manages to be vacuous, silly and offensive at the same time. Do nations have a collective purpose? Do they derive that purpose from politicians? And if we did need help "renewing our purpose," why in the world would we seek it from a guy who couldn't figure out what he wanted to do with his life until he was well past 40? If Dubya wants to bring an end to the Clinton-Gore era, rhetorically and otherwise, he ought to come up with something better than a right-wing version of Hillary Clinton and Michael Lerner's "Politics of Meaning."

But, as campaign slogans go, it could be worse. Think back to Bill Clinton's theme for the 1992 campaign: "The New Covenant." Where Dubya's slogan is dopey and mildly insulting, Clinton's catch phrase was downright profane. The Old Covenant, presumably, was the one between God and the people of Israel: "And I will establish my covenant between me and thee and thy seed after thee in their generations, for an everlasting covenant, to be a God unto thee and to thy seed after thee." In the 1992 version, as Clinton envi-

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sioned it, the State steps in for God, and government giveaways for people who "work hard and play by the rules" are raised to the level of gifts from on high. One needn't be religious to find this blithe sacralization of the secular blasphemous and repugnant.

A Republican with a sense of humor once commented that American politics was dominated by the Stupid Party and the Evil Party, and declared "I'm for the Stupid Party." Accordingly, the Bush-Cheney ticket, with its vapid goal of "Renewing America's Purpose," has taken us rhetorically from evil to dumb. Given Bill Clinton's debasement of American political discourse, this, in a strange way, represents progress.

— Gene Healy

**Senatore Duce** — On August 15, Senate Minority Leader Tom Daschle (D-S.D.) told the delegates at the Democratic National Convention (and the PBS cameras) the following: "There's a wonderful movie, 'The Straight Story.' It's about an old farmer . . . [who] meets a young woman who's in a lot of trouble. He tells her that when his children were little, he would hand them a stick and tell them to break it. And they would, just like that. Then, he'd put the sticks in a bundle and ask his kids to break it. They couldn't. He gave them some advice: 'That bundle is family. That bundle is our community. We are stronger together than we are alone.' That is the simplest description I know of our party's core belief."

In ancient Rome, that same bundle of sticks, tied firmly together with the blade of an ax projecting outward, was the symbol of the unbreakable power of the state. That bundle is called a fasces. It is both the namesake and symbol of fascism. Centuries later, Benito Mussolini adopted it as the symbol of his collectivist, authoritarian social order.

This is not to suggest that Tom Daschle is a fascist. It is, however, both apt and telling that the Democratic leader of the Senate would unwittingly select the fasces as the symbol of his party. Later in the speech, the Senator makes this promise: "Al Gore and Joe Lieberman will strengthen America's bundle." Give me a break.

— Scott Chambers

**Post Hoc, Propter Hoax** — Today's news informs us that the homicide rate is up in the Bronx and that most of these murders are "drug-related." Now Joe Six-pack hears this and naturally concludes drugs cause crime. Just imagine old Joe Six-pack's opinion if he heard instead that the deaths were "Drug War-related" or "related to the continued illegality of drugs."

— Barry Loberfeld

**He had soul** — I now believe in the soul. I've seen Joseph Lieberman sell his.

— Sheldon Richman

**The East German Bikini Team** — For years, everyone joked about the masculine appearance of the East German women athletes. Even a beer company made commercials, using overweight middle-aged men in women's swimsuits to play the East German women's swim team. Leftward journalists laughed off any accusation of hormonal manipulation as paranoid fantasy. Medical experimentation was the realm of Right Wing Fascists, and would never occur in the Workers' Paradise. Just recently, a Berlin court convicted Manfred Ewald and Manfred Hoepfner of giving steroids to East German women athletes, under the guise of

vitamins, throughout the Seventies and Eighties. Apparently 142 women were given male hormones, one of them in such quantity as to require a complete sex change. The Olympics are supposed to be a competition of pure human achievement, of human beings stretching the limits of their physical selves, and the games have strict rules against doping and has equated it with cheating.

Yet the Games are hospitable to other ways of enhancing performance with modern technology. Bicycles and shoes are made of space-age composites, designed on supercomputers, and tested in wind tunnels. Swimmers now wear specially designed clothing to make them move through the water faster. Olympic athletes use video recording and computer imaging. Can you imagine how high today's pole vaulters would go if they still used bamboo poles instead of today's high-tech poles of exotic materials designed to give maximum spring?

But for some reason, when an athlete gets an advantage through pharmaceutical science, he is forced to resign in disgrace. I think if we're already going to use technology, we should involve bio-tech. Why not let scientists develop super-athletes through the use of growth hormones? Even start from the womb with genetic manipulation. Imagine what a runner you could create if you could splice giraffe genes into a human embryo. Think how fast a dolphin/human hybrid could swim. I predict there will be tests in the future to ensure genetic purity of athletes.

A truly modern Olympiad would also involve motor-sports. As long as we're breaking running records, why not go for the land speed record at the same time? Let American Indy race cars go up against European Grand Prix. Invite monster trucks from all over the world to compete in a World Championship Crush-off. (I think America would be undefeated in a monster truck competition.) The snooty Olympics committee would forbid such a show, but damn their whiny euro-attitudes. You want Capitalist American Dollars, you take Capitalist American Sports. Up next, drag racing and surfing, the California Biathlon!

— Tim Slagle

**Shrugging off Mugabe** — I read in *The Wall Street Journal* that Robert Mugabe and his gang of thieves have cut off lending to Zimbabwe's white farmers, raising food shortage concerns. Too bad. Perhaps a famine will be incentive enough for the populace to provide passage for Mugabe and his entourage to a safe haven. Perhaps France. Until then, maybe the white farmers should accede and give up their land.

Remember the scene from *Atlas Shrugged* in which Ellis Wyatt was faced with the same looting mob? The farmers should take heed to the sign in front of Wyatt Oil as it was burning to the ground: "I am leaving it as I found it. Take over. It's yours."

— Ivan Santana

**Serving the hive** — In *Earth in the Balance*, Al Gore discusses his collective vision of society: "Each individual, like a single small part of a holographic plate, reflects, however, faintly, a representation of the sum total of the values, choices, and assumptions that make up the society of which he or she is a part." All of us are part of everything — everything must be decided, therefore, "democratically and collectively."

Gore doesn't understand that civilization has become possible only by specialization, by creating institutions that compensate for our inability to become knowledgeable about even a modicum of the knowledge base on which our modern society exists. (Recall Leonard E. Read's famous little essay, "I, Pencil," in which he points out that nobody knows how to make a pencil.) Gore doesn't know much science — no surprise for the Chief AirHead of this Administration — but he doesn't know much about politics either, and that's a bit more surprising.

— Fred Smith

**Anarchy, State, and Dystopia** — Growing up in late-20th century America, most of us were taught to view the state as the necessary condition for social peace. Especially if we went to public school, we absorbed a kind of subliminal Hobbesianism: without a strong central government, we'd all be at each other's throats, in a bloody war of all against all. Of course, the study of history teaches us that life under the worst states — Stalinist Russia, Maoist China, Nazi Germany — is far worse than life under the worst statelessness. Still, it's sometimes hard to get above your raisin', intellectually. Perhaps that's why when genocide swept Rwanda in 1994, I thought to myself: "My God: it's total anarchy!"

I should have known better. In his horrific — and horrifically interesting — book on the Rwandan genocide, *We Wish to Inform You That Tomorrow We Will Be Killed with Our Families*, reporter Philip Gourevich dispels the popular myth that the mass murder of the Rwandan Tutsis was the result of anarchic, unplanned violence. Gourevich writes, "In 1994, Rwanda was regarded in much of the rest of the world as the exemplary instance of the chaos and anarchy associated with collapsed states. In fact, the genocide was the product of order, authoritarianism, decades of modern political theorizing and indoctrination, and one of the most meticulously administered states in history." The genocide was planned at the highest levels of the Rwandan government, and orchestrated with the help of state-run radio. Mass murder followed logically, if not inexorably, from the governing philosophy of Rwanda's ruling class: systematic discrimination against the Tutsi minority by the Hutu majority. This philosophy, racial identity politics taken to staggering extremes, was known as "Hutu Power." The Hutu Power Elite had, years before the genocide, adopted a system of state-sponsored discrimination that would give even Al Sharpton pause. As Gourevich describes it, "to give extra teeth to the quota system a reverse meritocracy was imposed on Tutsis competing for the few positions available: those with the lowest scores were favored over those who performed best."

As Gourevich's book demonstrates, Rwanda's problem was not a weak central government — just the opposite. The Hutu Power State created the conditions for the worst mass killings since the Khmer Rouge. And, more broadly, the Rwandan example suggests that our teachers were wrong: if it's the war of all against all you're worried about, establishing a state is a loser's gamble.

— Gene Healy

**Teach this!** — Al Gore admitted that he spent the night before his acceptance speech with a teacher. Probably just brushing up on the spelling of potato, and his knowledge of world leaders in case he's subjected to any of the

grade school questions his Republican counterparts had to answer.

— Tim Slagle

**Cookie, Monster** — Wasn't it interesting to learn that the White House slammed Barry "Czar" McCaffrey ("B-Czar") for forcefeeding "cookies" to unknowing visitors to his office's website? Apparently, the Administration realizes that B-Czar's cookies are as unpopular with the public as hash brownies are with B-Czar.

— Douglas Tyler

**Saints be praised!** — A recent wire story (Reuters) quotes Fidel Castro as saying that Jesus Christ chose fishermen as his first disciples because he was a communist. He also noted that Ernesto "Che" Guevara would have been canonized if he were Catholic because he had "all the virtues."

Saint Guevara? That has an interesting ring to it. Maybe we should recap the "virtues" that Castro was referring to (courtesy of *The Black Book of Communism*):

- In his will, he praised the "extremely useful hatred that turns men into effective, violent, merciless, and cold killing machines."

- As state prosecutor in La Cabana prison, he executed a great number of people, including his former comrades-in-arms who refused to abandon their democratic beliefs. "I can't be the friend of anyone who doesn't share my ideas," he once said.

- Though claiming to despise money, he spent his life in one of the rich, private areas of Havana.

Ah yes, the virtues of Che.

— Niklos Leverenz

**Net taxes** — Politicians get nervous when they think something is going to take away the tax revenues that they lovingly redistribute in an effort to buy votes.

And the rise of the Internet and electronic commerce has state and local governments — especially those that rely heavily on sales taxes — terrified.

So scared out of their wits that South Dakota Governor William R. Janklow, a Republican, has threatened to have state troopers pull over United Parcel Service delivery trucks so taxes can be assessed and collected on purchases coming in from out-of-state.

Those who want to keep the tax floodgates wide open argue, just as the opponents of California's Proposition 13 did, that government revenue reductions could have a devastating impact on government-provided services such as education, emergency fire response, and road building.

Those who would tax so-called remote — or out-of-state — sales say that if the Internet continues to grow exponentially, as many expect it will, states stand to lose out on more than \$10 billion a year in uncollected sales tax revenues by 2003, and they fear the foregone revenues could balloon in subsequent years. There is, however, no evidence yet of a trend toward such a revenue drain. And even if there were, \$10 billion is pocket change in the age of the gigantic welfare state.

Austan Goolsbee, a University of Chicago economist, suggested some officials may have ulterior motives: "Most state revenue officials, whenever they see growth rates of the magnitude that we've seen with e-commerce, get very nervous . . . they don't like the activity and want to control it."

Admittedly, at first glance it does seem "unfair" that



some transactions conducted over the Internet escape sales tax.

But there's a very good reason for that.

The fact that some sales escape the clutches of the tax man, is the result of an eminently sensible 1992 Supreme Court decision, *Quill Corp. v. North Dakota*, 504 U.S. 298. In *Quill*, the court correctly decided that permitting states to force out-of-state sellers to collect their sales taxes would be unconstitutional because it would place undue burdens on interstate commerce. In other words, the forty-five states that have a sales tax are free to tax commerce within their physical borders, but not outside them.

Had the court not ruled this way, the constitutional ground rules governing commerce in this country would have been fundamentally altered. The seeds could have been sown for what some have recently called an "Electronic Confederacy" or an "Internet Iron Curtain" in which states would be free to establish "Internet toll booths" and levy taxes beyond their borders.

Years before most people had heard of the Internet, the court recognized the danger of changing the rules. Referring to the relative chaos that was America in the 1780s, the court made it clear that it wanted to avoid the situation "under the Articles of Confederation," in which "state taxes and duties hindered and suppressed interstate commerce." The court noted that "the Framers intended the Commerce Clause as a cure for these structural ills."

And Fred L. Smith Jr., president of the Competitive Enterprise Institute, has raised another serious constitutional concern.

Smith has said that changing the current rules governing taxing out-of-state purchases would lead to "taxation without representation."

"When you can extend the tax reach to people who do not have a chance to vote you out of office, it is far too tempting, and I think it's far too politically attractive and wrong," he said.

Expanded collection duty advocates already had a previous kick at the can. Out of fear that untaxed mail-order and catalog sales would drain their treasuries, state and local governments raised parallel arguments in the 1967 case, *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U.S. 753, which the Supreme Court also correctly rejected.

To prevent a sales tax free-for-all and protect the principles of limited government embodied in the *Quill* decision, Rep. Christopher Cox (R-Calif.) and Sen. Ron Wyden (D-Ore.) have championed the proposed Internet Nondiscrimination Act. The bill would continue the 1998 prohibition of "new, multiple, and discriminatory" taxes online an additional five years to 2006, rescind existing Internet access taxes and preclude the imposition of Internet access taxes in the future, in accordance with the majority recommendations of the Advisory Commission on Electronic Commerce.

The pending legislation, although it would also prohibit the taxation of recorded music, books, and their "digitized" equivalents capable of being downloaded, would not — contrary to misinformed media reports and popular opinion — touch the existing sales and use tax system which sets new

records for revenue collection just about every year.

In May, just a month after the advisory commission handed down its report, the House of Representatives approved the bill on a 352-to-75 vote. Despite the vocal support of leading Republicans, opponents have stalled the measure in the Senate.

The issue has split lawmakers who normally revel in anti-tax rhetoric, the congressional Republicans, pitting GOPers like Speaker of the House Dennis Hastert (R-Ill.), Rep. Dick Armey (R-Texas), and Senate Majority Leader Trent Lott (R-Miss), against Sen. Phil Gramm (R-Texas), Sen. Pete Domenici (R-N.M.), and Sen. George Voinovich (R-Ohio), who say the bill is an attack on states' rights.

Most of the states are currently pushing hard to expand sales tax collection duties to sellers beyond their borders. Even Minnesota Governor Jesse Ventura, whom so many libertarians admire, has been enlisted in the campaign.

But Virginia Governor James S. Gilmore, the Republican who chaired the advisory commission and who promotes himself as a tax-hating crusader, has pointed out that state treasuries are "overflowing with liquid cash" and simply do not need the money.

Gilmore has said the only thing the rise of Internet-based commerce threatens is existing government structures.

The Internet is altering the way people make purchases and the way they think. Private companies have to adapt to changing times, and governments do too, he said.

If electronic commerce renders the current sales tax system obsolete, then governments will just have to come up with new methods of raising the revenues they need, he said.

In other words, expanding tax collection duties will only fatten the tax monster and help maintain the status quo: big government.

— Matthew Vadum

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## Letters, from page 6

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would have undoubtedly been in the tertiary stage of syphilis and not responsive to antibiotics.

Also, burning down Japanese homes and industry had a major effect on the collapse of the Japanese War Machine. On VJ Day, the Japanese industrial output was essentially zero. For the High Command to continue the war, they would have had to rely solely on stockpiles of weapons and fuel.

Ron Greimn  
Orange, Calif.

## Smile When You Say "Sellout"

I sat down to read Stephen Cox's review of Robert Novak's new book ("Reclaiming the Republican Dream," August) on the day after the Republican Convention. A marvelous sense of timing, I would say, since it allowed me to consider Cox's comments from the perspective of the convention.

I have been, over the years, a regular viewer of "The Capital Gang," and have, to some small degree, appreciated Novak's attempts to bring some measure of intelligence to the show. And, perhaps like Cox, I would like nothing better than to wipe the smirk off of Margaret Carlson's face, not to

continued on page 32

# The FBI's Pet Carnivore

by Bart Kosko

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

— Fourth Amendment, United States Constitution

Now the FBI wants to recruit Internet service providers (ISPs) to spy on U.S. citizens. The FBI already works with the credit companies to secretly snoop large portions of our digital credit reports per the 1996 Intelligence Authorization Act. The FBI has installed digital wire-tapping equipment directly in phone companies per the Communications Assistance to Law Enforcement Act that passed in the last hours of the last Democrat Congress in 1994. And the Treasury Department's Financial Crimes Enforcement Network has "deputized" all banks to monitor our bank accounts and to secretly file "suspicious activity reports" that it shares with the FBI and IRS and even with some foreign governments.

The FBI calls its new ISP surveillance software "Carnivore" and developed it at its Engineering Research Facility in Quantico. An agent connects a laptop computer to the ISP server and then reads at least the header of every e-mail message that passes through the server. The FBI claims that Carnivore can scan millions of e-mails per second. The Carnivore software itself uses the Microsoft Windows NT operating system.

Carnivore breaks new legal ground because it searches through all the ISP's communications and not just that of the suspect. The ISP has no control over the process or any knowledge of what the FBI removes from its server. Yet the FBI's own Carnivore website states that "The system is not susceptible to abuse because it requires expertise to install and operate, and such operations are conducted, as required in court orders, with close cooperation with the ISPs."

Attorney General Janet Reno has called Carnivore a "wonderful tool." She said on August 10th that she will now let an unspecified "university review team" study at least part of its source code to address mounting privacy concerns both from civil libertarians and from members of Congress. Assistant Attorney General Steve Colgate said the Justice

Department will work with the FBI to pick the university. The Justice Department says it does not want to release Carnivore's source code because it contains commercial (Microsoft) code and because suspects might use the source code to beat Carnivore. But the Justice Department may have no choice.

The ACLU and the Electronic Privacy Information Center (EPIC) have each asked the FBI for the source code to all these sniffer programs and for all related FBI correspondence under the Freedom of Information Act. The ACLU and EPIC also asked for all software and information related to the FBI's other Internet "sniffer" programs called "Omnivore" and "Etherpeek." The ACLU and EPIC argued that the FBI should expedite these document requests because of privacy concerns and pending Congressional legislation.

A federal court dealt the FBI its first blow on Carnivore on August 2nd: U.S. District Court Judge James Robertson granted EPIC's motion for an injunction against the Justice Department. Judge Robertson's ruling gave the FBI until August 16th to provide EPIC with a timetable of how it will give EPIC the software and documents it seeks. The FBI said it would release 3,000 pages of documents starting in 45 days. EPIC asked Judge Robertson on August 17th that the FBI complete its document release by December 1st. The ruling is a breakthrough in itself even though the Federal Circuit Court of Appeals for the District of Columbia can overrule all or part of it. The FBI has in the past refused to comply with like Freedom-of-Information-Act requests that

deal with its tools and methods of electronic surveillance. The Act itself contains several exemptions for law enforcement.

### **The FBI Testifies Before Congress on Carnivore: Trust Us**

The first news about Carnivore broke on April 6th when Attorney Robert Corn-Revere testified before the House Judiciary Committee's Subcommittee on the Constitution. Corn-Revere testified on behalf of ISP Earthlink. The FBI had forced Earthlink to install Carnivore to carry out a "trap and trace" wiretap order. Such wiretaps give the state the right to intercept only the telephone numbers of calls that someone makes or receives from a given phone line. Trap-and-trace orders do not allow the state to intercept the content of a

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*This 'trust us, we are the Government' approach is the antithesis of the procedures required under our wiretapping law.*

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phone conversation. Earthlink feared that letting Carnivore scan the headers of all its e-mail traffic revealed too much user information.

Then the FBI ran a public Carnivore "demo" at the June meeting of the Telecommunications Industry Association in Washington. The Federal Communications Commission had asked the FBI to demonstrate Carnivore at this meeting as part of the FCC's partial oversight of FBI surveillance procedures. An FBI technician supposedly said that the FBI chose the name "Carnivore" because the software system is smart enough to "find the meat" in targeted e-mails.

*The Wall Street Journal* ran a short Carnivore article on July 11th. Then House Majority Leader Dick Armey issued a statement on July 12th that asked Janet Reno and FBI Director Louis Freeh to "stop using this cybersnooping system until Fourth Amendment concerns are adequately addressed." Many newspapers have since mentioned the story (the *Los Angeles Times* ran my own Carnivore editorial on July 27th and then released it for syndication).

The big event occurred on July 24th when FBI officials testified before the same House Constitution Subcommittee before which Earthlink's attorney had testified in April. FBI Assistant Director Donald Kerr told Congress that the FBI has used its Carnivore software 25 times in the last two years to search for terrorists or drug dealers or child pornographers. Kerr oversees the FBI's Laboratory Division. He said that the FBI has used Carnivore 16 times so far in 2000: six times in criminal cases and ten times in national-security investigations. None of the cases have yet come to trial.

Kerr told Congress that the FBI needs Carnivore's search-'em-all software to find and catch criminals when they use the Internet. But Kerr insisted that the FBI conducts such electronic surveillance only with a court order except in emergency cases when "the Attorney General, the Deputy or the Associate Attorney General may, if authorized, initiate electronic surveillance of wire or electronic communications without a court order but only if an application for such order is made within 48 hours after the surveillance is initiated." Kerr said the FBI was well aware of the penalties for abusing

wiretaps: "The illegal, unauthorized conduct of electronic surveillance is a federal criminal offense punishable by imprisonment for up to five years, a fine, or both."

But Kerr said he opposed releasing the software blueprints of Carnivore: "We would have a problem with full open disclosure. When is enough enough?" That explains why EPIC had to get an injunction to force the FBI to comply with the federal statutes that permit expedited document release under the Freedom of Information Act (5 U.S.C. Sections 552 and 701).

Kerr dismissed the rumor that Carnivore was an open-ended search engine: "It does *not* search through the contents of every message and collect those that contain key words like 'bomb' or 'drugs.' It selects messages based on criteria expressly set out in the court order, for example, messages transmitted to or from a particular account or to or from a particular user." But that is just the kind of dragnet content search that the National Security Agency conducts through its global Echelon program. And Kerr here evades the crucial question of how much "content" an e-mail header contains. The FBI needs a full-blown "Title III" search warrant to search content.

Kerr touched on the ambiguity of the search-warrant status when he tried to give technical details of Carnivore: "It works by 'sniffing' the proper portions of network packets and copying and storing only those packets which match a finely defined filter set programmed in conformity with the court order. This filter set can be extremely complex, and this provides the FBI with an ability to collect transmissions which comply with pen register court orders, trap-and-trace court orders, Title III interception orders, etc." It is just this broad "ability to collect transmissions" that may violate federal statutes (18 U.S.C. Sections 2510-2522) and the Fourth Amendment.

The FBI's Congressional testimony on Carnivore was far more guarded than its testimony just 11 days before on July 13th when Principal Deputy Assistant Director David Knowlton testified before the House Judiciary Committee's Subcommittee on Crime. Knowlton spoke in support of a pending bill in the House called Child Sex Crimes Wiretapping Act of 1999 (H.R. 3484). He flatly asked Congress to give the FBI more Title III surveillance power for the alleged sake of children: "We are of the opinion that an expansion of the list of predicate offenses for Title III electronic surveillance (codified at 18 U.S.C. Section 2516(1)) to include three additional statutes pertaining to sexual exploitation of children is not only warranted but necessary."

Knowlton explicitly relied on the fuzzy notion of "child pornography" to greatly extend the FBI's wiretap authority: "Enabling the FBI to obtain Title III authority for the interception of wire and oral communications will expand our investigative and prosecutive efforts which are aimed not only at the proliferation of child pornography but at the pedophiles and sexual predators who are sexually exploiting children. For all these reasons, the FBI would like to see Title 18 U.S.C. Section 2252A Certain Activities Relating to Material Constituting or Containing Child Pornography, Title 18 U.S.C. Section 2422 Coercion and Enticement, and Title 18 U.S.C. Section 2423 Transportation of Minors added to the list of Title III predicate violations as proposed by your bill." This pending bill will likely become law. The FBI will likely use

Carnivore and other e-mail sniffers to enforce it.

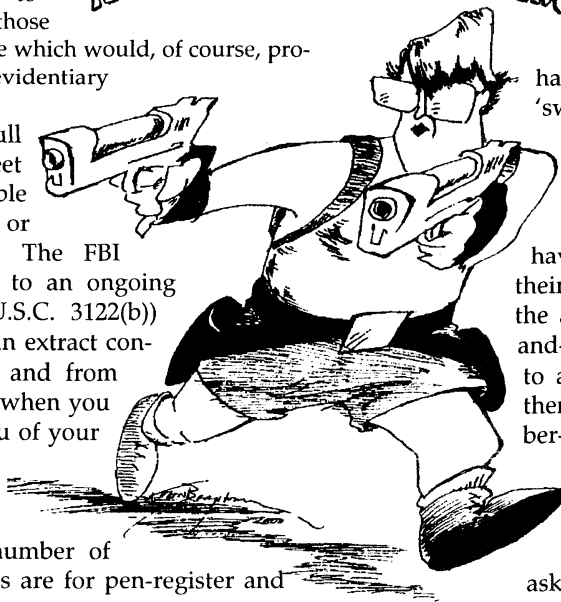
The FBI has also tried to directly rebut newspaper editorials critical of Carnivore. FBI Assistant Director John Collingwood published a rebuttal letter to the editor in *USA Today* on the same day that Kerr testified before the Subcommittee on the Constitution. Collingwood oversees the FBI's Office of Public and Congressional Affairs. He too said that Carnivore is not a content-only search and that the searches are lawful and involve careful judicial oversight:

Carnivore does not snoop through every Internet communication, does not spit out everyone's e-mail, and is not an unrestrained Internet wiretap. Court orders authorizing the intercept of a criminal's e-mails come only after rigorous review and the conclusion that there is probable cause that a crime is being or has been committed, the e-mails are about or in furtherance of that crime, and the intercept is necessary to gather evidence about the crime. The orders are specific as to whom and what can be intercepted and then the courts supervise the interception to ensure compliance. Evading those court orders is a serious crime which would, of course, produce absolutely nothing of evidentiary value.

But Collingwood knows full well that the FBI need not meet the high threshold of "probable cause" to get a trap-and-trace or pen-register search warrant. The FBI need only show "relevance" to an ongoing investigation (per Title 18 U.S.C. 3122(b)) even though such warrants can extract content from e-mail headers — and from those extra digits you type in when you work through the phone menu of your bank or broker. Only Title III content searches must surmount the probable-cause hurdle. The overwhelming number of wiretap orders the FBI obtains are for pen-register and trap-and-trace wiretaps.

Collingwood also knows that such illegal searches have evidentiary value to an ongoing investigation even if the FBI cannot use such evidence in court. Title 5 statutory exemptions to the Freedom of Information Act allow the FBI to indefinitely withhold many kinds of data and files that may well have come from an improper search. These exemptions range from information "related solely to the internal personnel rules and practices of an agency" (5 U.S.C. Section 552(b) (2)) to "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to disclose the identity of a confidential source, including state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis . . . would disclose techniques and procedures for law enforcement investigations or prosecutions" (Section 552(b)(7)).

## E-MAIL RAIDER ADVENTURES OF JANET RENO



Collingwood even honored me with a letter to the editor of the *Los Angeles Times* on August 12th. He did not cite a single complete sentence from my July 27th op-ed in the *Times* about Carnivore. But he did repeat his earlier claim that Carnivore "intercepts the specific e-mails or other computer traffic going to or from specific individuals to the exclusion of all other computer communications." This evades the central point that Carnivore must first search through thousands or even millions of e-mails before it finds the "specific e-mails" it wants to intercept. He claimed that "Only after a court concludes that there is probable cause to believe that a serious crime has been or is being committed, the e-mails to or from a specific person are about that crime and the interception is necessary to obtain evidence about the crime can an order be obtained to intercept the content of any e-mails." This ignores the fact that e-mail headers can contain content. The FBI intercepts these often content-rich headers with pen-register and trap-and-trace court orders that do not involve probable cause or any judicial finding (per statute 18 U.S.C. 3123(a)). This has led to the ACLU-Telecom lawsuit discussed below.

Collingwood further claimed that "The FBI has not been granted any new powers, let alone 'sweeping' ones, and we are not asking anyone to just 'trust' us." But the FBI asks everyone to trust it with new dragnet-search software that it so far refuses to share with privacy watchdogs. ISPs have complained that they have to trust the FBI with how Carnivore uses their servers. Judges have to trust FBI agents when the agents "certify" that the pen-register or trap-and-trace wiretap orders they seek are "relevant" to an ongoing criminal investigation — because then statute 18 U.S.C. 3123(a) forces judges to rubber-stamp the wiretap orders. And the FBI has asked Congress to trust that the FBI will not abuse the new nation-wide jurisdiction for these rubber-stamp pen-register and trap-and-trace orders that Director Louis Freeh asked for in March. Yet Freeh promised Congress in 1994 that the FBI would never use the then-pending Communication Assistance for Law Enforcement Act to expand the FBI's search power or to identify the physical location of cell-phone users. These new powers are indeed sweeping and have also led to the pending ACLU-Telecom lawsuit.

### The Legal Status of Wiretaps

The Carnivore controversy takes place amid the government's largest reported use of wiretaps in U.S. history. The FBI's own website states that "electronic surveillance has been extremely effective in securing the conviction of more than 25,600 dangerous felons over the past 13 years." But these absolute numbers do not reveal the growth in wiretaps of all forms.

Consider first Title III wiretaps for content. The term "Title III" refers to Congress's Omnibus Crime Control and Safe Streets Act of 1968 even though the relevant statutes are

in Title 18 of the U.S. Code (Sections 2510–2520). These are the gold standard of wiretaps. Only a high-ranking official at the Justice Department can approve a Title III application and then only for specific and serious crimes. A state or federal judge must approve the wiretap based on “probable cause” of criminal activity.

The Administrative Office of the U.S. Courts publishes data on Title III wiretaps in its annual Wiretap Report. State and federal judges approved a total of 872 Title III wiretaps in 1990 and that grew to 1,350 in 1999. So such wiretaps grew at an average annual growth rate of about 5 percent. But the federal Title III wiretaps grew at twice the average annual growth rate of state Title III wiretaps during the 1990s. State judges issued 548 Title III wiretaps in 1990 and 749 in 1999 for an average annual growth rate of roughly 3.5 percent. But federal judges issued 324 Title III wiretaps in 1990 and 601 in 1999 for an average annual growth rate of roughly 7 percent.

The Administrative Office data also shows that each Title III wiretap intercepts on average 1,608 innocent communications. That implies that the state monitored at least two million innocent communications in 1998 alone. The government estimates that roughly 80 percent of its wiretap intercepts are innocent. That error rate is up from about 50 percent in the late 1960s.

The Justice Department has also released data on the number of foreign wiretaps that judges have granted under the 1978 Foreign Intelligence Surveillance Act (FISA) as now codified in Title 50 U.S.C. Section 1801. These are the wiretaps that the National Security Agency often seeks. A panel of judges secretly issues them in the so-called Foreign Intelligence Surveillance Court. This secret court issues FISA content wiretaps in matters of “national security” and without the probable-cause requirement of Title III content searches. These judges granted 595 FISA wiretaps in 1990 and 886 in 1999 for an average annual growth rate of roughly 4.5 percent.

Note that in 1999 FISC judges issued more FISA wiretaps than all federal judges issued Title III wiretaps (886 versus 601). Also note (as explained below) that statute 18 U.S.C. 3122(b) forces judges to grant the less powerful but far more common “pen-register” and “trap-and-trace” wiretap orders based on little more than an *ex parte* request for them from a

law enforcement officer or government attorney.

The most startling finding is the number of Title III wiretap requests that state and federal judges have denied. State officials have requested over 20,000 Title III wiretaps from 1968 through 1996. But state and federal judges have denied only 28 of these requests or fewer than one request per 714. They denied only one Title III request in 1996. That was the first Title III request they had denied since 1988. The denial rate fell during the period 1989 through 1996 more than a full order of magnitude to just one in 7,747. So the alleged judicial oversight that Kerr and other FBI officials often cite regarding even Title III wiretaps is plainly a sham.

Carnivore and related e-mail sniffers promise to truly extend state electronic surveillance to the digital age. But Carnivore has at least six problems and each may prove fatal.

### Problem 1: Carnivore Violates The Fourth Amendment

The first and core problem with Carnivore is that it undermines the Fourth Amendment’s ban on unreasonable searches if it does not violate it outright. The FBI must still get a judge to issue a search warrant based on “probable cause” for Title III content searches. The above statistics show that this in practice means no more than that the FBI asks for the warrant.

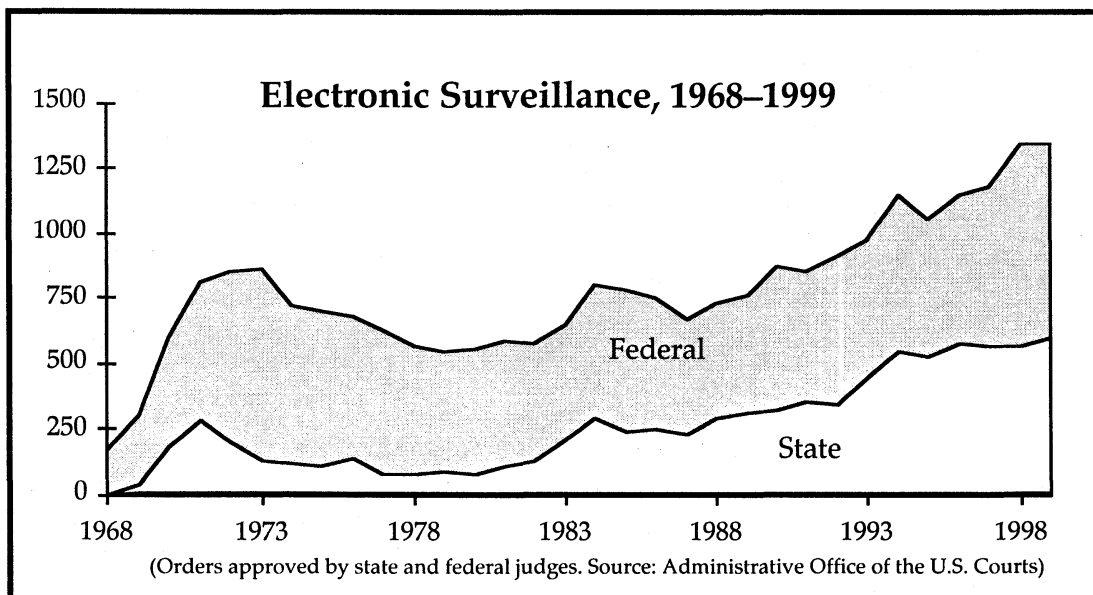
But the Fourth Amendment further demands that the warrant be *specific* — “particularly describing the place to be searched.” Carnivore seems to violate this provision on its face because it searches blindly through all private e-mails that flow through the ISP server while it looks for a suspicious few. This is as if the police have a warrant to search someone’s bedroom closet and then they search all houses in a city until they find it. The search itself invades privacy.

ACLU Associate Director Barry Steinhardt made a similar point when he testified on Carnivore before the House Subcommittee on the Constitution on July 24th:

Carnivore is roughly equivalent to a wiretap capable of accessing the contents of conversations of all of the phone company’s customers with the ‘assurance’ that the FBI will record only conversations of the specified target. This ‘trust us, we are the Government’ approach is the antithesis of the procedures required under our wiretapping law. Law

enforcement is required to ‘minimize’ its interception of non-incriminating communications of a target of a wiretap order. Carnivore is not a minimization tool.

Instead Carnivore maximizes law enforcement access to the communications of non-targets. . . . [The FBI] asks you to trust it with unsupervised access to the entire stream of communications over an ISP’s network, which can amount to literally millions of innocent





communications of non-targets of any interception order. If you accept this premise, you reject the Fourth Amendment. It is built on the opposite premise: that the Executive cannot be trusted with carte blanche authority when it conducts a search.

Carnivore switches the order of search and identification. Traditional search first identifies the suspect's property and then searches it. Carnivore searches through private databases until it identifies a suspect's property — and perhaps learns some new things along the way. This is a big leap

*The very existence of such a monitoring system produces a chilling effect on e-mail-based free speech.*

down the slippery slope of state invasion of privacy. And the very existence of such a monitoring system produces a chilling effect on e-mail-based free speech. Knowing that a state police agency will read at least part of your e-mail message affects what you say in that message.

## **Problem 2: Congress Cannot Trust The FBI**

The second problem with Carnivore is that neither Congress nor anyone else can trust the FBI based even on its recent anti-privacy actions. FBI spokesmen continue to claim that the public can trust the FBI to police itself with Carnivore and like e-mail sniffers. But the recent experience with the 1994 Communications Assistance for Law Enforcement Act (CALEA) shows otherwise.

CALEA forced phone companies to install wiretap devices or so-called "call setup information" systems directly at the companies. The FBI argued for this law because it said it was losing its ability to tap digital phones. FBI Director Louis Freeh assured Congress that he sought no new powers for the FBI under the proposed CALEA legislation. Freeh told Congress that CALEA would "provide law enforcement no more and no less access to information than it had in the past" (Testimony of Louis Freeh, H.R. Rep. No. 103-827, pt. 1 at 22, 1994).

Freeh specifically said that the FBI would never use CALEA authority to find the physical location of someone speaking on a cell phone: "[Call setup information] does not include any information which might disclose the general location of a mobile facility or service, beyond that associated with the area code or exchange of the facility or service. There is no intent whatsoever, with reference to this term, to acquire anything that could properly be called 'tracking' information" (Joint Hearing on H.R. 4922 and S. 2375, 103rd Congress 29, 1994).

Yet last year the FBI convinced the Federal Communications Commission (FCC) that CALEA gives law enforcement the power to force a wireless carrier to give them a cell-phone speaker's location at the start and end of his call. The FCC issued this shocking order despite the plain language of the CALEA statute that denies law enforcement just such power: "Call identifying information shall not include any information that may disclose the physical location of the subscriber" (47 U.S.C. Section 1002(a)(2)(B)).

The FBI has also argued before the FCC that CALEA gives it the right to acquire the content of digital (packet-based) phone calls solely on the authority of a pen-register or trap-and-trace order even though such orders authorize law enforcement only to intercept phone numbers. This is a plain attempt to sidestep a Title III order. The FBI has further argued that CALEA endows the same pen-register or trap-and-trace orders with access to those extra digits a caller punches in after dialing a number for connection even though most of those extra digits convey content. This is another attempt to sidestep a Title III order and to broaden the FBI's surveillance powers.

The FCC's pro-FBI decisions in the CALEA case have led to a major lawsuit. Privacy firms and telecommunications firms filed suit in January against the FCC in the Federal Circuit Court of Appeal for the District of Columbia. The suit asked the court to vacate the FCC's pro-FBI CALEA order from last August. The petitioners include the ACLU, EPIC, the Electronic Freedom Foundation, the United States Telecom Association, and the Cellular Telecommunications Industry Association. Intervenor in the litigation include Air Touch, Sprint, U.S. West, and the Personal Communications Industry Association.

The appeals court dealt the FBI a major blow on August 15th when it vacated the FCC's 1999 order that had let the FBI gain access to phone digits dialed after a connection. The court plainly said both that "post-cut-through dialed digits can also represent content" and that "it may be that a Title III warrant is required to receive all post-cut-through digits." The court remanded this portion of the FCC order back to the FCC and thus back to the FBI for "further proceedings consistent with this opinion." But the appeals court did agree that CALEA forces wireless carriers to give law enforcement the

*Carnivore breaks new legal ground because it searches through all the ISP's communications and not just that of the suspect. It's as if the police have a warrant to search someone's bedroom closet and then they search all houses in a city until they find it.*

first and last antenna towers that a mobile phone uses to connect at the start and end of a call. But it confirmed that "antenna location information could only be obtained with something more than a pen register order." The court did allow access to packet-data content but only with the appropriate Title III warrant: "although the [Federal Communications] Commission appears to have interpreted the j-standard as expanding the authority of law enforcement agencies to obtain the contents of communications, the Commission was simply mistaken.

The appeals court flatly denied the new content-search powers that the FBI had sought and has been using since at least last August: "CALEA authorizes neither the Commission nor the telecommunications industry to modify either the evidentiary standards or procedural safeguards for securing legal authorization to obtain packets from which call content has

not been stripped, nor may the Commission require carriers to provide the government with information that is 'not authorized to be intercepted.'" The court also made clear that the FBI cannot use CALEA powers in anyway to search e-mail: "CALEA does not cover 'information services' such as e-mail and Internet access."

The FBI has simply lost its credibility in pursuit of new CALEA powers. That should not just keep Congress from trusting the FBI to police itself with how it uses the ever-evolving software of Carnivore and the FBI's other Internet sniffers. It should be enough for Congress to investigate the FBI.

### Problem 3: E-mail Headers Contain Content

The third problem with Carnivore is that it often reads e-mail content when it has authority to read only e-mail addresses. This problem is both legal and technical. It involves the Supreme Court's view of the Fourth Amendment and stems from the packet-switching nature of Internet communication.

Consider mailing a letter to a friend. The letter's envelope contains the public address. Anyone who handles the envelope has a legal right to read its address. The letter inside the

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*Internet users might think twice before they visit some websites if they knew the FBI would see their names or addresses there.*

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envelope is the "content" and has legal privilege. The state needs a court order to see that content.

The same holds if you phone the friend and speak the same message content to him. The message itself enjoys a constitutional privacy protection while the phone number does not. The Supreme Court held in its 1967 case *Katz v. United States* that the Fourth Amendment gives you a reasonable expectation of privacy in your phone conversations. Thus the state needs a Title III warrant to intercept a phone conversation. But then the Supreme Court held in its 1979 case *Smith v. Maryland* that the Fourth Amendment does not give you a reasonable expectation of privacy in the numbers you dial. So law enforcement agencies do not need a Title III warrant to intercept the phone numbers you dial or the numbers of those who dial you.

The state needs only a pen-register or trap-and-trace order to intercept these phone numbers (per 18 U.S.C. Section 3123). These orders involve little more than a judicial rubber stamp. Statute 18 U.S.C. 3123(a) states that a law enforcement officer or government attorney need only have "certified to the court that the information likely to be obtained by such installation is relevant to an ongoing criminal investigation." The statute does not even require that a judge make the finding of relevance let alone require a finding of probable cause or imminent criminal action. The state agency need only *assert* or "certify" this relevance and indeed do so in a semi-secret *ex parte* hearing. The statute forces the judge to issue the pen-register or trap-and-trace order when any law enforcement officer or government attorney asserts this relevance. That itself explains why almost all FBI and other state wiretaps are pen-register or trap-and-trace orders rather than Title III con-

tent orders. State agencies need do little more than ask for them.

Yet FBI Director Louis Freeh has asked Congress to extend the power of these rubber-stamp orders. Freeh testified on March 28th before the Senate's Judiciary Committee's Subcommittee for Technology, Terrorism, and Government Information. He first called out the non-content limits of pen-register and trap-and-trace orders and then asked the Senate members to extend the scope of these rubber-stamp orders from local court jurisdictions to the entire nation: "Like all law enforcement agencies, the FBI relies upon the pen-register and trap-and-trace provisions contained in 18 U.S.C. Sections 3121 (et seq.) to seek court approval to acquire data identifying non-content information relating to a suspect's communications. . . . Under current law, however, valuable time is consumed in acquiring individual court orders in the name of each communications company for each newly discerned link in the communication chain even though the legal justification for the disclosure remains unchanged and undiminished. [Proposed Senate bill] S. 2092 would amend 18 U.S.C. Section 3123(a) to authorize Federal courts to issue one nation-wide order which may then be served upon one or more service providers." Freeh's proposed new powers would further weaken the already weak limits on pen-register and trap-and-trace orders and do so just when Congress needs to clarify and strengthen them.

The FBI has used pen-register and trap-and-trace orders to search for content both in the post-connection digits that a suspect dials and in phone-pager messages as well. That again is what the FBI persuaded the FCC to let it do under the 1994 CALEA statutes. But the FBI also persuaded the FCC that CALEA gives the FBI access to both the header and content of e-mail packets — hence the ACLU-Telecom lawsuit. The D.C. Circuit Court's ruling on August 15 plainly forbids this. And Justice Department officials told the House Subcommittee on the Constitution in April that the Justice Department regularly obtains e-mail addresses through the 18-U.S.C.-3122(b) process for obtaining pen-register and trap-and-trace orders. This shows one legal strategy that the FBI can and likely does use to feed millions of e-mail addresses to Carnivore without ever

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*Carnivore's software blueprints and performance quirks will leak to the digital underground despite of those who oversee it.*

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getting the Title III probable-cause court orders that Assistant Directors Kerr and Collingwood described.

The packet-switching nature of e-mail traffic tends to endow e-mail addresses and header information with content. Suppose again that you send your friend a message but this time you send it by e-mail. Many users think that the e-mail shoots from your computer to his in one long stream of 1s and 0s. But that postal analogy fails. Your computer chops the message into sub-messages and attaches header information to each sub-message to form a packet much as if you cut up the hardcopy letter into pieces and mailed them separately in tiny addressed envelopes.

A sub-message's header information states where the sub-message came from and where it is going and how it fits together with the other sub-messages (somewhat like the word endings in an inflected language like Latin). Then the packets take off over their own Internet paths to get to their final destination. The packets each tend to arrive at different times and from different paths that in some cases may involve different countries or even different continents. Carnivore reads the headers of all such packets as they leave and arrive at the ISP. Then it tries to identify those packets that somehow deal with the suspect. This is a far more complex and dubious process than just opening everyone's letters at the local post office. Carnivore can also read the packets involved in chat rooms and other forms of Internet communication.

E-mail headers can contain content in many ways. The most obvious way is the subject line: "She said yes!" or "Call 911" or simply "No." You can communicate the content of any message simply by putting enough parts of it in enough e-mail subject lines. Would-be terrorists and other cautious types have surely found clever ways to communicate with subject lines. The address itself tends to be alphanumeric and can contain content. And e-mail addresses clearly are more personal than phone numbers. Clever users might use different address names to convey different messages. This is especially true for those who send messages. We do not yet know whether the government counts the subject lines and the carbon-copy or "cc" lines as part of the e-mail address. But it is a good bet that they do or at least have in the past. So pen-register and trap-and-trace orders can give the FBI access to

these sources of content just as the FBI already uses them to gain access to the content in e-mail addresses.

Internet users might think twice before they visit some websites if they knew the FBI would see their names or addresses there. This reflects the behavioral aspect of content. Law enforcement can now use pen-register and trap-and-trace orders to see the e-mail addresses of those who visit a website or download a file or enter a chat room. That information itself can help build digital profiles of suspects and non-suspects alike. The FBI might also use these same rubber-stamp orders to find out the file names or web addresses or other header information that a suspect uses. Any of these FBI actions may prove illegal and may even be illegal right now.

Congress clearly should strengthen the statutory requirements for getting a pen-register or trap-and-trace wiretap order. And the Supreme Court may well have to intercede to draw the line between digital content and non-content. Meanwhile Carnivore and the other FBI dragnet sniffers draw their own lines.

#### Problem 4: E-mail Has Less Legal Protection Than Phone Calls

The fourth problem is that Carnivore takes advantage of e-mail's weak legal protections. The legal irony of e-mail is that the e-mails we tend to value most are those that we store the longest — yet these are just those that have the least legal protection.

We speak spontaneously on the phone and in e-mail messages. We seldom store phone messages but we cannot even read an e-mail message unless a server has already stored it

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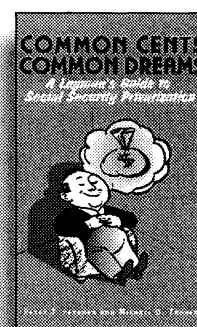
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for at least a few seconds or even a few fractions of seconds. We talk on the phone to each other in real time but we seldom speak in real time through e-mail. That distinction makes all the difference to the Electronic Communications Privacy Act (ECPA) of 1986 and the Title 18 statutes that codify ECPA.

The FBI still needs a Title III warrant under ECPA to intercept the contents of an e-mail message in *real time*. But statute 18 U.S.C. Section 2703 greatly lowers the bar for a stored e-mail message even if the storage lasts only seconds: "A gov-

*The Justice Department says it does not want to release Carnivore's source code because suspects might use the source code to beat Carnivore. But the Justice Department may have no choice.*

ernment entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant."

This means that FBI agents need only get a probable-cause search warrant from a federal magistrate rather than a full-blown Title III court order from a federal judge. And "any attorney for the government" can approve the warrant application. It need not be a high-ranking official at the Justice Department. FBI agents can exploit this storage technicality when they seek authorization to intercept the content of e-mail messages that pass before Carnivore in real time. They need wait only one second while the system stores the message. Then the legal limits on their surveillance powers will have loosened.

A stored e-mail's legal status falls further after 180 days of storage. Then statute 18 U.S.C. 2703(b) applies and the FBI can obtain the entire e-mail message with only an administrative subpoena and a mere showing of "relevance" to an ongoing investigation. There also is no statutory "exclusionary rule" for this or any other type of e-mail as there is for wiretaps and electronic bugs. This absence means law enforcement officers need not follow the same strict procedures for wiretaps or bugs.

It is not the FBI's fault that an e-mail message has less legal protection than an equivalent phone call has. That fault lies squarely with the Supreme Court and Congress. The growing use of e-mail may someday lead either of these two law-making bodies to revise the ECPA statutes and give stored e-mail messages the same legal status that real time phone messages have. Or Carnivore abuses themselves may lead to these changes.

### **Problem 5: The FBI Does Not Need Carnivore**

The fifth problem is that the FBI does not need Carnivore to search for alleged criminal e-mails. House Representative John Conyers Jr. (D-Mich.) raised this issue to FBI Assistant Director Kerr when Kerr testified before him at the July 24th

hearing on Carnivore: "Why do we need to put terminals on site at the ISPs rather than let the ISP itself turn over needed information much in the way that telephone companies do?" Kerr conceded this point but claimed that the FBI still needs Carnivore for those ISPs that lack filtering software. Note that the FBI's whole case for Carnivore rests on this one contingency.

The FBI's Carnivore website echoes Kerr's point: "Because many Internet Service Providers lacked the ability to discriminate communications to identify a particular subject's messages to the exclusion of all others, the FBI designed and developed a diagnostic tool called Carnivore. . . . This type of tool is necessary to meet the stringent requirements of the federal wiretapping statutes. The Carnivore device works much like commercial 'sniffers' and other network diagnostic tools used by ISPs every day, except that it provides the FBI with a unique ability to distinguish between communications which may be lawfully intercepted and those which may not."

But this FBI argument is plainly specious: the FBI or oversight sources could simply give such ISPs this filtering software or instruct them on how to modify their own filtering software. There is simply no need to grant the FBI such sweeping powers of search and then trust the agency to police itself as those powers inevitably grow in time.

### **Problem 6: Carnivore Will Ultimately Fail**

The final problem is that Carnivore ultimately will not work despite all its costs. The criminals whom Carnivore tries to watch are the very persons who will take the two obvious steps to evade it: they will change their fake digital IDs more often and they will use ever more powerful digital encryption

*The FBI has in the past refused to comply with like Freedom-of-Information-Act requests that deal with its tools and methods of electronic surveillance. The Act itself contains several exemptions for law enforcement.*

to scramble their messages. It does not take a hacker to make these simple Internet adaptations. Many criminals have likely already made them.

Carnivore's software blueprints and performance quirks will leak to the digital underground despite or because of the best efforts of those in Congress or the judiciary who oversee it. Janet Reno's "university review team" will itself leak this information. And hackers will surely study the software system and maybe crack it.

The final result is a textbook policy inversion: the only persons Carnivore can reliably watch are the innocent citizens whom it has no right to watch. This sets a foolish and dangerous precedent for the type of heavy-handed government surveillance one would expect to find in Myanmar or China.

The only thing right about Carnivore is its name: this digital beast devours both personal privacy and constitutional limits on state police power. Congress should kill it. Then Congress should investigate the investigators. □

# Rockin' for a Free World

by Sarah J. McCarthy

Rebellion against authority is what rock 'n' roll is all about.

This past May, on the 30th anniversary of the 1970 Kent State shootings of anti-Vietnam War protesters by the Ohio National Guard, Grove City College professor Paul Kengor wrote an article in *The Pittsburgh Tribune Review* denouncing as “slanderous” Neil Young’s haunting lyrics from “Ohio”:

Tin Soldiers and Nixon’s coming,  
We’re finally on our own,  
Four dead in Ohio.

Kengor, an earnest social conservative and free-market advocate with libertarian leanings condemns the lyric as a “true abomination” that “underscores Young’s ignorance and unfairness, as well as those who exalt the line.” He cannot resist piling on:

The fact is that Young’s famous song “Ohio” suggests Nixon is responsible for the killings of those four kids at Kent State. That’s wrong. That’s bad. That shouldn’t be excused. I grew up thinking Nixon ordered the killings of those four kids, and it was because of the lyrics in that song. Now that I know better, I’m outraged. To borrow a phrase from Young, you can’t always be 20 on Sugar Mountain. [Young’s use of] artistic license is dishonest because it enables the writer to escape responsibility through obfuscation and subtlety by using a clever line that is not totally clear.

Well, hey, hey, my, my, the politically correct never die. Young’s weaving of compelling music with leftish-libertarian political commentary has long annoyed and upset Southern men and social conservatives. What is it about the tone and nuance of the arguments of many social conservatives, who otherwise like to think of themselves as freedom lovers, that so often reminds me of the rigorous political correctness of Catherine MacKinnon, the Queen of Sexual Harassment Law? Like hard-core victim feminists lacking in restraint and tolerance, social conservatives seem to have a special revulsion for American popular culture — Gertrude Himmelfarb in *The De-Moralization of Society*, Judge Robert Bork in *Slouching Towards Gomorrah*, William Bennett in *The Death of Outrage*.

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“Abomination” is a word that few people other than religious zealots use, an Old Testament, Elmer Gantryish sort of word that most people use only in connection with things like mass killings, exterminations in concentration camps or genocide. Applying words like “slander” and “abomination” may occasionally apply to the woman-hating sexual violence of certain rap groups, but applying such vitriol to the lyrics of a masterful musician like Neil Young is quite a stretch, and to use such terms against gays, a frequent target of social conservatives, sounds pharisaic and almost evil in its cruelty. How tiresome it has become to listen to the religious zealots of conservatism — Jimmy Swaggart, Jim Bakker, and the rest — railing against the wrongdoings of their neighbors (or in Newt Gingrich’s case, against his sister’s sins), and then watch the next day as they do the same things (or worse) themselves.

Anyone who laments the squelching of free speech in the American workplace, and most particularly the penalties that have been placed upon offensive speech, should get nervous about editorials by people at both ends of the political spectrum claiming that another’s speech is a “true abomination, nothing to shrug off,” and that songwriters or other artists are “escaping responsibility.” Responsibility to whom? Excused from what? Surely Professor Kengor cannot mean that songwriters’ opinions escape the consequences from the free market of ideas, because they do not. Everyone is free to refute the musings of a poet or the ragings of a rock star.

I have long been concerned that a coalition of ideologues from the Feminist Left and the Virtuous Right and their enterprising lawyers will claim that speech controls enacted

for the workplace should be expanded to society at large. If artistic expression, off-color humor and outrageous rap or rock lyrics are actionable in the workplace, why should abominable speech and hostile environments be tolerated elsewhere? This sort of argument is used by governments bent on enacting their own versions of political correctness and cultural revolutions since the beginning of time. I'm no lawyer, but it seems to me that the legal underpinnings are

*How tiresome it has become to listen to the religious zealots of conservatism railing against the wrong doings of their neighbors, and then watch the next day as they commit the same sins themselves.*

already in place. We're probably just a baby step away from a hostile environment law for the country at large. After all, every place is somebody's workplace. When the final tyranny comes to America, it will come in the form of a well-argued lawsuit.

To accuse Neil Young of "slander," which is primarily a legal term, for his difference of opinion, or to dismiss the entire antiwar movement as a bunch of communists who wanted the other side to win, as former radical leftist and neo-conservative David Horowitz habitually does, is beyond the pale. Shall we sue Neil Young for his opinion? Convict him of treason? Shall we make all rock stars accountable for those clever implications and allegations, hyperboles and subtleties? Let's see if they can support these wild statements under "cross." Send these rock stars a message with some punitive damages! Call Tipper Gore and Catherine MacKinnon! Suspend artistic and poetic license altogether and put lawyers in charge of poets and songwriters! Let's take Neil Young downtown, put him in the witness chair, get him sprawled and wriggling on a pin for obfuscations in the clever phrases and opinions he formulates! Let's make him be precise! Make him explain exactly what he meant when he wrote, "Tin soldiers and Nixon's coming/We're finally on our own/Four dead in Ohio."

Why not prosecute Shakespeare too? Along with anyone else who repeats his inflammatory incitement that we kill all the lawyers? Before you laugh, just remember that Harvey Saferstein, president of the California Bar and the greatest living example of *chutzpah* run amok, has already proposed that lawyer-bashing be designated a hate crime.

It's not just that I love Young's music, or that my all-time single favorite rock performance was Neil Young and Crazy Horse a few years ago at Star Lake Amphitheater near Pittsburgh (when his electric guitar seared through the summer night with a 30-minute version of "Like A Hurricane," so wild you felt that any moment the chairs and the amphitheater itself would become airborne), but I am blown away by conservatives' failure to recognize Neil Young as a liberty lover — a spokesman for freedom whose message against government violence is recognized by music lovers the world over.

I once read a rock critic who said Mick Jagger plays at

being a madman but that Neil Young really is one. Neil Young is a madman for individual freedom. He was authentically mad about the shootings at Kent State, just as many of us were angered about the killings at Waco. As the Commander-in-Chief and escalator of the Vietnam War, President Nixon was fair game for Young's ire. Richard Nixon can no more be removed from the chain of events at Kent State than Bill Clinton can be removed from the chain of events that led to Waco or even Oklahoma. Legal responsibility is not the same as moral or political responsibility. Violence begets violence, actions lead to reactions. It is impossible to imagine conservatives denouncing as slanderous or dishonest a song called "Waco" that might say "Reno's tanks and Clinton's coming, 80 dead at Mt. Carmel."

### The Puritanical Coalition

It's amazing how quickly the tyrannical coalitions of speechphobes and purification zealots of the political Left and Right can gel almost overnight into legislative combines when the need arises, as it did to enact, for example, the Civil Rights Act of 1991. Though insisting until the last minute that he wouldn't sign a bill that for the first time permitted jury trials and punitive damages for sexual harassment in the workplace, President Bush was prodded into signing by a politically unbearable and unbeatable coalition of MacKinnon-style feminists, trial lawyers and social conservatives. With the enactment of that law, employers could be penalized \$300,000 per incident for their employees' off-color comments; the sheer size of the liability causing employers to monitor workplace speech and behavior like never before, in ways reminiscent of the prohibition of hand-holding and other sexual behavior controls that existed during the Cultural Revolution in Red China.

There was a time in America, not that long ago, when we were shocked at Cuba's use of neighborhood committees that conducted roundups of the politically incorrect, where neighbors turned in neighbors for "thought crimes" — speech against the state. Now we have our own Committees

*Neil Young's weaving of compelling music with leftish-libertarian political commentary has long had a special penchant for angering southern men and social conservatives.*

for the Defense of the Revolution in our workplaces — lethal financial injections for speech crimes that offend a growing group of government-designated official victims.

This coalition of Purification Zealots have suspended free speech and freedom of association in the American workplace without a shot being fired, nor an amendment being amended, and created an instantaneous well-paid and well-trained secret police force of enterprising lawyers certain to profit from the criminalization of workplace speech. It was feminist zealotry on sexual harassment, after all, that brought us the Clarence Thomas-Anita Hill hearings as well as the Paula Jones-Bill Clinton spectacle that opened the door to the Bill Clinton-Monica Lewinsky shamefest.



Both the Right and Left ends of the American political spectrum are engaged in increasingly punitive measures to control the speech and behavior of their respective list of sinners, punishments like the megabucks punitive damages in tort litigation, public humiliation, shunning and banishment, and the ending of sinners' careers. Deviations from their own moral code and/or political beliefs (which are one and the same) are both typically greeted with the self-righteous intolerance of the True Believer. Differences are not seen as the product of different experiences or viewpoints, but as black and white, good and evil. Those who do not share their sexual preference or their view of how a particular marriage, or marriage in general, is conducted, are *persona non grata*. Their fellow humans are not seen as works-in-progress capable of growth and change, but as evil icons.

Whatever happened to the American belief that the answer to offensive speech was more speech? A growing number of Americans are buying whole hog into the idea that unpleasant, controversial speech is a bad thing that has victimized, offended and harassed them as well as their wives and their children. Legal and religious nomenclature has bled into the culture. They speak not of being in an argument, but of being "verbally assaulted." When they don't like the conversations of their fellow workers, they say they are subject to "a hostile employment environment." To criticize a particular religion is to blaspheme. To prefer a different marital arrangement than another is an abomination. In his song "Keep On Rockin' in the Free World," Young sums up such demonization processes succinctly. "Don't feel like Satan but I am to them," he wails, "so I try to forget it anyway I can/Keep on rockin' in the free world."

If Neil Young and those who exalt him and his lyrics are guilty of ignorance and unfairness to President Nixon, then let's hear the other side of the argument. Those who are outraged at ignorant and offensive speech should welcome and relish it, which I suspect deep-down they do, as a chance to fight and set the record straight, to refute the erroneous ideas of their opposition. Truth is the best defense against slander. The emphasis, in a discussion of whether or not Neil Young is guilty of slandering Nixon, should focus on what it was that Nixon did or did not do, rather than outrage over "abominable speech."

Far, however, from being just the out-of-leftfield irresponsible ravings of a lunatic rock star using his artistic license dishonestly, "Nixon's vicious, unrelenting policies and his blatant scoffing at the anti-war movement had ignited serious domestic upheavals, including the shooting of 15 students at a Kent State anti-war demonstration," states a source as bland and generic as *Grolier's Online Encyclopedia*.

Though Nixon ran on the pretext of having a secret plan to end the Vietnam War, and that he would "bring us together," by 1970, the year of the Kent State killings, 53,849 Americans had been killed in Vietnam. Nixon, like Clinton, was among the most divisive of American presidents. He hated the antiwar movement, and went so far as to have thugs beat up and remove a lone war protester whom he could see from the Oval Office windows. John Dean, Nixon's special counsel, told of an incident when Nixon dropped by the Lincoln Memorial at four in the morning to confront anti-Vietnam protesters: "The rumble around the White House was that he was drunk. I heard he'd had several before going

out that night."

John Ehrlichman, Nixon's chief domestic advisor, was imprisoned for violating the civil rights of psychiatrist Dr. Lewis Fielding, for approving a "covert entry" into his office to obtain derogatory information about one of Dr. Fielding's patients, Daniel Ellsberg. Ellsberg had leaked the Pentagon Papers to the newspapers. At the Watergate hearings, Senator Howard Baker asked, "What did the President know, and when did he know it?" The hearings demonstrated that Nixon knew a lot and that he knew it early.

We know that Nixon was hardly an innocent or an honorable man. In 1971, he created the Special Investigations Unit that included the "plumbers" whose job it was to plug news

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*People will long be listening to Neil Young sing about the warnin' signs on the road ahead, about tin soldiers and machine guns and other signs of big governments on the move.*

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leaks. According to his special counsel, Jeb Magruder, Nixon's Attorney General, John Mitchell, approved the middle-of-the-night break-in at the Democratic headquarters in the Watergate Hotel.

Good people disagreed about the Vietnam War, and contrary to the trendy belief among conservatives that '60s Leftists are responsible for all of society's current ills, antiwar Leftists were not demons, and Nixon was no angel. The antiwar movement mounted one of the most massive rebellions by a grassroots movement against big government arrogance, drawing a line in the sand that remains to this day. Thanks to the antiwar movement, far fewer Americans have died in subsequent wars. The reckless and wanton squandering of American blood in war has been slowed.

As a result of Nixon's paranoid ranting about protesters being "outside agitators" instead of mainly college students and other mainstream Americans, there was speculation that Nixon had conspired with Ohio's Governor Rhodes to fire on the protesters at Kent State to teach the antiwar movement a lesson. It was a shocking moment when American soldiers opened fire and shot wantonly and recklessly into a crowd, shooting 15 students on an Ohio campus and killing four. "Soldiers are cutting us down. What if you knew her, and found her dead on the ground?" wails Young in "Ohio." No one will ever know if Nixon gave the orders or just set the prevailing attitude, just as no one will ever know Bill and Hillary Clinton's actual role in the Waco massacre. But Nixon was the Commander-in-Chief, the leader of the anti-peace forces.

"It's still hard to believe I had to write this song," says Neil Young about "Ohio." "It's ironic that I capitalized on the death of these American students. Probably the biggest lesson ever learned at an American place of learning. David Crosby cried after this take." Those words do not sound like the irresponsible words of a thoughtless, reckless rock star abusing his artistic license. I don't like to sound melodramatic, but Neil Young's poetic lyrics, guitar and harmonica

strike chords in my spirit. Music is where the more earth-bound among us gain solace. Perhaps social conservatives can understand that to smear Neil Young is to blaspheme a saint in my church.

### Dylan's Double Standard

Though first written about President Bush in Desert Storm, Young's line, "We've got a kinder gentler machine gun hand," from "Keep On Rockin' in the Free World," endures to so aptly mock Janet Reno's assurance that there was no finger on the trigger of the kinder and gentler machine gun aimed in the middle of the night at 6-year-old Elián González.

Though one of Young's song lines is that "It's better to burn out than it is to rust," the truth is that he and the rest of the '60s vanguard are rusting away on Sugar Mountain, guilty of a double standard, writing only songs about Republican presidents. Neil Young should have written a song about Waco, and it's high time Bob Dylan wrote a song about Elián González! Where is Thunderclap Newman now that we've found out the "something in the air" was incendiary tear gas, and how many years do we have to wait before Peter, Paul and Mary weigh in on what's really blowin' in the wind?

Young even sounds a bit Republican in a couple of his songs. One is "Even Richard Nixon Has Got Soul," from the

album "Campaigner," and the other, "A Man Needs a Maid," with lines like "Just someone to clean my house up, fix my meals and go away," an obscure little song, recorded with the London Symphony Orchestra, and possibly one of the worst songs ever to make it out of a recording studio. "Some people thought this arrangement was overdone," says Young, "but Bob Dylan told me it was one of his favorites."

But conservatives are rusting too. To their unrecognized misfortune, they, on the whole, have closed their ears to rock n' roll. It is their loss. No conservative or libertarian musicians have risen from the masses of liberty lovers on the Right. That means something, but I'm not sure what. The only real freedom anthem we've got from the down-home conservative movement is the Thelma and Louise of music, "Earl Has To Die" by the Dixie Chicks.

The '60s were a creative burst of epic proportions, and rock music remains a freedom force in rebellious political movements against tyrannical governments around the world. Because he is an artist speaking in the universal language of music, people will long be listening to Neil Young sing about the warnin' signs on the road ahead, about tin soldiers and machine guns and other signs of big governments on the move.

"The limits of tyrants," said Frederick Douglass, "are prescribed by the endurance of those whom they oppress." □

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### Letters, from page 20

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say that of Al Hunt and half a dozen (is that all?) pundits who regularly sound off on the assumption that the Republican Revolution is dead.

Unfortunately, they are correct. It is dead, at least in the Republican Party for the foreseeable future. The convention, if it did nothing else, put the lid on the coffin. Unless things change radically, the next Congress will drive home the nails.

Consider the recent *Policy Analysis* from the Cato Institute that demonstrates the Republican complicity in the 106th Congress' increase in non-defense spending by some 13 percent. Oh, sure, several departments and agencies were abolished or significantly downsized. But no doubt, still other programs would have been axed or reduced by a Democratic Congress. The difference in policy makes no difference in principle. We're still talking about taking money from taxpayers, dropping some of it in the pockets of the bureaucracy, and doling out the rest to the citizens of this country as though they were on an allowance.

Everything that Robert Novak says about what is wrong with the Republican Party is true. But I fail to

see any evidence whatsoever that they intend to take any of his advice, even if I thought that any of it was any good.

Indeed, the general advice Cox mentions, that the Republicans "need to stand up for large American principles and refuse to bargain them away," that they "stop thinking small," seems to fall on increasingly deaf ears, a fact that the convention only served to confirm (despite Novak's praise on the following Sunday).

Which principles does Cox say they ought to stand up for? Not surprisingly, libertarian principles. And who has those principles down pat? Who has the backbone Novak and Cox think is so necessary to win the day? Why, the Libertarian Party candidates running for office at all levels of government this year.

Cox seems to be so fearful of what might happen if Gore is elected that he passes this choice over with a mere wave of a hand, and the kind of condescending admonition a parent might give to a thoughtless child.

Sure, the country may not be ready for the kind of libertarian society we want. But will continuing to vote for those who are more than willing to live in a mixed economy welfare state

bring them any closer? Sure, maybe the country isn't willing to accept the full libertarian message. But will effectively silencing it by voting for what they are willing to hear make the message any louder? Will giving Margaret Carlson one more thing to smirk about help?

Thomas Rowland  
Dublin, Ohio

### Make Mine Tofu

I was amused by Tim Slagle's Reflection (September) in which he practically equates red meat eating with human progress, patriotism, and liberty. As a vegetarian libertarian (yes, there are some of us out there), I can assure Mr. Slagle that one's diet doesn't necessarily have any connection at all to one's social values. In fact, the freedom to ingest whatever you want into your body, and the willingness to tolerate the accompanying lifestyle choices others make, are among the highest values which we libertarians hold dear. I too enjoy barbecued burgers when celebrating the Fourth of July. But please, please make mine with tofu.

David Grappo  
Oakland, Calif.

# Logical Synapses, Sins of Omission

by Stephen Cox

In the September *Liberty*, Bart Kosko made the case that Jesus Christ was a family-hating communist. Not everyone was convinced.

More has been written about Christianity than any other subject. Every possible opinion has been expressed about Jesus and the implications of his teachings, from the most idiotic claims (e.g., he never existed) to the most pious orthodoxy.

There are two traditional libertarian views of Jesus and Christianity.

One is the view of such people as Thomas Jefferson and John Adams (deists and classical liberals), Lord Acton (Roman Catholic and classical liberal), and Rose Wilder Lane and Isabel Paterson (deists and radical libertarians). These people were, with one exception (Lane), profound historical scholars, and they regarded Christian ideas as crucially important to the development of modern conceptions of liberty.

The other tradition of libertarian thought is fundamentally hostile to religion of any kind and anxious to portray Christianity, in particular, as irrelevant or hostile to individualism. The most influential advocate of this view was Ayn Rand, who was an atheist long before she became an exponent of libertarian ideas and who always associated freedom in general with freedom from belief in God. Of historical interest in what Jesus did or taught, Ayn Rand had none.

Why is this important? For several reasons. There is, of course, the issue of truth and fact. Libertarians ought to know the history of their own ideas, as accurately as possible. There is also a practical issue. Most people in this country are Christians. If there is something in the teachings of Jesus that is important to libertarian ideas, libertarians ought to know it and let other people know it, too.

In the September issue of *Liberty*, Bart Kosko took a different course. Attacking the American religious right, he argued that Jesus, far from being a "family values" conservative, was actually an "anti-family communist." So much for the possibility of a libertarian connection with Jesus. But let's

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examine Kosko's argument.

Some of it, I am sorry to say, could easily be read as self-parody. Kosko excoriates the ill-logic and ignorance of the Christian conservatives, while committing, almost advertising, egregious logical and historical blunders of his own. One reason we know that Jesus was a communist, he suggests, is that other people have been communists: the Jewish sect of the Essenes, "modern Roman Catholic and Eastern Orthodox priests," even "Hindu and Buddhist holy men" who "predate Jesus in this regard by at least a half millennium." On this evidence, I suppose that all of us are communists.

The cream of the jest, however, is Kosko's idea that his adversaries just aren't reading what is plainly in the Bible, and that he is.

Consider his discussion of Jesus' "famous anti-capitalist metaphor": "It is easier for a camel to go through the eye of a needle, than for a rich man to enter into the kingdom of God" (Mark 10:25). Rose Wilder Lane, who wasn't long on cash but who knew a lot about what she called the psychological "illusions" of wealth, considered Jesus' message perfectly sensible. But whether his saying makes sense or not, it would be sensible for us to recognize that being "rich" and being a "capitalist" aren't quite the same thing. They certainly weren't the same thing in Jesus' day, when very few people got rich by trading on the stock market.

But never mind. The funny thing is that Kosko, who roundly declares that Jesus "had only contempt for wealth and the wealthy while he promised the poor the kingdom of heaven" doesn't even bother to read the next two verses after

the "camel" part. I'll quote them:

And they were astonished out of measure [apparently, Jesus had never discussed his all-important economic theories with his followers before], saying among themselves, Who then can be saved? And Jesus looking upon them saith, With men it is impossible, but not with God: for with God all things are possible. (Mark 10:26-27)

So even Bill Gates *can* go to heaven.

There's a saying that "the Bible is an old fiddle on which you can play any old tune." It simply means that the Bible is like any other book — you can interpret it in whatever way you want, just by dropping the context of whatever you choose to quote. The "communist" interpretation of the New Testament has been tried many times before. It always goes the same way.

First someone cites Mark 10:25, without mentioning Mark 10:26-27. Then it is alleged, as Kosko alleges, that "Jesus repeatedly tells his followers in the Gospels to give their property to the poor and follow him." Kosko's evidence for this, said to be "typical," is Luke 14:33: "Whosoever he be of you that forsaketh not all that he hath, he cannot be my disciple." This is supposed to show that Jesus wanted to "abolish private property."

Of course, Luke 14:33 doesn't say that, even if one drops its context. But what is the context? Is Jesus talking about how society should be run? Or is he, an itinerate preacher, tramping around Palestine with little more than the clothes on his back, and in bad repute with the authorities, letting people who want to follow him know just what they're up against? He introduces his statement by making several references to the importance of "count[ing] the cost" before you do things. He also says, "whosoever doth not bear his cross, and come after me, cannot be my disciple" (Luke 14:27). That, in the context of what actually happened in the first

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*This is yet another whopping proof of "communism" — people actually pooling their resources while visiting in foreign parts. How strange. How startling. By this definition, again, we have all been "communists."*

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century, was true enough. But it has precisely nothing to do with communism.

Speaking of dropping the context, let's go on to the next, entirely predictable stage of the old, old argument. Here it is always alleged, as Kosko alleges, that the early Christians practiced "communism," and the citation, which Kosko also cites, is always Acts 2:44-45. These verses describe Christ's followers, who were gathered in Jerusalem from many parts of the world to celebrate the Feast of Pentecost, having "all things common" and selling "their possessions and goods" so they could share them "as every man had need."

This is yet another whopping proof of "communism" — people actually pooling their resources while visiting in foreign parts. How strange. How startling. By this definition, again, we have all been "communists."

That passage from Acts, by the way, is the last time we hear of any "communist" social arrangements in the New Testament. What we do hear, several times and in much

detail, is Paul's asking people for contributions to church charities, thanking them for their "liberality" (query: why beg for money, if we have "all things in common" anyway?), and urging everyone to give "according as he purposeth in his heart . . . not grudgingly, or of necessity" (1 Corinthians 16:1-3, 2 Corinthians 9:7). We also hear Paul congratulating himself on his ability to earn his own living, instead of accepting a salary from the church (1 Corinthians 9).

This doesn't sound much like communism, and of course it's not. Neither does it sound like communism when Jesus

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*There's a saying that "the Bible is an old fiddle on which you can play any old tune."*

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tells a parable likening God to a strict businessman who fires his assistant for not investing his money profitably:

Thou oughtest therefore to have put my money to the exchangers, and then at my coming I should have received mine own with usury. (Matthew 25:27)

Jesus the capitalist? No; to say that would be dropping the context, too. But it is not too much to talk about Jesus the individualist — the Jesus who refused to try seizing political power, the Jesus who saw life as an investment that individuals must make by counting costs for themselves, the Jesus who founded a religion whose central act is conversion, which is a decision to follow your own conscience, even if it means getting in serious trouble with the law, the community, and the family.

In the same passage in which Jesus urges people to count the cost before following him, he says, with as great practicality as rhetorical emphasis,

If any man come to me, and hate not his father, and mother, and wife, and children, and brethren, and sisters, yea, and his own life also, he cannot be my disciple. (Luke 14:26)

A hard saying! But true enough in context. Is it an "anti-family" saying? If you insist that it is, you are turning practical observations into social philosophy, and Jesus did not set himself up as a social philosopher. His concern was purely with individual choices. When a woman shouted out to him in a crowd, "Blessed is the womb that bare thee, and the paps which thou hast sucked!", Jesus responded, "Rather, blessed are they that hear the word of God, and keep it" (Luke 11:27-28). He wasn't preaching against his mother, or motherhood; he was preaching in favor of adults who take responsibility for their own moral actions.

Conservative preachers who insist on Christianity's "family values" are actually neglecting a central emphasis of their own religion, which is on choice and freedom of choice, and on liberty as opposed to law: "Stand fast therefore in the liberty wherewith Christ hath made us free" (Galatians 5:1). Kosko, by citing such verses as the one about hating your father and everyone else in the family compound, provides a valuable corrective to some modern Christians' patently silly notions.

But it is just as silly to go to the opposite extreme and picture first-century Christianity as resolutely anti-family. To do so is to ignore Jesus' happy relationships with certain mem-

*continued on page 38*

# Guns and the Movies

*by William R. Tonso*

Once guns were merely tools. Today, they are icons of evil.

It read like a Who's Who of the entertainment industry: Meryl Streep, Rosie O'Donnell, Madonna, Henry Winkler, Rosemary Clooney, Jerry Seinfeld, Barbra Streisand, Fannie Flagg, Tony Bennett, Richard Gere, Spike Lee, Jack Nicholson, Cher, Mary Tyler Moore, Dick Van Dyke, Barry Manilow, Bruce Springsteen, Richard Dreyfus, Alec Baldwin . . . and some 200 others. The names of all these celebrities appeared in a full-page "Open Letter to the National Rifle Association" in the June 9, 1999 edition of *USA Today*. The purpose of this letter, published by Handgun Control Inc. in the wake of the horrendous school shootings in Littleton, Colorado, was to promote various additional gun controls — everything from the mandatory sale of trigger locks with every gun purchased to a complete ban on large-capacity magazines and "assault weapons."

No surprise here. With the exceptions of such pro-gun actors as Charlton Heston, currently serving as president of the NRA, Tom Selleck, and a few others, Hollywood has provided massive celebrity support for the gun-control movement for more than three decades. But the spate of school shootings over the past few years has encouraged a considerable public reaction against the mindless violence found in the movies, music, video games, etc., that the entertainment industry has been producing for teen consumption. Reformers have long argued that movies, comic books, and other manifestations of popular culture have a negative impact on the young and that past popular culture was positively pacifistic compared to what is currently available. The actions of several of the teen monsters who have shot their classmates and teachers are so similar to scenarios depicted in movies, rap songs, and video games that it has become increasingly difficult to ignore the possibility that popular culture has greatly influenced their actions.

So the entertainment industry in general, and Hollywood in particular, has been taking much heat from the public and politicians, liberals as well as conservatives. Even Bill Clinton, in spite of the strong support through thick and thin

that he has received from Hollywood, has felt obliged to order a government study of the possible connections between violence in popular culture and real teen violence. And the entertainment industry has predictably responded to the criticism it is receiving by attempting to deflect it to the favorite target of those in enlightened mainstream-media and politically-liberal circles when it comes to placing blame for our high violent crime rate — the easy access to guns in this country.

Extreme violence in popular culture can't explain our violent teens, Jack Valenti and other industry spokespersons argue at every opportunity, because if it did other countries such as England and Japan that consume our popular culture, or even more violent popular cultures of their own, would have teens as, or more, violent than ours. Since these other countries consume violent popular culture but don't have our violence problems, our violent popular culture can't be blamed for our violent teens. So what do we have that other countries don't have that explains why we're violent and they're not? We have guns and easy access to them, the Valentis and O'Donnells are quick to point out, and they are seldom challenged through the mainstream media.

The 1950 western "Winchester '73" nominally starred Jimmy Stewart as the hero and Stephen McNally as the villain. But in a sense, the star of the movie was its namesake, the very fancy Winchester Model 1873 rifle won in a shooting match by the Stewart character early in the movie, and stolen from him shortly thereafter by his nemesis, the McNally character he had bested. Much was made over that gun, both in the movie by the shooting match participants

and onlookers, and during the promotion and opening of the movie when the rifle used in it was put on display. The film in no way presented its star negatively. The Winchester was presented as a fine tool that a good man would take great pride in owning. And it was a neutral tool that could be put to bad use in the hands of a bad man or good use in the hands of a good man.

Skip ahead to 1971 and "Dirty Harry," the first of several movies in which Clint Eastwood plays an unruly but honest and dedicated cop whose trademark is the huge Smith & Wesson .44 Magnum revolver he carries. Eastwood's Smith & Wesson is also a fine precision instrument, but the characteristic emphasized in the movie is the damage it can do, or at

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*In the 1950 movie "Winchester '73" that rifle was presented quite positively as a fine tool that good men would take great pride in owning. And it was a neutral tool that could be put to bad use in the hands of a bad man or good use in the hands of a good man.*

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least, that the moviemaker wants us to think it can do, to the human body. Pointing his revolver at the face of a criminal he has apprehended, Eastwood's character Harry informs him that "this is a .44 Magnum, the most powerful handgun in the world, and would blow your head clean off. . . ." This gun is not merely a tool, it's a very powerful and destructive device, and as such it is menacing even in the hands of a cop who, though unruly, is dedicated to combating criminals.

These two movies come to mind when I think about Hollywood's symbolic transformation of the gun since the '60s. Prior to the mid- to late '60s, Hollywood seldom presented guns themselves as menacing or focused on their destructiveness. As in "Winchester '73," guns were tools that good people used to defeat bad people who also had guns but, fortunately, were somewhat less skilled in their use. Guns, their inventors, and sharpshooters were celebrated in the titles of such movies as Randolph Scott's "Colt .45" (1950), Gary Cooper's "Springfield Rifle" (1952), Stewart's "Carbine Williams" (1952), and Betty Hutton's musical "Annie Get Your Gun" (1950), and such 1950s TV westerns as Chuck Connor's "The Rifleman," James Arness's "Gunsmoke," and Richard Boone's "Have Gun Will Travel." Distinctive guns, usually one or two ivory- or stag-handled six-shooters, but sometimes, as in the case of Steve McQueen's "Wanted Dead or Alive" and Connor's "The Rifleman," altered rifles, served to mark off almost all B-, TV-, and many big-budget-western heroes from those with whom they mingled.

In the 1955 film "The Desperate Hours," Fredric March's character comes home from work to find his family held hostage by three escaped convicts. He keeps a semi-automatic pistol in the house for protection, but the cons, already armed with a revolver acquired during their escape, have found it. No issue is made of the fact that a gun was kept in the house for protection, or the fact that the cons acquire it.

But toward the end of the movie, when March is sent on an errand by the cons, he acquires a semi-automatic pistol from the police, unloads it, and takes it back home, knowing that he will be searched and the pistol found, hoping that the cons won't check to see if it's loaded, and that reliance on that empty gun will eventually lead to their undoing. Of course, that's what happens. What's significant is that here is a movie where a gun kept in the home for protection and an ordinary, modern, urban citizen's knowledge of firearms are simply taken for granted, not an uncommon Hollywood occurrence before the mid-60s. In "His Kind of Woman" (1951), Robert Mitchum and Vincent Price, the latter playing a ham movie actor who is an avid hunter and owns a number of guns, also are ordinary, modern, urban citizens who display enough prowess with guns to best mobster Raymond Burr and his henchmen with little help from comical Mexican provincial police.

By 1975's "Mahogany," however, the mere proud display of a handgun collection was enough to confirm the spookiness of one of fashion model Diana Ross's admirers, played by Anthony Perkins. And during the '70s and '80s, a number of situation comedies (such as "All in the Family"), crime dramas (such as "Night Caller"), and other TV series aired episodes illustrating the alleged dangers associated with ordinary people keeping guns for personal protection. One TV movie was ominously titled "A Gun in the House." Needless to say, none of the characters in these TV offerings who armed themselves for their own protection were able to ward off criminal attack successfully — guns were turned on their owners by criminals, or their owners shot the wrong person, etc.

The self-reliant and gun-wise folks of the Old West have been out of favor with Hollywood since the late '60s, though they still show up occasionally in the likes of TV's "Lonesome Dove" (1988) and "Conagher" (1993). "Matewan" (1987), by independent filmmaker John Sayles, "The Milagro Beanfield War" (1988), and John Milius's "Red Dawn" (1984)

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*Eastwood's Smith & Wesson is also a fine precision instrument, but the characteristic emphasized in the movie is the damage it can do, or at least, that the moviemaker wants us to think it can do, to the human body.*

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all depicted small, 20th century armed communities fighting off oppression (coal company goons, a politically-connected land developer, and communist invaders, respectively). "Star Wars" (1977), a George Lucas creation, and its successors have civilians in a "galaxy far, far away" fighting off oppressors with guns and other weapons; and another Lucas creation (1981), archaeologist Indiana Jones, also handles guns well. But since the '60s, modern urbanites and suburbanites on big and little screen alike far more often than not have been incapable of gun-assisted self-help and have been in need of police protection. In the real world, research indicates that every year there are anywhere from 760,000 to 3.5 million defensive uses of guns by private citizens.



From the '50s on back, western movie heroes regularly, if unrealistically, disarmed their opponents by shooting guns out of their hands. The hands those guns were shot out of were seldom more than stung, if that, and the guns shot out of those hands suffered no damage at all. In other words, Hollywood regularly ignored the power of guns. For the past three decades or so, however, Hollywood has tended to exaggerate the power of guns. This exaggeration apparently started with "Shane" way back in 1953, when the farmer shot by Jack Palance's villainous gunfighter is lifted off his feet by the impact of the bullet and slammed back in the mud. It seems to have taken awhile for such laws-of-physics-defying nonsense to catch on, but gunshot victims knocked head-over-heels by the impact even of cinema slugs fired from guns far less potent than Dirty Harry's .44 Magnum eventually became standard fare in TV police shows like "Miami Vice" and "Hunter," and on the large screen as well.

But Hollywood hasn't only transformed guns from neutral tools, useful to good people concerned with protecting themselves and their significant others from bad people, to destructive devices useless and dangerous to ordinary good people who are incapable of handling them safely. It has also transformed those deemed worthy of handling guns. Eastwood critic Pauline Kael has written: "This is no longer the romantic world in which the hero is, fortunately, the best shot; instead, the best shot is the hero." Kael's comment is cited in Richard Schickel's *Clint Eastwood: A Biography*, which though a worshipful tribute to its subject's acting and directorial skills, nevertheless offers numerous interesting insights into modern, or even postmodern, popular culture and its consumers.

Schickel notes that sometime during the cultural upheaval in the '60s filmmakers began to realize "that the audience really doesn't care a rap about who shoots whom or why, so long as the matter is handled with — yes — a certain 'panache.'" He continues: "That this revised context to some degree revises the nature of screen heroism, encouraging us to root for our guy on the basis of his superior style, not his heavier moral weight. . . . What could be more subversive to our traditional codes of heroism than the idea that its largest imperative is to style, to cool improvisation in the heat of the deadly moment?" Mister amoral cool himself, James Bond with his "007 license to kill," preceded Dirty Harry to the big screen by nearly a decade and was followed by a host of imitators. And in the mid-'60s came Eastwood's nihilistic spaghetti westerns (made in Italy but popular here) and their imitators.

While Gary Cooper's title character of "Sergeant York" (1941), like the real-life York, had to overcome his pacifism before he could kill enemy soldiers, and movie-cowboy heroes prior to the '60s often shot guns out of the hands of villains rather than kill them, many, if not most, post '60s "heroes" (James Bond, the Terminator, John MacLane) joke about killing. And Eastwood apparently spoke not only for himself but for many other '60s and later action stars when he told an interviewer, "I do the stuff [John] Wayne would never do. I play bigger-than-life characters, but I'll shoot a guy in the back. I go by the expediency of the moment." So has Paul Newman, one of Hollywood's most vociferous gun prohibitionists. In "Hombre" (1967) Newman's "hero" shoots outlaw leader Richard Boone while the latter is under a flag

of truce, something that no traditional hero would have ever considered. Nor would any traditional hero execute even deserving thugs as coolly as Charles Bronson did in his vigilante "Death Wish" movies, starting in 1974. The lid came off in the '60s and cinema killings by "heroes" became casual, cool, remorseless, even humorous, and without moral context. Now the '90s have given us films like "Basketball Diaries" which depict self-righteous, disgruntled youths massacring fellow students.

### Hollywood and Conservatives: Both (Half)Right

*Guns are neither good nor bad; they are inanimate objects, hunks of metal and other durable materials that are developed and used within social-cultural contexts that assign them their meanings and guide the uses to which they're put.* Where cultural contexts and intact communities encourage the socially acceptable use of guns, as is the case in Switzerland, Israel, and still to a great extent in small-town and rural areas of the

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*By 1975's "Mahogany," however, the mere proud display of a handgun collection was enough to confirm the spookiness of one of fashion model Diana Ross's admirers.*

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United States, even though their possession is widespread, guns are seldom misused. Where cultures or subcultures encourage the misuse of guns and/or families or communities are fragmented, as is often the case in underclass urban areas in this country (but is more and more the case even in small-town and rural areas) gun possession can prove troublesome.

Storytelling has been a prime socializing tool from the dawn of man to the high-tech present. Through most of man's prehistory and history, the young heard from their elders stories that provided them with maps for living their lives as families or whole communities gathered around fires in the evening. By the time I came along in 1933, such stories came from public schools and mass-produced popular culture transmitted through mass media as well as from family settings, but in my experience the lessons to be learned from these different story sources in those days generally reinforced rather than undermined each other.

That's less likely to be the case for today's young, particularly when it comes to what they learn about guns. In the United States, many of today's young come from single-parent or fragmented families, and few among those intact urban or suburban families that still manage to monitor the activities of their offspring know much about acceptable gun use to pass on to them. That means that many American youngsters know little or no more about guns than what they get from an entertainment industry that caters to the young and their teen culture; an industry that has demonized guns, exaggerated their power, and transformed those popular cultural "heroes" skilled in their use into cynical, cool, amoral killers. This doesn't happen in Switzerland where teenagers are closer to their parents (who know a lot about guns) than to their peers; family and community ties are still strong, and as David Kopel has noted, "Rambo" guns are owned but Sylvester Stallone's "Rambo" movies and other violent films

are banned.

*Fort Worth Star Telegram* columnist Bill Thompson has written, "We could pile up guns and pipe bombs and hand grenades in front of well-adjusted youngsters all day long, and not one of them would consider grabbing those devices and using them to slaughter teachers and fellow students. What has happened to kids who would do such a thing?" Many things have happened to them, most related to the undermining of family, community, and widely-accepted normative systems by gradual, if uneven, modernization, and now postmodernization that have affected different social-cultural systems in different ways. Cultural elites and the entertainment industry both reflect and promote the normless aspect of this modernizing-to-postmodernizing process.

Since literally millions of kids consume the movies, music, and games provided them by the entertainment industry, but very few, even of those millions who have easy access to weaponry, go on murderous rampages, it should be obvious that neither the consumption of nihilistic popular culture nor easy access to weapons in and of itself *causes* any given rampage. But today's entertainment industry tells the young stories to which they would never have been exposed 30-plus years ago. And as isolated as many young people now are from responsible adult input into their lives, it should hardly be surprising that some of the more isolated and resentful ones (spurred on by their craving for certain mass-media-generated celebrity) occasionally act out this nihilism through violent rampages while they're still young

or even later in life.

More common fallout of the current state of society and what Tipper Gore has called its "toxic popular culture" are risky behaviors involving drugs and sex that have been incorporated into adult-free teen culture. There was very easy youth access to guns in the '40s and '50s I experienced, and even grade-school boys commonly carried pocket knives; I started carrying one in the third grade. But there was negligible youth violence. Boys and girls were physically equipped then as they are now, yet there were no unwed schoolgirl mothers when I was in high school. And there were no school-supplied condoms then. I understand that during World War II, the government encouraged Midwestern farmers to plant hemp for the war effort, and that it came to grow like weeds in these areas, yet, my friends and I knew nothing of marijuana or other drugs.

Gun-related violence has skyrocketed, and youth marijuana use and unwed schoolgirl mothers have both become common, despite stricter gun controls, the War on Drugs, and the much easier availability of contraceptives. But it apparently has never occurred to the Hollywood celebrities who signed Handgun Control Inc.'s advertisement that availability is not the primary cause of gun violence, any more than it has occurred to most conservatives that availability is not the cause of increased marijuana use. In a world where kids spend more time watching Hollywood's products on television than they spend with their parents, somehow these Hollywood celebrities have forgotten entirely the role that morality plays in people's lives — and the increasing role that they play in the morality that kids learn. □

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"Logical Synapses, Sins of Omission", by Stephen Cox, from page 34

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bers of his own family, especially his cousin, John the Baptist; Jesus' working through family relationships (the brothers Zebedee, the brothers Peter and Andrew, his own brother James, the siblings Mary, Martha, and Lazarus) in the calling of his disciples; Jesus' emphasis on family relationships in some of his sayings and stories (superlatively, in the parable of the Prodigal Son); and his favorite description of his relationship to God, which is that of a son to a father.

Now, in strict terms, all this talk of communism and libertarianism, family values and anti-family values, is misleading and unhistorical. It is an attempt to make ancient religious documents answer modern political questions, using terms that appear nowhere in the documents themselves. Jesus wasn't a communist, and he wasn't a member of the Libertarian Party, either. But the issue that Kosko raises is a valid one: What, in the broadest terms, is the relationship of Jesus to our own ideas? Who was Jesus — friend or foe?

Everyone is capable of judging that question independently. But here's some evidence that might interest you.

The kingdom of heaven, Jesus said, is like a big pearl that a merchant finds and is willing to pay a lot for, because it's worth a lot. And the kingdom of heaven is like a treasure that someone finds while he's out walking in the fields, and he rushes to buy the land (without telling anybody else, of course) so that he can enjoy all the profit (Matthew 13:44-46).

The kingdom of heaven, Jesus said, is like someone who

hires a bunch of temporary employees to help him out on the busiest day of the year. The people he hires in the morning contract with him for a certain wage, but when he pays everybody at the end of the day, they notice that he, being sort of eccentrically benevolent, has paid the same amount to the people he hired in the afternoon. This infuriates the first group. If they were still working, they would go on strike. But the landowner says to them, "Look, we had a contract, and you got what I said I would pay you. The rest of it is none of your business. I can do what I want with my own money" (Matthew 20:1-16).

A traveler, Jesus said, was coming down the Jericho Road when he noticed an injured man lying in the ditch. This man had been mugged by the usual gang of hoodlums that the government, for all its laws, never seems to get rid of. Anyway, two local people with official jobs came by, and they pretended not to notice him. But the stranger, who was of a different race and religion, and who consequently wasn't very popular around those parts, picked up the injured man, bandaged his wounds, took him to a nearby motel, and paid the bill for his lodging while he recuperated. No one made the stranger do that. He didn't promise to support the victim for the rest of his life, and he didn't try to get him to sign a petition for socialized medicine. He just helped him out, and went on his own way (Luke 10:30-37).

Communism — or individualism? You decide. □

# American Justice, Up Close and Personal

by Logan Brandt

*In modern  
America,  
you never  
know  
what  
might  
happen  
when  
you  
try to  
renew  
your  
driver's  
license.*

## Houston Roadkill

It was late August '98, and I couldn't put it off any longer.

Time to stand in line for Texas, get a driver's license. Having already experienced the rigmarole of car registration with Harris County, and been soaked for the Texas sales tax (\$650) on a vehicle leased in Michigan, I just want to get the whole bureaucratic mess behind me.

Similar to the county clerk, these folks at the Department of Public Safety (DPS) have their panties in a bunch about extracting social security numbers from you. Whatever. So I give them some proof-of-SSN stubs and write my numbers in the boxes of their form in fine, bold strokes. Immediately the clerk sends the form to a scanner.

The reason I know it goes straight to a scanner is that as I leave — I have a smile on my face because I'm finally done with this crap and even took a decent picture — a large black trooper, fully accessorized in the Lone Star law-enforcement package, i.e., Stetson hat, cowboy boots, Colt Border Patrol .357 Magnum, and bulletproof vest, stands in front of me pointing emphatically to the right:

"Come this way."

"Thanks, but I don't need a driving test today," I counter.

From his stern demeanor, it's clear something of more import than a driving test is on the agenda. So, with a quick jolt of primal apprehension, my mind races into the realm of things I might have done that could generate unpleasant system attention . . . IRS? Red Squad? Donut Pilferage?

"Damn!" I know what it is.

Trooper R asks me my name again, then indicates he has a record in the LEIN (Law Enforcement Interstate Network) database that matches. To make a long story short, the SSN has drawn a hit on me for an outstanding arrest warrant from Michigan. I tell him there's no way, "I don't even have kids," knowing they publicly justify their SSN fetish by nabbing out-of-state deadbeat dads.

Bo', you in a heap o' trouble.

While Trooper R is checking it out, he makes special seating arrangements for me in the DPS office. The handcuff to the steel folding chair symbolizes the new relationship I would have with the state of Texas for the next few days: unwilling guest, varying degrees of discomfort, caged or tethered in proximity to hard surfaces.

So, on account of some ancient police foulup, here I wait, a fugitive from justice, 1,400 miles away . . . waiting for the bailiff to come and cart me away to the Harris County Jail. "Look, trooper" — I have quickly discerned these DPS officers like to be called troopers — "how about I just go out to my car and get a few things?"

No dice.

My one phone call, to a co-worker (who might be able to get my car from the lot, hence avoid its impoundment), goes to his answering machine. Internally, my adrenaline-drenched central nervous system has gone into full-tilt panic, and I can barely point and grunt, much

less generate full sentences.

Eventually the bailiff arrives in his county car and strolls amiably into the office. Trooper R is a big man, but this "County Mountie of Fetching and Toting" blocks the sun at 20 paces, easily 6 feet 8 inches and 350 pounds, and not chubby either, a giant. Referrin' to him as Trooper Sir. Then Sir, R, and R's supervisor start chewing the fat, talking about the wives, girlfriends, jobs, partying, working out, etc.

After maybe 25 minutes, during which I'm just sitting there cuffed to the chair, dry-throated, wide-eyed, slack as a fish on a stringer, trying to adjust to what is obviously going to be a very bad day, Sir decides it's time to mosey with his charge.

Sir gives me the surreal courtesy of piping in public radio at 80 decibels for the half an hour it takes to drive me to the

*I'm sitting there cuffed to the chair, dry-throated, wide-eyed, trying to adjust to what is obviously going to be a very bad day . . .*

Jail Annex at 701 N. San Jacinto. Even if I want to chat, or if he could hear me, I figure he probably exhausted his scintillating repartee on his buds at DPS, and is now wholly focused on world affairs with Nina Totenberg and "All Things Considered."

When you finally reach the place of steel bars and concrete, you become part of an unyielding and systematic process . . . not, for a moment, to imply rational or efficient. The preliminaries — appearing briefly before a magistrate (required for show of due process), fingerprints, checking in your stuff, answering some questions for filling out forms, getting some papers — are perfunctory.

Then the fundamental jail-entry process is a multi-hour period of moving from one crowded concrete-block and grated-steel enclosure to another. When you move, and with what select group of detainees, is sadistically random and arbitrary.

You will pass through approximately three milestones leading to the ultimate objective of getting a bunk with a mat: 1) shower and uniform, 2) a formal hearing in court, and 3) medical interview and assignment to a cell block. In between each of these milestones you move several times to different holding cells — I marched to 15 to 20 cells, and only repeated one or two.

You begin to get an idea of the cross-section of people who have been caught in the same web. There's obviously a basis for conversation: "Man, does this suck, what'd they get you for?" A few DWIs, some spouse-abuse types, lots of small-time drug possessors or traders, petty transgressors of firearms laws, parole/probation violators, several DWBHs (driving while black or Hispanic).

The uniforms are comical, and obviously part of the "Psy War." Orange, they consist of a pocketless short-sleeve, heavy cotton pullover shirt and pocketless pants. The pants have elastic waistbands in varying degrees of disintegration, and in many cases the bands have given way entirely and the separated sections have been ingeniously though crudely kept

together with mop rope. On the back is stenciled "Harris County Jail," in case, I'm speculating, you escape and people mistake you for a hospital orderly.

I'm lucky, in that my pants will stay up without having to tie any knots in them and the shirt doesn't have too many holes in it. The hard plastic sandals are another story. One thing you need to do if you suspect imminent incarceration in America: wear tennis shoes and white socks. They let you keep only these for footwear. Whatever the origin, keeping your own shoes and socks is hugely preferable to standard issue.

The sandals are elevated at the heel, and it's difficult to lift your feet to walk in a normal fashion. What you do is shuffle along trying to minimize the chafing of the wide hard-plastic strap that rides over the top of your bare foot. Socks are not standard issue, and neither, for that matter, is underwear. These you can order every Wednesday from the commissary once you reach your cellpad.

It's Wednesday morning now, and I figure for sure I'll be reaching the cellpad in a few hours. I've been marched around all night, since six o'clock p.m. Tuesday, meeting new guests, striking up an occasional conversation, seeing them come and go depending on the holding-tank roulette.

I even manage to catch some cold-concrete-floor shuteye maybe fifteen fitful minutes at a time. Shortly after the longest stretch of sleep, about 07:00, we get roused for the court hearing, which is actually a more formal arraignment process in my case. Seven of us are accommodated in this cold, dark, dank 20 x 20 x 20 foot anteroom with iron-clad walls and an iron bench.

A tall, lanky guy is in here shaking from the cold. "Sir, would it be possible to turn up the thermostat in here?" I say to an officer. "It's freezing and one of these guys is really in pain." His ears practically start spewing little steam puffs. I thought this oversized oinker was going to take his oversized pistol off his oversized butt and either pistol-whip or shoot me. He mutters something about never speaking to him again unless somebody dies in there.

Our time to go before the judge finally comes. We have attained the status of petitioners in a courtroom, so naturally we are shackled and cuffed together — walking in a line wearing these goofy orange pajamas. Several people fill the courtroom benches, along with the judge and prosecutors in front, and various defense attorneys, mostly court-appointed. My case is not a good one for getting bailed. Technically, I'm a fugitive charged with two felonies from a different state, so my only choice is to fight extradition or to accept it. If I fight, bail is permissible until the preliminary hearing, but my court-appointed attorney (lackey) informs me it means fronting about \$50,000 to the State of Texas, with "right-now" money of \$10,000.

The irony is that the system has caught me just a few weeks before I expect to take a new contract as a computer consultant back in Michigan. I had planned to give notice to my current Houston client and Dallas consulting firm in a couple of days.

But I can't realistically make bail, and so, according to state law, Texas can keep me in jail for 45 days before the Guv (former scholar and party-boy G. W. Bush) even gets to hear my appeal. Plus, there would be the attorney fees, the attempt to find one — I hardly know anyone outside of work — and so forth. I doubt I can make much of a case, anyway, certainly

not from jail.

The choice is easy: extradition. The public defender recommends this course, too, and hands me his business card. Naively, I assume I'll be able to contact him for free legal advice down the line. The bunch of us that had collected in the antechamber, and then the courtroom, now resume routine entry processing in the jail proper at 09:00, Wednesday.

### Schmoozing With the Locals

So the day wears on, going from tank to crowded tank, I'm thinking any time I'll arrive at the cellpad and actually have a soft surface to sleep on. The tedium grinds me down. But I keep meeting interesting people. One of the young Hispanics strikes up a conversation:

"Hey mon, wha' ju in for? Ju know somethin', ju look jus' like Carlito . . . in Carlito's Way."

I was wearing my prescription blueblocker shades when I was detained. Some of the esteemed enrollees think I have that tough criminal-enterpriser look. I explain my situation, and he asks animatedly how much weed you can get from a Growtronic system. I tell him what I remember.

I strike up another conversation with a guy who's been in the system previously, and in fact has gone to the state prison at Huntsville. So what's it like? Apparently, it has some advantages to the county because most of the guys perform work and are not constantly confined in a cell.

Violence is normally not a problem if you exercise a little caution and are fortunate enough to avoid being locked up in proximity to big, mean, crazy guys. Here, in the whole time it's taken to be processed, I see three or four out of 4:00 or 5:00 guys who had that unfed psycho look. Anyway, at Harris County, the herders and watchers keep a close eye, and are ready to intervene in any assaults they aren't part of.

At midnight, Wednesday, in subdued light, walking into the cellpad with pillow and blanket, like a kindergartner late for his nap, I finally reach what will be home for the next six days.

### Harris County Hilton

Some faint conversation in the background, almost everyone is sleeping; two rows of double bunks and some overflow cots bring the total occupancy to about 40. I get an upper bunk next to a wall, and climb up carefully, close to exhaustion. I really need this semi-soft surface to catch up on the sleep missed over the past 30 hours of crawling on concrete floors.

Turns out this is an unusually quiet midnight. A brother two bunks down is awake and asks me what I did.

"Grew some weed, had an illegal gun in Michigan."

"Man, they ain't going to come to get you for that."

"Dunno." And I'm in z-ville.

About 3:00, the lights come on, a guard wakes us up with an announcement over the intercom, and some trustees wheel in racks containing trays of food. This is universally referred to as "chow," and chow is an apt term; it's a nondescript mass with low nutritional value on which to chew. As for the unusual hour, I don't have that figured out yet.

After breakfast, most of the guys are awake and dialoging up a storm. Difficult to sleep. I check out the sanitary facilities, which are Spartan: one communal toilet — with a handmade sign that states "Shiter only, no pissing" — two urinals, and a shower in the corner with a short concrete modesty wall.

"Privacy? Privacy? You don't need no stinkin' privacy!"

Back to the mat. More sleep for me, even though the general population is boisterously awake. The next chow time is 10:00, and again the message comes over the intercom, after which everyone stands in line to get his tray. Unlike roll call, these mealtimes are optional, so no rule prevents you from ignoring them.

Some of the guests are playing checkers or chess on picnic tables with checkerboards painted on top. There is also a steel table, without the checkerboards, occupied with a dominoes game, at the end of which are socks, t-shirts, and underwear

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*I thought this oversized oinker was going to take his oversized pistol off his oversized butt, and either pistol-whip or shoot me. He mutters something about never speaking to him again unless somebody dies in there.*

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drying, hanging off the bench edges. A few tenants are reading the *Houston Chronicle*, delivered daily, but there's a distribution pecking order of slow readers, so most of us get old news.

I begin to work my way into the social order. A lot of primal socializing is associated with barter, particularly trading food. At lunch, someone offers me an apple for a hockey-puck sweet roll, which I take him up on.

Some chess, some dominoes. Then I start rapping a little with one of the brothers, who seems to have the King Rat position within the cellpad. He asks me if I could use a pair of socks, which I sure can.

He's just going to give me the socks, though they're on the short, thin side. The expectation is when I leave, he'll get the majority of the stuff I have to leave behind. No problem.

"Could I get a pen and some paper somewhere?" A cheap pen and three sheets of paper costs me a chocolate milk, which someone tells me is high.

Irwin is an artist of sorts, using a lot of his commissary resources to purchase handkerchiefs, cardboard items, and ballpoint pens. He then creates ink sketches on the handkerchiefs and cardboard mostly of a Christian theme — Jesus in the manger, Jesus admonishing the moneychangers, Jesus on the cross, and so on — and colors them using extreme pressure. He breaks lots of pens.

Irwin, too, is a long-timer, but I never do find out his transgression. My guess is his sentence is a few more months, and for something like shoplifting or reading bad poetry in the Galleria and "resisting arrest." Houston cops are big in the news; just a few days ago six of them gunned down an unarmed Hispanic teenager on whom they found traces of dope.

And I notice how loud it gets in general, not just when there's a party going on — particularly, now that I decide to use the telephones. Yes there are telephones, three of them, two of which function. A detainee can make as many collect calls as he wants — calls do not come in, they only go out — and whoever you contact gets a banner message in an automated, loud, officious male voice:

"This is a collect call from the Harris County Jail. To accept the charges, press the star key."

Mom hardly expects to get a call from jail, and she has no clue of the particular incident back in Michigan behind all this. But she has long been dimly aware of my political notions and of my antipathy toward the state in general. So, eventually figuring out the key to push, she picks up on the second call, thinking it could at least be a friend of mine.

"Hi, Mom. Well, geez, you're not going to believe this, but ..."

I tell her the circumstances that led to my confinement, then I try to remember some telephone numbers for people I had planned to be visiting up there in three days.

Poor Mom. This can't be easy for her, either. She's back in Michigan, 72 years old, trying to get all the instructions right, press the right keys, talk to the right people, etc. And worrying about me.

"No, Mom, it doesn't really seem dangerous in here or anything. Just boring and noisy. I get to watch a lot of TV, particularly all those African-American sitcoms I missed the first time. Everyone seems to get along all right."

I ask her to call the secretary of the company where I work in downtown Houston. I had planned to give them a month's notice tomorrow, but now I have no idea when I can even get back to my desk.

"Tell her I have some legal problems, and it'll be a few days."

Then I try to reach my court-appointed attorney, but no one takes the collect call there. Duh.

It's mostly too loud for making phone calls, and when it isn't loud, the telephones tend to be monopolized by certain individuals, mainly the redneck alkies who mix sweet nothin's and verbal abuse as they palaver with the old lady they beat up a day earlier.

## Friday 8/29

Roll call at 05:00 is plain harassment, psy war. No way anyone can disappear in here, and you sure can't get out.

*One thing you need to do if you suspect imminent incarceration in America: wear tennis shoes.*

Concrete block on all sides except for some bulletproof glass and a door that exits to a central area where the guards staff an electronic control console, inside a steel and bulletproof-glass enclosure. Vent-shaft grates are the size of an envelope.

Regularly scheduled activities? Three. If you don't count the infirmary:

- Religious services and study groups — Christian, Muslim, Jewish. Nothing for devotees of Great Pumpkinism.
- Library visits — the library contains some legal material, but mainly Bibles and Christian literature.
- Exercise sessions.

I try an exercise session, just to get out of the cellpad. We go downstairs to a non-airconditioned gym, where a volley-

ball net and a makeshift handball court have been set up. If you don't get into one of the games, you can walk around aimlessly and enjoy Houston in Summer, Unplugged. Eventually, an opening occurs on one of the volleyball teams, and I play for half an hour. In ninety minutes, we file back to the cell, drenched in sweat.

Most eschew the scheduled out-of-cell activities. The television is on all the time, except when lights-out is officially called, and the brothers mainly control the program selection process. During the day, it's the soap operas.

There is virtually no theft, certainly nothing of your major stuff, which everyone keeps unsecured near their bunks. The social environment has a natural laissez-faire quality, a spontaneous order. When it seems right to vote on something, like a TV program, we do it and accept the vote.

Heck, if you lived in a society of guys like these, no one would put you away for smoking a joint or having a gun. They wouldn't draft you into the army or launch wars in your name or with your money. They wouldn't roust you for gambling or whoring. They'd pretty much leave you alone. As I told a friend later, "I hate to say it, but I think these are my kind of people."

Like Irwin, several others are taken with the Christian message, displaying high biblical understanding. And you have to admit there is an appeal and comfort in believing you have some father-figure or buddy in the sky who watches over you and cares about you personally ... especially under these circumstances, or worse ones that can easily be imagined.

Laundry happens once a week. They call roll and you give them your orange jammies, marking them with a pen in some way. The uniforms come back early in the morning (04:00 or 05:00) in a damp pile, and we sort through it to find our stylish monogrammed threads. They dry to a fine array of wrinkles by afternoon.

## Weekend 8/30, 8/31

This hyperconversational brother, Stanley, arrived a day ago. His life was going just fine until he made the mistake of picking up a hitchhiker a few years ago.

The hitchhiker wanted to stop at a party store. While he's parked outside, the hitchhiker robs the store. Stanley doesn't know anything about it. They get caught. With Texas justice, and a lousy court-appointed lawyer, the sentence is 10 years.

After three years, Stanley is paroled and put on a tether. He throws the tether on a passing truck, then takes off to California for work. Pulled over for some car problem in California, he was arrested on the parole violation, and, after 45 days, extradited to Texas. Now he's here, and probably is going to spend another year or two in jail.

Okay, so don't believe the story. I do, and it's representative. All I know is if you're looking for dangerous criminals who need to be put away for the safety of society, they ain't here. Generally, the system is a ruling-class, money-making operation preying on the unfortunate and the naturally disobedient or defiant.

## Homecoming

Little was I aware that this Sunday would be my last night in the Harris County Hilton. It had already seemed like an eternity, and I was doubtful that any of the narcocops in Michigan would care enough about a nothing case like mine



to hustle for it.

So about 05:00 Monday morning I awoke to my name spoken over the intercom, with a mixture of astonishment, relief, and apprehension. This was it: they had come to get me, and I had only a few minutes to get my items together — only a folder containing my papers, and the jammies on my back. Everything else, mainly some nonperishable food items, pens, paper, soap, and TP was left to Irwin.

For the past few days I'd been troubling my mind with thoughts of what these narcs were going to do with me on the way back. I had an image of being cuffed and stuffed in the back of a van, beaten regularly with a battle mace, and showing up in the Oakland County jail three days later as a smelly — more smelly — black and blue hulk.

It wasn't going to be like that. Two 30ish white middle-class, mild-mannered plainclothes cops, driving a big airport-rental car, show up at the check-out room.

Everything's cool. I'm even helping them with instructions to get back to the airport. We take a 727 from Houston Intercontinental to Detroit Metro. Cuffed in front while walking or in the car, but not cuffed on the plane — FAA regulations prohibit that. Walking through an airport with cuffs, escorted by cops, just like the movies. Real badass.

Another night in jail, this time my hometown variety. Like Houston, worse in some ways, better in others, just as crowded, less supervised, with slightly more-menacing gang types.

Tuesday, September 2, is the point of release, a lucky set of circumstances. Keep in mind, there are a lot of poor blokes in this jail, too, innocent victims of the state who got stuck mainly because they're black and/or poor.

I'm fortunate to have managed to reach a Michigan attorney through calls to Mom and to my ex-wife, Ariana. He's Walt Puchalski, personal acquaintance, former beau of Ari's twin sister, former prosecutor, now criminal defense attorney, and occasional political ally. He agrees to take the case.

Step one is arraignment before a magistrate for setting of bail.

Magistrate Janice Haviland presiding. As she reads incredulously through the warrants and the recent history of the case, my mind drifts back to the fateful day. . . .

### **Fear and Loathing in Drayton Plains**

On the evening of January 8, 1992, at approximately 2030, in the storage unit of Building 6, at the Clearview Apartment Complex, in Drayton Plains, Michigan, one or more persons intentionally started a serious fire.

Minutes before, Anne Lewis, living on the second floor, heard loud, angry male voices and violent crashing sounds in or near the apartment directly above hers. Indeed, according to the fire report, she thought someone had broken the window of that overhead apartment. She went to her balcony and looked up.

She then smelled smoke, gazed down and saw billows lapping up toward her window. Quickly, she called for help and, while the fire trucks were on their way, worked frantically with the apartment manager and other residents to get everyone out of the building.

Thanks to these efforts, everyone who had been at home in their apartments that night made it to safety. One older woman in the adjoining set of apartments suffered severe smoke inhalation and had to be helicoptered to an intensive

care facility in Ann Arbor. She recovered, but had she been in the hallway minutes longer, she'd have certainly perished.

Many firefighters that night were treated for smoke inhalation at Beaumont Hospital in Royal Oak. So was D, a well-known hyperactive Drayton Plains traffic cop and Walter Mitty wannabe. As officer D was running to and fro without a mask, firefighters informed him that in a bedroom of the third-floor unit, they had located a device growing marijuana.

When D left the hospital early the next morning, he valiantly returned to the scene and dutifully called his buds at the State of Michigan Narcotics Aggression Alliance (NAA), a

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*Some of the esteemed enrollees think I have that tough criminal-enterpriser look. I explain my situation, and he asks animatedly how much weed you can get from a Growtronic system. I tell him what I remember.*

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countywide, state-funded collection of rotating municipal cops specializing in investigating and/or busting people for drugs.

Without obtaining a search warrant, NAA Detective Sergeant G entered the premises, examined the growing system and made a determination that marijuana, indeed, was present. At that point, the apartment was identified as a "crime investigation scene" and sequestered along with the fire-damaged surroundings.

Early Wednesday morning, G obtained a search warrant, and with a fellow narc, ransacked this third-floor apartment, turning up an illegal firearm, some legal firearms, some cannabis literature, along with the Growtronic unit, and a handful of plants holding maybe a half-ounce of weed.

He left the search warrant on the dining room table. The charges, though on the same warrant, were significantly separated, one for "manufacture and/or delivery of a controlled substance" and the other for the illegal firearm.

I work late on January 8, 1992, and it's close to 10:30 by the time I arrive at my apartment. The yellow-taped area gives up the fact that a fire has occurred. A crowd was milling about. My neighbor downstairs, Anne Lewis, majorly geeked and all aflutter, tries to give me an idea of what's been happening.

"Where were you? It was exciting, we got all these people out. I almost fainted from the smoke. We were running and yelling, and the firemen got here really fast. You know somebody up there was *really* loud tonight, like having a fight."

I'm trying to think, "What the hell, who could possibly have come by that evening? I don't have that many friends, certainly few who would drop by, and no enemies that I know of either. And nobody has a key." I make arrangements to spend the night elsewhere, and return to the scene late the next morning.

The guy who escorts me in is fire-department cleanup. My plan is to gather up a few things, then see if some other friends or family can put me up for awhile. The apartment is lost to smoke damage, which has made an acrid stench everywhere that's hard to bear even through the disposable breath-

ing filter. As I gaze around, it slowly registers that my crib has been sacked.

Then I see the search warrant and list of property seized on the dining room table, and I get that primal fear of apprehension in the pit of my gut. The growing system is gone along with the weapons (and some coins and other valuables that don't show up on the seizure list). Now I realize what this is all about, and shaking, I quickly put a few items in an athletic bag along with the search papers, aiming to get out of there fast.

My fire-person escort mentions some officials have come through and hauled out some things, but "we don't have anything to do with those guys," and suggests I go down to the Drayton Plains police department and check it out. I think, yeah, right, and *you* just go over to that balcony there and do a swan dive.

One of the men walking through the building, apparently a fire department employee, pulls a badge and asks me to stick around to talk with a fire investigator. My heart is in my throat, but I say sure. I get to a phone in the temporary Red Cross unit, call work, return a call that my ex-wife has left with the fire department. I assure her I'm fine, but may have some other problems.

The fire investigator, H, interviews me. He's polite, sim-

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*Walking through an airport with cuffs, escorted by cops, just like the movies. Real badass.*

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ply inquiring where I was (Don's, Bloomfield Hills bistro) and whether anyone has it in for me (No). As an arson investigator, H is no ball of fire, just a county employee going through the routine motions of a job. And that's fine with me at this point.

"Anything unusual, you can think of?" he asks.

"Nope."

I leave him and drive to work, where I ask an esteemed colleague the name of his divorce attorney (need a lawyer, any ol' lawyer, pronto). Hal Crockett is an old salt who knows the rules in the criminal world, too, and his assistant will handle the matter of contacting the detective and giving me up voluntarily upon service of the arrest warrant, if/when one exists.

The next days are filled with insurance claims, removal and restoration of items from smoke damage, moving in with some friends for two weeks, and, of course, trying to find out the status of the arrest warrant.

I remember going to the apartment that weekend with a friend to pick up some things. He's taking some boxes to the truck, and casually asks two women who live downstairs across from the storage area:

"Anybody have an idea of what started this?"

"We heard it was the cops."

But as far as I know, no official, including NAA personnel or their boys, have been considered suspects, nor has any work gone forward as to who the two (or more) men were at my apartment the night of the fire. I get a twinge of conscience, in case no one has mentioned these dudes to H, and

express my misgivings to Crockett:

"You know a lady almost died at that place. I'm thinking the reason NAA isn't coming after me is they don't want to open any investigation into their own activities that night, or activities of people who may have been working under their guidance or loose authority. I'm thinking of going back to H, tell him what I've heard, maybe go to the newspapers."

Hal, the veteran barrister, leans back slowly in his chair, then issues his carefully weighed response:

"Are you out of your fucking mind?!"

After more contacts by the attorney with G and others at NAA, no arrest warrant is forthcoming. They don't return calls. We get written notification of a forfeiture hearing on the guns, which there is no point in fighting. Three years later, a "come-in" letter arrives in my mailbox, and again we contact the signer, and, again, no one knows jack about a warrant. Nothing in LEIN.

Time to forget about it and move on.

## The Trial

A few months later, I go to Houston for that contract job.

Two years more and here I am in cuffs standing before the magistrate.

She shakes her head, having a hard time accepting 1) this is a seven-year-old incident, 2) the prisoner volunteered to come in back then, 3) the arrest warrant was just made public (put in LEIN) six months ago, and 4) the county had suddenly gone to all this trouble to bring him in. My escort cops even somewhat gratuitously testify:

"Your honor, we don't think Mr. Brandt poses any risk of flight."

She gives me what Puchalski calls the "Get Out of Jail Free" card (a personal recognizance bond of \$10,000) with the proviso I can travel to Texas, wind up my affairs there, and return for the preliminary exam in three weeks. No out-of-pocket money.

Mom and I tag-team her '86 Ford Aerostar to Houston, pick up my car 50 miles away from where it was towed off (some vultures in Baytown relieve me of \$200.00 for that), then we crash at my efficiency near the Galleria. Mom leaves for Michigan the next day in the van with most of my apartment contents. I hang around and give notice, then finish up work there in ten days, and head north with the rest.

It's time to face the music.

In a normal criminal court proceeding, you have two stages: a preliminary examination, to determine if there is reason to go to trial, and, assuming no plea agreement is reached, a trial. In Michigan, preliminary exams are held in district court, and any subsequent felony proceedings in circuit court.

The cards are stacked against you, as a defendant, even with a good attorney, and I have, arguably, the best in Michigan. The cops and the prosecutors are against you, as a matter of system function and job security — they represent the state. Judges, with few exceptions, function as cheerleaders and sacerdotal scorekeepers for the prosecution.

The prelim is quite an eye-opener. Detective G testifies to the events of the early morning of January 9, 1992. His manner upon examination by Puchalski is apologetic: "did not have a warrant initially, somebody at Oakland County said it was OK, long time ago . . . remember most but not like yesterday, physical evidence disappeared, we may have

pictures."

Puchalski: "Move to dismiss."

Assistant Prosecutor: "Inevitable discovery."

Visiting judge: "The court will adopt the argument of the prosecution and bind the defendant over on both of the charges. Bond will continue."

G knows Puchalski from Puchalski being a former assistant prosecuting attorney, and he indicates to Puchalski, in private, that the cops have no axe to grind here against his client and hopes the case can be dismissed or a good plea deal made.

My next milestone is the evidentiary hearing before Circuit Court Judge W for which Walt puts together a formal motion consisting of five due process reasons to dismiss the case:

- 1) Delayed justice
- 2) Illegal search
- 3) Loss of physical evidence
- 4) Questionable and nonverifiable conclusions from the evidence
- 5) Improprieties in issuing the warrant

Quite a compelling document. Naturally, the circuit court prosecutor finds nothing there to cause him to deviate from his customary punitive advocacy. And Judge W may dwell on the left side of the bell curve intellectually, but he also lacks initiative.

He tells Puchalski "Yes, yes, I understand we'll deal with all that at the pretrial," failing to grasp that, no, the judge is supposed to listen to and rule upon evidentiary issues *now*. That's why it's called an evidentiary hearing. Walt is astounded that W doesn't even realize how the system works, especially when this is a case, due to all its irregularities, that normally "gets kicked," i.e. routinely dismissed.

In the meantime I want to get the fire investigation report. I call Oakland County Arson and find out that the case is still open and they won't release the report. Puchalski gets a court order and they give us an incomplete report. It contains nothing of H's interview with me, and nothing of his exculpatory interviews with Don or the Bloomfield Hills barmaid.

But the fire investigators do narrate what Anne Lewis reports about the noises made by the men upstairs, so they've known about that all along. Who *were* those guys? Now, if you're a real fire investigator, you'd want to find them, wouldn't you?

If we go to trial, the question of who set the apartment fire will not be considered relevant, unless we have clear proof that it was set by police to obtain evidence. Even then, Puchalski tells me the evidence issues can't be resubmitted after they've been ruled upon in the evidentiary hearing. That hearing never happened, anyway, because W was such a dimwit.

So if the cops bust down your door without a warrant, kill your wife and rape your dog, and then catch you rolling a joint, don't expect to bring up any unprofessional police behavior at trial. "Inevitable discovery," absolves any police action if drugs exist. Judges are 90 percent pro-goon, at least in the People's Republic and budding fascist theocracy of Michigan.

Sorry, I lost it there. Where was I?

Eventually, the persecutor offers guilty to the "manufacture" felony, dropping the gun charge. Probation is acceptable to him — no need for doing time on a first offense —

which is in accord with Michigan sentencing guidelines. Plus, with only the one felony, I can get it removed by petition in five years.

It was significant how the charges were eventually written up against me — separately. If the firearm charge had been connected with the other charge, then, *by statute*, it's an *automatic two-year prison sentence*! So G did me a big favor; he could have shattered my life with the stroke of a pen.

The probation interview precedes the sentence. One question is "Are you a homosexual?" to which I answer "No." Rather emphatically as I remember, because Puchalski told me one of his other heterosexual clients, who eventually had to do some time, got it mistakenly marked "Yes" by some careless or malicious probation officer).

When the sentencing day arrives in January, sure enough the report notes me as a homosexual. Further, it suspends my driving license for a year. This last is a consequence of another get-tough-on-drugs statute, but the statute was implemented after my "crime" was committed. Both issues Puchalski handles successfully with Judge W.

A few months later, on early release, it ends just as it began, sitting on my butt in a state office waiting for its byzantine machinery to process me and spit me out.

Why? I grew a natural plant that George Washington and Thomas Jefferson grew a bunch of. I liked it. My actions were

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*We have attained the status of petitioners in a courtroom, so naturally we are shackled and cuffed together — walking in a line wearing these goofy orange pajamas.*

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peaceful and friendly (and uncharacteristically considerate, if you really want to get into the whole Tony Robbins motivational story). Did I deserve this treatment? Does anyone?

Until you've been there — through a tax audit, a profile traffic stop, a BATF raid, or any of a growing number of police-function assaults on peaceful, consensual activities — you can't feel the violation.

Today I was pumping gas and thought, "What if someone came up, held a gun to my head, stole my money, and drove off?" The *last* thing that crossed my mind was that I'd call the cops. Protecting people from violent crime is just a sideline for them now, a dying art. Their main task is harassment of ordinary people for victimless acts.

The law is an ass, and has become a grand oppressor: it has turned the nonaggression principle on its ear and made crimes of things that are not crimes. It has turned the government itself into a predatory criminal enterprise resting on odd new forms of slavery, where *anyone* can be shanghaied and tied to the next yoke on the road to the detention center.

As a meagerly defiant and average middle-class victim of this predatory system, I would be doubly proud if my story sounds an alarm of some kind and helps generate some corrective action. There's this dream I have where a group of people are milling around at a party talking about football scores and movies, while this 800-pound gorilla destroys the furniture. If we don't pay attention quick and do something smart, the party's gonna be over. □

# Heroes of Freedom

*by Jim Powell*

The triumphs, trials and tribulations of liberty's greatest heroes.

Like many libertarians, I had long focused on the role of ideas in the history of liberty. I had also read widely about economic history and the history of law and culture relating to liberty. I was fortunate to have been at the University of Chicago when F.A. Hayek, Milton Friedman, George Stigler, Ronald Coase and Aaron Director were around, because they had an enormous amount of knowledge about the history of liberty.

It has only been during the last decade that I focused on a dimension of the story hardly anyone seems to have paid much attention to, namely the lives of liberty's great heroes. I pored through all the biographies I could find, drawing on major libraries and booksellers around the world. In addition, I read published diaries, published letters and original manuscripts.

The lives of these people turned out to be far more dramatic and poignant than I had imagined. I didn't realize how daunting the obstacles they faced were, how much they suffered and how much persistence, resourcefulness and courage was needed to prevail. Nor had I known how many friends of liberty inspired and helped each other. Long before political correctness became a scourge, there was a vigorous libertarian tradition in which an Englishman inspired Americans, an American aided the French, a Frenchman influenced the Greeks, a Dutchman helped save the lives of the English, an Italian reached out to people in India, a Swede inspired Jews and a German inspired people on every continent.

There were so many critical times in the history of liberty when everything involved in getting a job done — writing a book, giving a speech, soliciting volunteers — depended on a single individual or a very small number of individuals. Miraculously, these individuals seemed to come out of nowhere and often from the most humble circumstances. I wrote about some 65 people in my new book *The Triumph of Liberty*. Two were former slaves, one was a farmer's daughter, another was a pencilmaker's son, one was a hobo, and so on. These people transformed themselves into activists, writ-

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ers, educators and political leaders who changed the world.

## The Great Orator

I began the story with Marcus Tullius Cicero (106–43 B.C.), the earliest figure about whom much biographical material is available. He expressed principles of natural law, and amidst a violent age, he was a man of peace. He refused to build a personal army like other leading Roman politicians, and he spoke out against violence. "It is a hard thing to say," he declared, "but we Romans are loathed abroad because of the damage our generals and officials have done. . . . Do you know of a single state that we have subdued that is still rich, or a single rich state that our generals have not subdued?"

When the chips were down, Cicero displayed the courage of his convictions. He opposed Julius Caesar's schemes for one-man rule. After Caesar's assassination, he denounced Mark Antony's bid to become dictator, and Antony had him beheaded.

For centuries, though, people read Cicero because of his beautiful Latin prose. He had transformed Latin from a utilitarian language, serving generals, merchants and lawyers, into a poetic language. The first century A.D. Roman writer Quintilian remarked that Cicero was "the name not of a man, but of eloquence itself." As a writer, Thomas Jefferson called Cicero "the first master of the world." Historian Edward Gibbon, who elegantly portrayed Rome's decline, recalled that when reading Cicero "I tasted the beauties of language, I breathed the spirit of freedom, and I imbibed from his precepts and examples the public and private sense of a man."

Murray Rothbard hailed Cicero as "the great transmitter of Stoic ideas from Greece to Rome. . . . Stoic natural law doc-

trines heavily influenced the Roman jurists of the second and third centuries A.D., and thus helped shape the great structures of Roman law which became pervasive in Western civilization."

## The First Pacifist

The Dutch-born monk Desiderius Erasmus (1469?-1536), endured wretched poverty and became a pioneering champion of peace. Historian Preserved Smith described the place where Erasmus lived in Venice:

roots were burned as fuel, making nothing but smoke. . . . In summer the house was overrun with fleas and bugs. The wine was made by adding water to dregs of ten years' standing. The bread, made of spoiled flour twice a month, became hard as rocks. . . . In the autumn the fare consisted of small portions of shellfish drawn from the sewers. When the guest complained of these he was given soup made of the rinds of cheese, followed by a bit of meat, taken, two weeks previously, from the viscera of an ancient cow. The batter with which it was covered was just enough to deceive the eye, but not the nose.

Amidst such squalor, Erasmus scratched away with a quill pen and became perhaps the first to fully take advantage of opportunities opened up by Johannes Gutenberg's movable type. Erasmus translated Greek plays and the New Testament, wrote satires, letters, all sorts of other things, which enjoyed a wide audience across Europe. His *Dulce Bellum Inexpertis* (1515) is credited as the first book in European history making a case for pacifism, and the theme of peace runs throughout his writings. He attacked "the vengeful furies whenever they let loose their snakes and assail the hearts of men with lust for war."

Erasmus scorned those "whose belief in communism of property goes to such length that they pick up anything lying about unguarded, and make off with it without a qualm of conscience."

Erasmus risked the wrath of Europe's most powerful rulers when he wrote that a king is "carnivorous, rapacious, a brigand, a destroyer, solitary, hated by all, a pest to

passionate pamphleteer.

After the Revolutionary War, Paine traveled to England, and he was there when his book *The Rights of Man* came off the presses. Pro-government newspapers denounced him as "Mad Tom." Churchmen delivered sermons attacking Paine. On May 17, 1792, the government charged him with seditious libel — a crime punishable by hanging. Excise tax collectors ransacked Paine's room. He hastened to Dover and boarded a boat for Calais, France in September 1792, avoiding an arrest warrant which arrived only 20 minutes later.

French officials considered Paine suspect because he was born in England — even though he could be hanged if he

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*Erasmus risked the wrath of Europe when he wrote that a king is "carnivorous, rapacious, a brigand, a destroyer, solitary, hated by all, a pest to all. . . ."*

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returned. In the middle of the night before Christmas 1793, Jacobin police hauled him away to Luxembourg Prison. On July 24, 1794, Paine's name was added to the list of prisoners who would be beheaded, but he got lucky. Prison guards mistakenly passed by his cell when they gathered the night's victims. Three days later, people had simply had enough of the Reign of Terror, and they beheaded Maximilien Robespierre, the most fanatical promoter of Jacobin violence. The worst was over, and Paine was freed.

Paine's *The Age of Reason*, offering a critique of organized religion, outraged almost everybody, and he returned to the United States an outcast. President Thomas Jefferson, however, welcomed Paine, saying that Paine is "too well entitled to the hospitality of every American, not to cheerfully receive mine."

## The French Revolutionary

Marquis de Lafayette (1757-1834) is one of my favorite heroes. He was wounded at Brandywine, Pennsylvania, during the American Revolution. He personally paid the cost of buying shoes for his soldiers, and helped corner British General Charles Cornwallis on the Yorktown peninsula, which led to victory. During the 1780s, he bought a plantation in French Guiana, liberated the slaves and showed them how to earn a livelihood on their own. Playing an important role in the early stages of the French Revolution, he ordered the capture of King Louis XVI who had tried to escape, and when Jacobins turned on Lafayette, he fled only to be captured by the Austrians and imprisoned for five years. Biographer Brand Whitlock described one of the prisons where "under the cross-barred windows of their dungeons drained the open sewers of the town. The stench was insupportable; vast swarms of mosquitoes rose from the river; dense fogs hung over it, and it bred pestilential fevers."

Lafayette emerged with little money because most of his assets had been expropriated, but he became a principal adversary of Napoleon who had established the first modern police state. After being defeated at Waterloo, Napoleon tried to retain power at home, but Lafayette demanded his

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*"Do you know of a single state," Cicero declared, "that we have subdued that is still rich, or a single rich state that our generals have not subdued?"*

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all. . . . Villages are burnt, fields are devastated, temples pillaged, innocent citizens slaughtered . . . while the king plays dice or dances, or amuses himself with fools, or with hunting or drinking." Ahead of his time, Erasmus urged a "limited monarchy, checked and decreased by an aristocracy and by democracy."

## A Man of Common Sense

Thomas Paine (1737-1809) took big risks with every one of his major works. As an English immigrant to the American colonies, he risked being charged with treason for his pamphlet *Common Sense* which convinced Americans to pursue independence. *The American Crisis* inspired Washington's men and made clear that Paine was our most

resignation. Eventually, Napoleon was forced to resign. Lafayette also played a key role bringing down King Charles X in 1830.

Meanwhile, Lafayette did more than anybody else to link friends of liberty everywhere. He was in touch with Thomas Jefferson, Thomas Paine, George Washington, Benjamin Franklin, James Madison, James Monroe, John Quincy Adams, Daniel Webster, Andrew Jackson and James Fenimore Cooper, among other Americans. He was a friend of Pierre-Samuel Du Pont de Nemours, Germaine de Stael, Benjamin Constant and Horace Say in France. He corresponded with Charles James Fox in England and Simón Bolívar (who helped secure the independence of Venezuela, Colombia, Ecuador, Peru and Bolivia). Lafayette encouraged Italian liberals, Spanish constitutionalists, and Greek and Polish freedom fighters — he even hid some Polish exiles in his attic.

Twentieth century historians generally belittled Lafayette as a simpleton, but even a tart-tongued biographer like Oliver Bernier acknowledged that:

whatever his limitations, it is to Lafayette's glory that the one idea he seized on was that of liberty. Nothing can replace the right to speak, think, organize, and govern freely: from this all benefits derive. With his vanity, his obstinacy, his self-satisfaction, his thirst for popularity, Lafayette never lost sight of that all-desirable principle. For that, he deserved the gratitude of his contemporaries and the esteem of later generations. In a world where liberty is in very short supply, there are worse heroes than a man who never stopped worshipping freedom.

### The Liberal Poets' Society

Then there's Friedrich Schiller (1759-1805), the greatest German playwright. He wrote one play about liberating the Swiss (*Wilhelm Tell*), another about liberating the Dutch (*Don Carlos*) and yet another about liberating the French (*The Maid of Orleans*). In his unfinished poem *German Greatness*, he urged his compatriots to renounce politics and war.

Hayek observed that Schiller "did probably as much as any man to spread liberal ideas in Germany." Ludwig von Mises declared, "Schiller became the preferred poet of the nation; in his enthusiastic devotion to liberty the Germans found their political ideal." That's why Schiller's work was banned by both Napoleon and Hitler.

Schiller displayed heroics in his personal life, creating his finest work despite severe asthma, tuberculosis, and liver and heart disease. The last nine years of his life, when he was virtually an invalid, were his most productive. A visitor reported in 1796:

One cannot help seeing in what an uninterrupted state of tension he is living . . . for every moment of spiritual slacking off produces

physical illness. And that is why he is so hard to cure, for his mind, accustomed to never-resting activity, is spurred to still greater efforts by physical suffering.

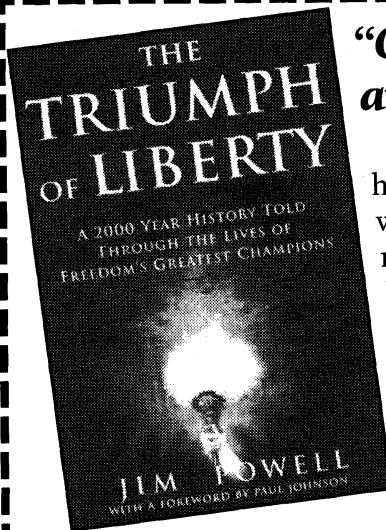
Thomas Mann wrote:

It is not easy to stop, once I have begun to speak of Schiller's special greatness — a generous, lofty, flaming, inspiring grandeur such as we do not find even in Goethe's wiser, more natural and elementary majesty. . . . Schiller's mighty talent . . . his libertarian sentiments . . . he is a poet who knows how to bring tears to our eyes while at the same time rousing us to indignation against despotism.

### William Lloyd Garrison

While Anthony Benezet, Thomas Paine and others had spoken out against slavery in the eighteenth century, there had never been a sustained antislavery movement in America until William Lloyd Garrison (1805-1879) came along. When Garrison came on the scene, two antislavery views dominated: that slavery should be ended gradually, and that slaves should be "colonized" back to Africa. Garrison launched the movement which aimed at immediate emancipation without compensation to slaveholders.

Garrison was a bold man of action. With the help of some friends, he founded (and for 35 years edited) the best-known abolitionist newspaper, *The Liberator*. He organized the New England Anti-Slavery Society which launched the abolitionist movement. He was a founder of the American Anti-Slavery Society and he traveled continuously to speak about the horrors of slavery. He brought the great English antislavery orator George Thompson to America, and he recruited Wendell Phillips and Frederick Douglass — who



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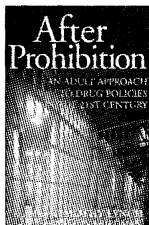
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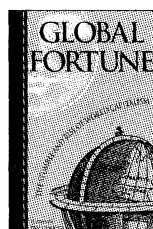
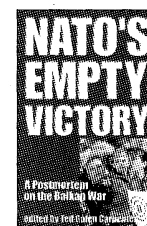


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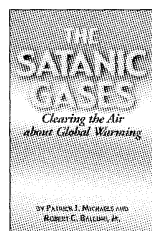


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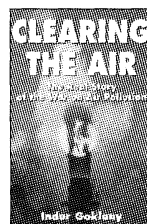


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became the most famous American anti-slavery orators.

Garrison's actions showed considerable courage, since most people in the North didn't want to hear about the slavery issue. Antislavery talk threatened to disrupt business and split the Union. And besides, even people who opposed slavery didn't generally like blacks. For his efforts, Garrison was jailed in Baltimore. North Carolina indicted him for provoking slave revolts. The Georgia legislature offered \$5,000 — a huge sum in those days — for anybody who brought him back to their state for trial and probable hanging. Six Mississippi slaveholders offered \$20,000 for anyone who could deliver Garrison. Proslavery goons put up a nine-foot-high gallows in front of Garrison's house. A Boston mob tried to lynch him.

### Elizabeth Cady Stanton

Equal rights for women didn't just happen. Elizabeth Cady Stanton (1815-1902) insisted women must have the right to own property, to enter into contracts, to share custody of children and, as an important way of securing these rights, women must have the right to vote. Stanton launched the movement, wrote a substantial number of the most important speeches (for herself and others, including Susan B. Anthony) and helped start four organizations to promote equal rights.

Stanton kept at it tirelessly. Frederick Douglass recalled:

[Y]ears ago in Boston, before the snows of time had fallen upon the locks of either of us, and long before the cause of woman had taken its high place among the great reforms of the nineteenth century, Mrs. Elizabeth Cady Stanton, then just returning from her wedding tour in Europe, did me the honor to sit by my side and by that logic of which she is master, successfully endeavored to convince me of the wisdom and truth of the then new gospel of woman's rights.

Susan B. Anthony (1820-1906) wrote her last and most poignant letter to Stanton, reminiscing that:

It is fifty-one years since first we met and we have been busy through every one of them, stirring up the world to recognize the rights of women. The older we grow, the more keenly we feel the humiliation of disenfranchisement and the more vividly we realize its disadvantages in every department of life and most of all in the labor market.

We little dreamed when we began this contest, optimistic with the hope and buoyancy of youth, that half a century later we would be compelled to leave the finish of the battle to another generation of women. But our hearts are filled with joy to know that they enter upon this task equipped with a college education, with business experience, with the fully admitted right to speak in public — all of which were denied to women fifty years ago. They have practically one point to gain — the suffrage; we had all. These strong, courageous, capable young women will take our place and complete our work. There is an army of them where we were but a handful. Ancient prejudice has become so softened, public sentiment so liberalized and women have so thoroughly demonstrated their ability as to leave not a shadow of doubt that they will carry our cause to victory.

After the suffrage amendment became part of the U.S. Constitution, suffragist Carrie Chapman Catt reflected that women had conducted:

fifty-six campaigns of referenda to male voters; 480 campaigns to get Legislatures to submit suffrage amendments to voters; 47 campaigns to get State constitutional conventions to write woman suffrage into state constitutions; 277

campaigns to get State party conventions to include woman suffrage planks; 30 campaigns to get presidential party conventions to adopt woman suffrage planks in party platforms, and 19 campaigns with 19 successive Congresses.

### Raoul Wallenberg

It's hard to imagine a more dramatic story than that of the amazing Swede Raoul Wallenberg who saved 100,000 Jews from Nazi death camps. In Budapest, 1944, he persuaded the Nazis that Jews holding his special passes should be under the protection of the Royal Swedish Legation, and he rented almost three dozen buildings to house these people. The Nazis figured they could get the Jews anytime they

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*Of the major 20th century thinkers for liberty, F.A. Hayek, Ludwig von Mises, Ayn Rand and Thomas Szasz were political exiles.*

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wanted, but the Allies had landed in Normandy, and the Russians were advancing from the East, so Wallenberg figured that the more deaths he could delay, the more would be avoided.

The challenge was getting these special passes to as many people as possible, and Wallenberg was incredibly resourceful and courageous. For instance, Wallenberg's driver Sandor Ar dai told biographer Harvey Rosenfeld:

We had come to a station where a train full of Jews was on the point of leaving for Germany and the death camps. The officer of the guard did not want to let us enter. Raoul Wallenberg then climbed up on the roof of the train and handed in many protective passports through the windows. The Arrow Cross men fired their guns and cried to him to go away, but he continued calmly to hand out passports to the hands which reached for them. But I believe that the men with the guns were impressed by his courage and on purpose aimed above him. Afterwards, he managed to get all Jews with passports out from the train.

When the Russians entered Budapest in January 1945, they arrested Wallenberg and imprisoned him. He disappeared in the Soviet gulag. I interviewed his half-sister Nina Lagergren who lives outside Stockholm and his half-brother Guy Von Dardel who's in Geneva, and they reported that human rights investigators have been unable to track his movements through the Soviet prison system. Around the world, though, there have been tributes to Wallenberg since he redeemed hope for liberty and humanity.

### Recent Heroes

Of the major 20th century thinkers for liberty, F.A. Hayek, Ludwig von Mises, Ayn Rand and Thomas Szasz were political exiles. Milton Friedman and Murray Rothbard were the sons of immigrants who fled from Eastern Europe and Russia respectively. All these individuals overcame resistance from hostile academics, journalists, editors and publishers. We owe much to their courage as well as their intellectual firepower.

I'm sure the future will bring more threats from politicians, terrorists and conquerors. But I have no doubt that in the new millennium, as in the past, new heroes and heroines will emerge to keep the torch of liberty burning bright. □

# Reviews

*It Didn't Happen Here: Why Socialism Failed in the United States*, by Seymour Martin Lipset and Gary Marks. W.W. Norton & Co., 2000, 379 pages.

## Socialism in America

Bruce Ramsey

The small minority of Americans who call themselves libertarians often miss how comparatively libertarian their country actually is. One indicator is that the United States has never had a major socialist party.

In their new book, *It Didn't Happen Here*, academics Seymour Martin Lipset and Gary Marks point out that America is the only industrialized Western country that can make that claim. Of course, government in America grew enormously in the 20th century, socialist party or not. In 1996, government at all levels in the United States absorbed 28.5 percent of the gross domestic product — far higher than in 1900. But it was still the lowest among comparable western countries.

Australia was at 31 percent of GDP; New Zealand 35.8, Britain 36, Canada 36.8, Germany 38.1, Italy 43.2, France 45.7 and Sweden 52. All have had socialist parties, and all but Canada have had socialist governments.

There *was* a movement in the United States to bring about a socialist government. The Socialist Party, formed in 1901, won 6 percent of the vote in the presidential election of 1912. It topped 10 percent of the vote in six states: Washington, Idaho, Montana, California, Arizona and

Oklahoma. That was the best it ever did, though it hung around until the 1960s when it was run by poverty maven Michael Harrington.

Why the poor results? One reason is America's two-party system. Despite numerous efforts from the Populists to the Perotistas, no party has replaced the Democrats or Republicans. But plenty of causes have infiltrated and influenced them. The Nonpartisan League, founded in 1916 by an ex-Socialist, took over the Republican Party in North Dakota. During its reign it set up a state-owned bank, grain terminal, flour mill, packing house and cold storage plant. It imposed a graduated income tax and mandatory eight-hour day. The Nonpartisan League spread along the Northern-tier states from Minnesota to Washington.

In the 1930s came the Commonwealth Federations in Washington and Oregon, which included Socialists and Communists but worked within the Democratic Party. In 1934, Socialist Upton Sinclair, author of *The Jungle* (1906), launched a movement called End Poverty in California and won the Democratic nomination for governor. For his efforts, the Socialist Party expelled him. It even ran a candidate against him. The Socialist Party had reacted the same to the Nonpartisan

League and the Commonwealthers. It wanted all or nothing.

In America, the authors say, a political movement has to be opportunistic. The Socialists were too doctrinaire. "Socialists tended to see politics in terms of absolute right and wrong, and it was difficult for them to envisage a strategy that involved institutionalized coalitions with non-Socialists."

In other Western countries, the key coalition for socialists was with organized labor. But in America, the Socialist Party made itself too radical for most unions. In 1911, Socialist Party leader Eugene Debs wrote "Not for all the votes of the AFL and its labor-dividing-and-corruption-breeding craft unions should we compromise one jot of our revolutionary principles." Debs bet his chips on the Industrial Workers of the World. It was a bad bet: the Wobblies, most successful with unmarried men in logging camps, peaked in membership in 1912 and were suppressed during and after World War I.

The Great War was a watershed. Labor shortages and regimentation invigorated organized labor and labor parties all over Europe. In America, the American Federation of Labor became a patriotic partner of Woodrow Wilson's crusade for democracy, and expanded to a size it would not see again until the New Deal. The Socialist

Party opposed the war. In 1918, Debs went to federal prison. In strongholds such as Oklahoma, where most Socialist membership was native-born, the party was tarred as anti-American, and wiped out. It survived best among the Germans of Milwaukee and anti-tsarist Jews of New York.

Then came the Red Scare. Socialist writers argue that repression is what wrecked socialism in the United States, but the authors don't agree. Socialist parties in other countries survived far

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*In America, a political movement has to be opportunistic. The Socialists were too doctrinaire.*

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worse. Debs was allowed to run for president from his prison cell and won a million votes in 1920. President Harding let him out, which was both the right thing and the smart thing: Debs was no threat to bourgeois society.

The high tide of the left in America came in the 1930s, a time when one-quarter of the American electorate told pollsters it favored "some kind of socialism." For the Socialists, the authors say, the Depression decade was the "final opportunity to build a viable political party." But the Socialists ran into master politician Franklin Roosevelt, who veered the Democrats to the left. Socialist intellectuals who had supported Norman Thomas in 1932 when he got 2.5 percent of the vote defected to Roosevelt in 1936. So did the garment workers'

unions, the Socialists' last labor stronghold. Norman Thomas's vote shrank radically in 1936.

Then came World War II. Once again, the national government was pro-union and committed to supporting the Allies "short of war." The Communists, who had thumped for Roosevelt in 1936, were antiwar in 1940 because Stalin had signed a peace pact with Hitler. The Socialists were also antiwar — an unprofitable position on the Left. Norman Thomas got just two-tenths of 1 percent of the vote. The Socialists' final urban stronghold, Milwaukee, fell that year as mayor Daniel Hoan lost his reelection after 24 years in office. Hoan, like other "sewer socialists," became a Democrat.

Thus ended the Socialists as a party worth watching. Why had it failed? Partly it was the American political system, which tends to absorb any third party that matters. Partly it was their own zealotry, which kept them aloof from labor and from allying with other leftists. But there was another reason, the authors say: the deep-seated American ideology of "anti-statism, laissez-faire, individualism, populism and egalitarianism."

For example, it wasn't just that the Socialists didn't want anything to do with the AFL. The AFL didn't want anything to do with the Socialists. The AFL, the authors write, "was the only union federation among those in western industrialized societies not to give its support to a working-class political party."

In antistatist America, the labor movement tended toward syndicalism, and was suspicious of the state. What changed labor's mind about such ideas as the minimum wage, state pensions and unemployment pay was the New

Deal, and the New Deal cemented labor to the Democrats.

One can argue, though the authors don't, that the Democrats became the *de facto* socialist party in 1932. In terms of the welfare state, they did. But there is more to socialism than government checks. The

Democrats never advocated nationalization, and have since backed away from socialist ideas such as subsidized interest rates, guaranteed jobs, unlimited welfare and industrial planning. The shift rightward by the Democrats in the 1990s and the continuing decline in unions, the authors say, are "the best evidence of the enduring influence of libertarian values" in the United States.

The European socialist parties have also shifted right, and in that sense it can no longer be said that America is unique. In what sense is Tony Blair running a socialist party? But Europe has also seen the rise of the Greens, with a different sort of leftist vision. In 1999, the Greens were part of the governing coalition in Belgium, Finland, France, Germany and Italy. But not here. The authors end their book with the observation that the United States "once more stands out politically among western democracies in that it lacks even a minimally effective Green Party."

Nor does the U.S. have even a minimally effective libertarian party, one might add. The Libertarian Party of today, like the Socialist Party of the early 20th century, is a party of pure doctrine, suspicious of alliances, a

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*The Libertarian Party of today, like the Socialist Party of the early 20th century, is a party of pure doctrine, suspicious of alliances, a party with no ties to a social or economic group, and stuck at 1 percent of the vote.*

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party with no ties to a social or economic group, and stuck at 1 percent of the vote. As such, it is doomed to failure.

But its agenda is not failing. Just as socialist ideas took root in the Democrat Party, libertarian ideas have percolated through the culture in the past 30 years and have taken root in the Republican Party. If the libertarian agenda is to be put into practice, it will be the Republicans that do it. □



"I figure that says it all, sir."

*The Devil and Sonny Liston*, by Nick Tosches. Little, Brown & Co., 2000, 266 pages.

# A Life of Hard Knocks

Gene Healy

Something about boxing attracts writers in search of the Masculine, and impels them to embarrass themselves. Gerald Early, Norman Mailer, Joyce Carol Oates, and others have imbued the sport with such dramatic, metaphorical significance — about Men, Race, Class, America — that it's easy to forget how uncomplicated an enterprise boxing really is: "Two guys trying to give each other a concussion," as a neurologist once unsentimentally described it to me. A.J. Liebling, author of the classic *The Sweet Science*, had a direct, laconic style that befitted the sport. But few pugilistic chroniclers since Liebling have been able to avoid sentiment and nonsense. For instance, Norman Mailer's *The Fight*, a chronicle of the Ali-Foreman "Rumble in the Jungle," complete with passages on Negritude, Bantu "philosophy," and Manhood, contains such delightfully impenetrable passages as "When laughter presents such power, what are we to make of the African's attitude toward lust, the inevitable kuntu of *fuck* — yes, every word will have its relation to the primeval elements of the universe."

Nick Tosches has nothing but scorn for Mailer, whom he calls a "tough-guy manqué," representative of a pretentious "white intelligentsia who sought meaning and metaphor in boxing." But Tosches's new biography of Sonny Liston, heavyweight champion from 1962 to 1964, is as full of incomprehensible dreck as Mailer at his worst. Hemingway wrote that every writer needs a "built-in, shock-proof, shit detector;" Tosches's detector is

keen when applied to other chroniclers of the "sweet science," but sadly defective when turned on his own work.

That Tosches has something of a flair for pompous portentousness is evident even from the book's jacket, which identifies him as the author of "*Dino: — A Brilliant Biography of the Man Who Embodied Menace for Mid-Century America.*" Dino? Dean Martin? The charming souse who sang "That's Amore?" You've got to be kidding.

But he's not. And if Tosches can turn a character like Dean Martin into an archetype of menace, imagine what he can do with someone truly menacing, like Sonny Liston. Liston, probably the most intimidating heavyweight champ in boxing history, came out of the Deep South — Arkansas, Tennessee, the date and the place of his birth have always been a bit murky — and made his way to St. Louis, where he embarked on a career of petty, violent crime. A string of assaults and muggings soon landed young Liston in the Missouri State Penitentiary at Jefferson City, where he learned to box. He brought to the sport cold fury and natural physical talent. As author and former boxer Thom Jones put it, Liston was blessed with a left jab that "would decapitate anyone with less than a seventeen-inch neck."

The earning potential that jab represented wasn't lost on boxing's shadowy Powers that Be. Once out of prison, Liston became a wholly owned subsidiary of underworld characters with names like "Blinky" Palermo. In the early years, he apparently moonlighted as a legbreaker for the mob. Soon moving on to better things, Liston rose through the ranks of the heavyweight division and in 1962

knocked out gentleman champ Floyd Patterson to gain the heavyweight crown — though the phrase "knocked out" doesn't really do the act justice. Before the fight, Liston said of Patterson, "I'll kill him. I'd like to run him over in a car." He did the closest thing to it, utterly demolishing Patterson in two minutes and six seconds. Liston was champ for less than two years, and then lost two fights in controversial circumstances to Muhammad Ali, né Cassius Clay (Clay "came out" as a Black Muslim and changed his name after the first bout). After losing — or throwing? — the second fight to Ali, Liston had a few more fights, and died under mysterious circumstances in Vegas in 1970, of a heroin overdose, despite a well-known fear of needles.

Liston's story, then, is an intriguing and dramatic one; but is it as dramatic as Tosches makes it? Consider:

[Sonny] spoke as one who knew in his blood what few others admitted: that no man — neither he nor they who had claimed him; neither prisoner nor he who sat in judgment; neither he in the gutter nor he who ruled from the Big House; neither he who knelt before God nor he who knelt before the indwelling darkness of himself — was ever his own man. No one in this world was free . . . that and that alone was nature; and to be aware of this, in thought and in blood, or in blood alone, was to possess something of wisdom, and therein lay the only manumission, the only elusive wind-blown corsilk strand of freedom that was real amid the illusive and delusive freedom that all professed and praised.

Whew! Sonny Liston: not just a mobbed-up heavyweight who took a few dives, but a metaphor for the human condition and a walking refutation of Free Will!

While this purple prose may fit comfortably within the genre of post-1965, novelistic bloviations about boxing, by chapter three of *The Devil and Sonny Liston*, "Big Time," Tosches has reached what is surely a low point in pugilistic chronicling, with a passage that might make even Mailer blush. Tosches breaks off an account of the Kefauver hearings into mob influence on boxing for an (ahem) extended discussion of Sonny's penis. "Let's talk

cock," Tosches says, by way of subtle transition. Sonny, in case you were wondering, was big enough to "scare a horse."

It's a shame that so much of *The Devil and Sonny Liston* is so tough to take, because much of the rest is terrifi-

cally entertaining and absorbing. No one can match David Remnick's splendid 1998 book *King of the World* for its account of the Patterson-Liston-Clay/Ali fights, but Tosches does an admirable job nonetheless. He recalls for us the racially charged atmosphere of the

first Liston-Patterson fight. Though both men were black, Patterson had been cast — and was somewhat complicit in his own casting — as the "white man" in the fight. The soft-spoken, gentlemanly Patterson was the sort of athlete who gave rise to the condescending phrase, "a credit to his race." We get a real sense from Tosches, as we did from Remnick, of

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*Sonny Liston: not just a mobbed-up heavyweight who took a few dives, but a metaphor for the human condition and a walking refutation of Free Will! Whew!*

how different things were in America before the Sixties properly got started. The NAACP openly rooted for Patterson and against the surly, menacing, mob-connected Liston; Percy Sutton, the organization's president, said that Patterson "represents us better than Liston ever could or would." Today, when Jesse Jackson travels to Decatur, Illinois to embrace hoodlums kicked out of school for rioting, it's hard to imagine that there once was a time when civil rights leaders felt an obligation to denounce thuggery. (Plus: A black guy named Percy?) At the time, even James Baldwin, famed literary apologist for Black Rage, lamented Patterson's ignominious defeat. Baldwin left the fight depressed, and went off "to have a drink, with love, for Floyd."

After his rematch with Patterson, which Liston won by knockout in two minutes and 23 seconds, Liston would lose his belt to 22-year old Cassius Clay. After six rounds, Sonny said "no más" and refused to answer the bell for the start of the seventh, complaining of numbness in his left arm. As infuriatingly suspicious as this ending was, it could not equal the rematch for controversy. Ali won the second bout with a first-round knockout, sending Liston to the canvas with, as Tosches puts it "a blow so slight that few could see it: a short right hand that seemed

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intended only to fluster and to fend off, a short right hand followed by a left hook that missed."

As David Remnick suggested in *King of the World*, watching the second Liston-Ali fight and trying to figure out whether the "phantom punch" really knocked Sonny out is like watching the Zapruder film and trying to figure out whether there was a second shooter from the pitch and roll of J.F.K.'s head. Remnick concluded that the knockout was real; Tosches doesn't buy it. He calls the second fight "a flaunted fix."

In fact, Tosches makes a fairly convincing case that both fights were fixed. Intercontinental Promotions, a mob-connected promotional enterprise of which Liston was a partner had, prior to the first fight, paid \$50,000 for the rights to promote Clay's next fight, "a staggering amount to pay for the future rights to a single bout by a fighter who was facing almost certain defeat in his upcoming match with Liston." And both Liston's bodyguard and Liston's half-brother confirmed to Tosches that Sonny admitted throwing the fight at the mob's behest. To believe that Liston really lost both fights, Tosches suggests, one has to believe (a) that a man who in an insignificant fight once went the distance with a broken jaw would quit in the heavyweight championship because of arm pain; and (b) that a man who had been knocked down only once before would be knocked out by a punch that looked incapable of even ruffling him.

As interesting as Tosches's account of the Clay-Liston fights is, the most powerful passages in the book are not written by Tosches himself. They're the words of Liston's opponents, recalling the "new dimensions of pain" they experienced from the punishment Sonny meted out. Tosches has the good sense to let Liston's victims go on at length, uninterrupted. Heavyweight Marty Marshall, who actually beat Liston in an early fight, recounts their April 1955 rematch in tones of awe, fear and bewilderment. You can almost hear his voice crack as years later he recalls the indignity of the beating Sonny gave him. You see, Marshall had the audacity to knock Liston down in the fourth round of their rematch, and still wishes he hadn't: "I'm sorry to this day about that. Man, am I sorry. He hit

me after that like — *nobody* should be hit like that. I think about it now and I hurt. He came out after me in the fifth round. He hit me with a right hand on my ear. It didn't knock me out and it didn't knock me down, but it hurt so much I just had to go down anyway. The next round, he knocked me down three times. He hit me in the stomach with a left hand in the sixth. That wasn't a knockdown, either. It couldn't be: I was paralyzed. I just couldn't move. I couldn't move enough to fall

down."

Chuck Wepner, who lost to Liston on June 29, 1970, in Liston's last fight, recalled that "after the fifth round, I was target practice. My one eye closed, my equilibrium was off. Broken nose, broken left cheekbone, seventy-two stitches. They iced me down for two straight days. I was in shock for three days, I really was. . . . It got so bad near the end [that] when the guy landed a jab . . . I could hear the bone shattering." Wepner, who later fought Ali for

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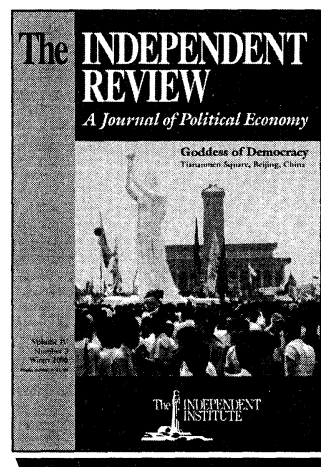
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the championship, said, "Liston was a lot tougher to fight. Ali didn't hit like Liston. Liston was the only man that ever hurt me."

Nick Tosches sees in Sonny Liston an emblem of fallen humanity, of our powerlessness over our own fate and the dark forces that tempt us. I don't know about any of that. But *The Devil and Sonny Liston* has convinced me of this much at least: Sonny was a mean

son of a bitch and as formidable a heavyweight as we've seen before or since. In his prime, he'd have made Tyson his jailhouse punk and beat the British accent out of Lennox Lewis. One suspects that Liston, whose epitaph reads simply "A Man," would have been happier with that assessment than with Tosches's ungainly attempts to imbue him with transcendent significance. □

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*Property Matters: How Property Rights Are Under Assault—And Why You Should Care*, by James V. DeLong. The Free Press, 1997, 390 pages.

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# Taking Property Seriously

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Bettina Bien Greaves

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There just aren't enough things in the world for everyone to have everything he wants. If each of us is to obtain food, clothing, shelter and the other things that we need or want, there must be some arrangement for determining who gets what. Otherwise we would have to fight over everything; it would be Hobbes's war of all against all. The system of property ownership based on private contract that has developed over centuries provides such an arrangement, and made possible the development of voluntary social cooperation and markets. And the profit opportunities markets offer provide people with an incentive to cooperate and produce. This voluntary cooperation has enabled us to produce more and more of the goods that enable us to live more comfortably.

Production depends on private property; trade depends on private property; peaceful social cooperation depends on private property. Without private property and the assurance that the property rights of individuals will be protected, production, exchange and social cooperation are

drastically reduced. The very survival of the world's six billion people, even the survival of civilization itself, depends on private property. Private property is the bedrock of civilization. Yet for some peculiar reason, books explaining the importance of private property have been few and far between.

But now we have James V. DeLong's *Property Matters*.

DeLong presents the case for private property, analyzes its difficulties, and explains the problems that result when private property rights are violated by government, the very entity obliged to protect property. DeLong begins by presenting the arguments for private property which have been made over the centuries. These arguments have been based on (1) justice, (2) economic efficiency, (3) political freedom, and (4) personal autonomy.

DeLong starts with John Locke's theory based on justice. According to Locke, "property" is created when a person mixes his labor with land. Thus it is unjust to seize another's property. To do so is an affront to the God-given nature of man: it is unjust to take from an individual the fruits of his labor.

The second argument for private

ownership DeLong presents is that it is economically efficient. Ownership of property leads to ingenuity, and fosters economic well-being, investment, long-term conservation, efficiency, exploration and development. Following 18th century British jurist William Blackstone, DeLong describes property as consisting of a bundle of several interests, each of which may be sold or leased separately, increasing productivity by permitting one piece of property to serve several purposes at the same time.

According to DeLong, a third argument for private property ownership is that it promotes political freedom. The right to own private property makes owners free and independent citizens, self-responsible individuals, not subjects of a government that controls their every act and their role in life.

DeLong's fourth argument is from the point of view of personal autonomy; the right to acquire private property makes it possible for individuals to accumulate economic investments and to become economically independent; they no longer need to kowtow to the economically powerful.

So private property is vital! If private property were not protected, if no one knew what belonged to whom, social cooperation would disintegrate and the market would collapse. We would soon find ourselves in a dog-eat-dog society of the fittest and strongest, or forced to pay racketeers or corrupt officials for "protection."

## Defining Property

Demonstrating that property is necessary for humans to flourish is only part of the challenge that DeLong tackles. There remain other, more vexing questions, the most important of which is determining who owns what property.

A person's property seldom exists in complete isolation. It touches, is connected with, and may impinge on the properties of many others. The consequences of what I do on my property may spill over onto yours. I might use fertilizers or pesticides that flow downstream or seep into groundwater which you use. I might drain a pond and flood your land. Or I might dam a stream and deprive you of water. Our properties may be reached by a public

road to which others have access and over which we have no control. Environmental changes and technology may alter the way we use our property and lead to unanticipated consequences that adversely affect others. If property rights are respected, however, such differences can usually be settled peacefully — by discussion, compromise, contract, arbitration, or adjudication in court.

But what of property that is not owned privately? DeLong argues that

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*DeLong argues that when property is collectively owned, those with access have an incentive to use its resources as fully and as promptly as possible and no one has an interest in conserving it.*

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when property is collectively owned, those with access have an incentive to use its resources as fully and as promptly as possible; no one has an interest in conserving it. As a result, unless regulated or rationed, common property with any value will be overused. This is the "tragedy of the commons." We have witnessed the decline of whale, tuna, and salmon populations in unowned oceans; we have seen the pollution with sewage and manufacturing wastes of unowned lakes and rivers; we find overcrowding, littering, and deforestation of non-private highways, public parks and on the slopes of non-private mountainsides.

DeLong tackles some of the complexities involved in protecting intellectual property — such as songs, books, movies and plays. They deserve to be treated as property. But there are now additional problems due to the computer "revolution" and new techniques of reproduction — taping, photocopying, scanning, downloading, etc. What is needed, DeLong says, is some technical solution that can prevent copying. Property rights must satisfy the formula of the "three Ds" coined by Richard Stroup. "[T]hey must be (1) *defined* clearly so as to reside with a specific person or entity; (2) *defended* easily against nonowners who might

wish to use or steal the asset; and (3) *divestible*, or transferable, by the owner to others on whatever terms are mutually satisfactory to buyer and seller" (156).

### Endangered Species: A Market Solution

After demonstrating that property really *matters*, and arguing that protecting private property should be government's principal task, DeLong analyzes the effects of legislation intended to protect "endangered species" and to preserve "wetlands." He recites many horror stories. To comply with government's rules and regulations, property owners are often forced to spend substantial sums of money for alterations and/or to engage in expensive litigation. Their ownership rights become practically meaningless; they not only lose the

freedom to use their property as they wish, but some owners even lose their entire investment.

To illustrate, DeLong cites the "endangered species" legislation, which began innocuously enough. At first it listed a mere 83 species of domestic fish and wildlife to be protected, but the number has been increased until now some 950 plants and animals are classified as "endangered" with several hundred others enroute to inclusion. At first the law applied only to federal agencies and federal lands, but by now it has also become a nationwide program of control over the use of all private land in the United States. At first the law made it illegal to "take," i.e., to kill or capture, an "endangered" animal species, but it has been made criminal to "harass, harm, pursue, wound, kill, trap, capture, or collect, or to attempt

## Notes on Contributors

Baloo is a nom de plume of Rex F. May.

Brien Bartels is a free-lancer and political consultant living in Ellensburg, Washington.

John Bergstrom is a cartoonist and illustrator who lives in southern California.

David Boaz is the author of *Libertarianism: A Primer* and the editor of *The Libertarian Reader*.

Alan Bock is a senior columnist for the *Orange County Register*.

R.W. Bradford is editor of *Liberty*.

Logan Brandt is a freelance writer.

Scott Chambers is a cartoonist living in Arizona.

Andrew Chamberlain is an editorial assistant at *Liberty*.

Stephen Cox is the author of *The Titanic Story*.

Bettina Bien Greaves is co-compiler of *Mises: An Annotated Bibliography*.

J. Bishop Grewell is a research associate at the Political Economy Research Center.

John Haywood is an editorial assistant at *Liberty*.

Gene Healy is a lawyer practicing in Virginia.

Ben Johnson is a freelance writer.

Bart Kosko is a professor of electrical engineering at the University of Southern California.

David Kopel is author of *The Samurai, the Mountie, and the Cowboy*.

Richard Kostelanetz is a critic of culture and politics living in Manhattan.

Niklos Leverenz works for a public interest law firm in Sacramento.

Barry Loberfeld is the president of the Long Island chapter of the Freeman Discussion Society.

Sarah J. McCarthy is co-author of *Mom and Pop vs. the Dreambusters*.

Jim Powell is a senior fellow at the Cato Institute and editor of *Laissez Faire Books*.

Douglas Puchowski is a freelance writer.

Bruce Ramsey is a journalist in Seattle.

Sheldon Richman is editor of *Ideas on Liberty*.

Ivan Santana is an editorial assistant at *Liberty*.

Jane S. Shaw is a senior associate at the Political Economy Research Center.

Tim Slagle is a stand-up comedian living in Chicago.

Fred L. Smith Jr. is president of the Competitive Enterprise Institute.

David Ramsay Steele is author of *From Marx to Mises*.

Clark Stooksbury is a freelance writer living in Knoxville, Tennessee.

William R. Tonso is a professor emeritus of sociology at the University of Evansville, Indiana.

Douglas Tyler is a carpenter living in Virginia.

Matthew Vadum is a journalist in Washington, D.C.

Martin Morse Wooster is an associate editor of *The American Enterprise*.

Leland B. Yeager is Ludwig von Mises Distinguished Professor Emeritus of Economics at Auburn University.

to engage in any such conduct," (101) and *harm* has been redefined to include any modification of habitat that injures wildlife by interfering with behavioral patterns. This made it a crime for private landowners to modify the habitat of an endangered or threatened species located on their own property, even if they don't know the creature is there, or that their land is its natural habitat. DeLong suggests that this legislation has drastically undermined private property rights and dramatically increased the power of government: "To uphold this rule would require a court to say that in 1973 Congress gave the secretary of the interior the power to control every acre of ground in the

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*Landowners are well aware that finding an endangered species is a disaster. The species, not you, now owns the property.*

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United States and to 'impose unfairness to the point of ruin... upon the simplest farmer who finds his land conscripted to the national zoological use'" (102). In 1995, the Supreme Court said "this was precisely what Congress meant to do, and upheld the rule" (102).

The impact on habitat for endangered species and for wildlife generally has been severe, but not quite in the way the framers of the law intended. If a member of an "endangered" species is found in the neighborhood, owners who do not want to lose control of their property are foolish to allow it to remain attractive as a habitat; massive destruction is the wisest course. The economically rational course of action is to scorch the earth. "In the late 1980s, as the golden-cheeked warbler moved toward listing, a wave of habitat destruction swept through the area around Austin, Texas.... Ergo, Texans got out the chain saws and down came the oak and juniper" (103). The protections given the spotted owl in the Northwest also led to panic cutting, especially by

small landowners who, while not immediately affected, owned forest land to which the owls might migrate. As in Texas, out came the chain saws:

Nor is destruction limited to habitat. It extends to actual animals. Landowners are well aware that finding an endangered species is a disaster. The species, not you, now owns the property. The shorthand description of a common outcome is "shoot, shovel, and shut up." Again, the people who shoot a spotted owl do not hate the owl; they hate the government for putting them in a position where they felt they must shoot it. (105)

DeLong claims that market incentives would be more effective than punitive government action against property holders:

Property rights advocates like to point out how different things could be if the incentives facing landowners worked the other way. What if the government paid a bounty for every species found on your land? Owners would compete to make their property attractive so as to lure the species. If one landowner found it more profitable to develop the land, it would not matter. This would open a market niche for a neighbor (105).

### Preserving Wetlands

DeLong also discusses in some detail the government's program to preserve so-called wetlands. Here government has followed a similar path from definition to redefinition to jurisdictional expansion. The responsibilities of the Army Corps of Engineers for navigable waterways and those of the Environmental Protection Agency

to prevent contamination have become intertwined. When representatives of the two agencies disagree, property owners cannot get clear answers to questions and are bound to run afoul of one agency or the other. Arbitrary and conflicting rulings have been the norm. Many property owners have been fined, imprisoned, or forced to tear down structures which they had been led to believe were permissible, and some have even lost their entire investments.

DeLong argues that because there is no effective limit on what the EPA and the Corps may spend to protect the environment, they face no logical stopping point. They may always argue that some additional step, or many additional steps, are necessary before the environment can be regarded as truly protected.

Since the EPA and the Corps are spending other people's money and are not responsible for the financial health of either the people they regulate or the country as a whole, they lack any incentive to decline these additional steps. The single mission is the environment. Why should they listen to arguments that they should stop short of perfection? ... The moral is simple: it is not wise to give an agency like EPA, which has the single mission of protecting the environment, the authority and responsibility to determine when the environment is now officially protected.... It will never reach that point. (151)

The result of the ambiguity over property rights has been misuse of resources, conflict, inflexibility, and continuing environmental harm. What

## Coming in Liberty

"The Best Little Whorehouse in Idaho" — Michael Freitas recalls the last time he met an honest policeman.

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is needed is not more bureaucratic decision making, but a good dose of property rights.

One of the virtues of DeLong's book is that he argues eloquently against the idea that securing property rights will lead to the demise of community values or goals.

The institution of property, one of the bedrocks of human liberty and autonomy, is a great engine of the wealth with which this nation has been blessed. The reasoning that places private property in opposition to community values is precisely wrong. Property is one of the major tools by which the community achieves its values. Given all this, defining property rights and protecting people's personal right to property should be a major, and a highly honorable, preoccupation of the legal system. (304-305).

Civilization depends on peaceful social cooperation. And the right to own property is essential for peaceful social cooperation. When individuals are secure in their property, when they cannot be deprived of it arbitrarily and are free to use it, trade it, and dispose of it as they choose, so long as they do not use force or threat of force to harm

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*The shorthand description of a common outcome is "shoot, shovel, and shut up."*

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others, peaceful interpersonal relationships are fostered. Peaceful interpersonal relationships enable individuals to make contracts for the exchange of goods and services, and engage in other productive activities. New opportunities arise; people will come up with new ideas, dream of new and better ways of doing things, and develop resourcefulness and ingenuity. In this way, the right to own property is responsible for production, peace, prosperity and even for civilization itself. Many persons will agree with this. But few realize the extent to which the very survival of life as we know it in our global society, which depends on finely divided division of labor, rests on the protection of the right of individuals to own property. □

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*Prometheus Bedeviled: Science and the Contradictions of Contemporary Culture*, by Norman Levitt. Rutgers University Press, 1999, 416 pages.

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## Politicized Science 101

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Douglas Puchowski

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In *The Future and Its Enemies* Virginia Postrel posited a useful approach for viewing the contemporary political landscape. Cutting across the left-right dichotomy, she distinguished dynamists, or those acceptant of an open-ended future, from stasists, those seeking a fixed destiny. The distinction, in its similarity to the Nolan chart, was familiar to libertarians, but the book has resonated outside libertarian circles, even attracting *The New York Times* attention. Should it command a second edition a chapter might be added, identifying those dynamists who are also stasists and those stasists who pose as dynamists.

Norman Levitt is an example of the latter, a purported dynamist in science and math, but truly a stasist because of his support for state science and state control of other areas. He has written a broad ranging inquiry, examining the incongruities between the elitist character of advanced science and the equalitarian tenets of a democratic society. Some of the phenomena considered in *Prometheus Bedeviled* are familiar: creationists dismissing the evidence for evolution, postmodern philosophers challenging western epistemology with opaque tracts, the scientific illiteracy of the daily newspaper. Yet as microbiology and genetics continue to revolutionize human possibilities it seems clear the reverberations of this issue have only begun.

*Prometheus Bedeviled* is comprised of fifteen chapters, all but one having single word titles such as "Mathematics," "Credulity," "Technology," and "Culture." The chapter

on education is among the strongest and offers a synopsis of Levitt's thinking. It begins by accounting for the United States' continued preeminence in science despite its poor rank in science education. The country's international reputation, material prosperity, and relative ease of immigration draw an influx of foreign scientists, who help fill the void left by poor schools. Another important factor was the post-Sputnik increase in government funding for science and engineering education. Taking a stance uncommon in academia, Levitt writes:

for the science-recruitment policies of the sputnik era...[and] their unabashedly elitist character... The operating hypothesis was that talent, whatever its origins in genetic endowment or early childhood experience, is a relatively rare resource, that positive measures are necessary to seek it out, and that once found it requires and deserves special treatment.

Yet Levitt notes that many contemporary educators hold students' self-esteem in higher regard than their intelligence. He writes that a mix of relativist epistemology and ed-school constructivism have led to educational practices that coddle more than teach. Identifying an idealistic egalitarianism that undergirds these ideologies, he counters with a pointed observation: "Research mathematicians [are] well aware of the great disparity of talent that exists even within their extremely selective profession." One general consequence of these educational practices is the increasing number of high school and college students who graduate without a real sense of their strengths and weaknesses. While graduate schools, at least in the sciences, have

maintained a high level of excellence, Levitt notes that this kind of egalitarian thinking has begun to slink into once-preeminent state institutions:

The National Science Foundation — the patron . . . of some of the most science-friendly (and unabashedly elitist) programs of the 1950s and '60s, [is] an organization whose commitment to first-rate research has noticeably flagged. . . . Even as funding for top-flight research declines, the NSF has initiated a number of new programs explicitly hostile to traditional notions of excellence and eager to supplant them by the canons of political virtue long prevalent among postmodernists.

As an example of these programs, Levitt singles out a symposium entitled "Teaching the Majority" edited by Susan Rosser, a pedagogical theorist and Senior Program Officer for

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Women's Programs at NSF. About "Teaching the Majority," Levitt writes, "Its aim is to create new forms of science instruction that will supposedly be more accessible to women, non-whites, and homosexuals." Though I have not read Rosser's symposium, its goals seem odd: not long ago I had a girlfriend in an Ivy League med-school where, as I recall, roughly half of the students were non-white. Perhaps these numbers differ for strict science programs, but at this level it would seem mostly a matter of career choice.

Levitt's professional proximity to the academic left makes his critique particularly acute. His first book *Higher Superstition: The Academic Left and Its Quarrels with Science*, co-authored with Paul R. Gross, was the purported impetus for physicist Alan Sokal to propagate his now-famous "Sokal Hoax," a lengthy, farcical essay titled "Transgressing the Boundaries: The Transformative Hermeneutics of Quantum Gravity." The essay duped the editors of the postmodern journal

*Social Text*, who published it. (Where were the scientists with a sense of humor when I was in school?) Unlike the ed-school theorists he disputes, Levitt's primary concern is for effective math and science education. There is real frustration when, in an earlier chapter, he writes of "having been through several rounds of 'reform' in calculus teaching." One problem is that science and math are taught, at least in the schools I attended, as disconnected from their histories, and hence from real-life applications. I recall several math professors, even at the university level, throwing their hands up when asked: "What use does this have in the real world?" It seems a typically American question, yet never was the development of mathematics from a practical to an abstract science explained (or how it moves from abstract to practical). Neither were any of the great mathematicians discussed.

Levitt closes his critique of the educational practices of the left by noting that:

Hypertrophied political piety lies at the root. Constructivism and its variants offer convenient pretexts for the display of self-perceived political virtue. They make it possible for well-meaning math teachers, and the well-meaning ed-school theorists under whom they study, to think of themselves as activists addressing urgent political and social problems through their educational practices.

After twenty-two pages building this extensive critique, Levitt writes, "this is a society that, by and large, has little use for leftist ideas in its politics, in the way it thinks about economic issues, or in its approaches to public policy." The religious right is the greater problem. It is a point I will dispute momentarily, but assuming it is true, why spend so much of this chapter and of the entire book critiquing the left? The answer is not clear. My thought is that Levitt thinks in sentences, not chapters; this accounts for his stylish prose and explains his tendency to hedge his positions as a chapter progresses. The book is difficult to review without doing the same.

Creationists present obstacles to teaching biology, cosmology, and related subjects, but learning the truth about evolution or the origins of the universe requires a mere change in

perspective, one obtainable with some inspired study. The controversy surrounding the topic is even likely to spur the curious to investigate further.

Constructivism and similar leftist educational practices enter at a fundamental level, thus the effects are more enduring. For example, I have several Hispanic friends, who detest the bilingual education they received, beginning in elementary school, which has contributed to their inability to speak fluently in either Spanish or English. Needless to say, it is not easy to write even a simple term paper when your locution mixes the syntax of two languages. This is the kind of setback requiring a serious commitment to overcome.

Levitt's professional proximity to the academic left has a downside: it informs his critique of the right. Regarding creationists he writes, "[m]uch could be said — but little needs to be." And he is correct, but when encountering a more challenging argument the results are unfruitful. In the chapter entitled "Plutocracy," he argues against Terence Kealey's *The Economic Laws of Scientific Research*, a book which makes a strong case for laissez-faire science. Kealey is a classical liberal who Levitt lumps in with the right — a flaw that clouds his rebuttal. Levitt

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*It is hard to fathom how this group of highly intelligent and unabashedly rational people can appreciate the benefits that competition has within their own field, while condemning others to a state-enforced economic mediocrity.*

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notes that "technology often develops on serendipity rather than on developments undertaken with the aim of short-term profitability. A wide growing base of basic knowledge seems the surest warrant for technological advance." He misses that Kealey's argument is not one that necessarily favors applied science over basic research. Kealey's greatest concern is how each is funded. Drawing on studies done by B. Martin, J. Irvine and



others, Kealey shows that Japan, though more reliant on private funding for academic science, publishes a higher ratio of basic to applied research papers than do Britain, Canada, or the U.S. Instead of engaging with the details of Kealey's argument, Levitt builds his case against laissez-faire science on a number of questionable assumptions, including that research done for its practical applicability is not at all "curiosity driven" and that science funded with the hopes of realizing

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*Levitt seems to forget that objective truth cannot be forced upon a human mind any more than unfounded belief can.*

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a profit necessarily has short-range applicability.

His weak response to Kealey's book has deeper roots. An avowed elitist in his own field of expertise, Levitt is, economically, an egalitarian socialist. It is a perspective he shares with a fair number of scientists from his post-Sputnik generation. It is hard to fathom how this group of highly intelligent and unabashedly rational people can appreciate the benefits that competition has within their own field, while condemning others to a state-enforced economic mediocrity. Levitt's intellectual history, however, offers a clue. The NSF began contributing to his intellectual development while he was a student at The Bronx High School of Science, one of the country's top five public high schools; it then provided fellowships for graduate school, and later a grant for his position at Rutgers. Since science is able to identify talent with an alacrity that eludes say, social service organizations, the result has been that state-supported science has made significant contributions, while limiting, or at least identifying, its excesses. As a measure of his earnestness, Levitt condemns the emphasis on military technology and the extravagance of the space program. The realization of Lord Acton's truth about power and corruption has, for these scientists, been slowed by the objectivity of their endeavor.

I notice that, aside from Kealey,

very few libertarians have made practical arguments against government-funded science. It is partly because any attempt at writing a disinterested history requires an untangling of costs and benefits that is not easy. Yet, I sense there is also another reason, a conflict of interest perhaps, for it is safe to say that a mere fraction of the private wealth gained from patents transferred out of, say, Los Alamos Labs ends up in the hands of those who initially (and unwillingly) pay for the research.

In the book's penultimate chapter "Democracy" Levitt asks, "Is it possible to love democracy and yet remain vigilantly suspicious of the demotic?" Regarding the question as "Toquevillian," Levitt has the right author, but the wrong question. Most of the serious majoritarian ills he identifies are the kind that unchecked, state bureaucracies pullulate. More appropriately framed, the question would ask: How are we to regain a self-ruling democracy now that, to paraphrase de Toqueville, the majority is omnipotent? Further in the chapter Levitt writes, "purely democratic values are in perpetual contention with elitist ones," but he fails to distinguish between the elite arrived at through the disparate distribution of energy and talent, and the self-proclaimed elite that imposes its will on others.

For him endorsing epistemological hierarchies is among the state's functions. "The libertarian creed more or less insists 'every thinking being for himself,'" writes Levitt, "so that every aspect of a world view, every lineament of philosophy, must be created anew within each individual." It is pointless here to rebut the ridiculous half of this statement. Levitt seems to forget that objective truth cannot be forced upon a human mind any more than unfounded belief can. It is a lesson one can draw from the German physicists who rejected relativity not for problems in the theory itself but for its Jewish progenitor. One reason science has thrived in America is that the truths it reveals require no official seal of approval. People thinking for themselves: That this is the only way is obvious. That such freedom might encourage one to think is apparently not. □

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# Terra Incognita

## *Cardiff, Wales*

Evidence of the consequences of inadequate professional licensing in Great Britain, from the *Express*:

"I didn't see it coming," said Agnes Destiny, a professional clairvoyant, after her house collapsed. "I was totally shocked and surprised by what happened."

## *Boulder County, Colo.*

Progress in the battle to protect the public from uncensored businesses, as reported *The Associated Press*:

Health officials in Boulder County, Colorado, closed down 11-year-old Caitlin "Soda Girl" Rezac's lemonade stand because she lacked both a sink and a \$110 operating license. Rezac's business was able to reopen when her father paid the licensing fee and a local sink manufacturer donated a portable sink capable of using a garden hose.

## *Bangor, Wash.*

Local environmentalists protest the Navy's latest outrage:

A word-of-mouth report claimed that one of the Navy's nuclear submarines was going to shoot "water slugs," prompting protests by local environmentalists. The protesters were dispersed by an announcement from the Navy that "water slugs" are blanks fired from torpedo tubes to clean them out.

## *Portsmouth, Va.*

The Navy has also angered animal rights activists in Virginia, as reported by *The Virginian-Pilot*:

The Navy hired wildlife experts from the U.S. Department of Agriculture for \$21,621 to capture dozens of feral cats in the Norfolk Naval Ship Yard, despite protests from animal right activists from Peru.

## *Port Townsend, Wash.*

Dealing with school violence in 21st century public schools, reported by the *Jefferson County Leader*:

A public school "educational assistant" told a Superior Court judge that "Being a victim has traumatized me beyond my wildest fears. It seems as if my life (as it once had been) has been taken from me at that moment on." The teacher's aide, who remains anonymous, had witnessed the brandishing of a red and yellow plastic toy gun by Elizabeth "Beth" R. Daubner. The toy gun resembled "in shape" a .38-caliber revolver.

The perpetrator was sentenced to 30 days detention, \$390 in court fees and restitution, and counseling.

## *New York*

Interesting cultural observation, from *NBC News*:

"The importance of the sports bra to American women really cannot be overestimated," Katie Couric observed.

## *Seattle, Wash.*

Eternal vigilance is the price of a non-sexist society, as reported by *Seattle Weekly*:

A life-size female-shaped inflatable doll was briefly left in a staff restroom at a roadside truck-scale station operated by the Washington State Police, where it drew a few chuckles. About one year later, a supervisor saw passing reference of the doll in an officer's journal and launched an internal investigation of this incident of sexual harassment, which lasted for three months, produced over 200 pages of documents and interview transcripts.

## *Minneapolis, Minn.*

Advance in police science in the North Star State, reported by the estimable *Star Tribune*:

Minneapolis police, fearing possible protests against an animal genetics conference scheduled to begin July 21, 2000, announced plans to screen pedestrians on a two-block stretch of Nicollet Mall, to verify that every one has a legal reason to be there. Inspector Sharon Lubinski said the screening may involve stopping, questioning and even searching people.

Inspector Lubinski declined to say what will constitute legal reasons to walk on the mall or what would happen to people whose reasons for being there are disputed by police.

## *Altamonte Springs, Fla.*

Interesting community relations activity by police in central Florida, reported by the *Orlando Sentinel*:

A 14-year-old girl asked police officers Michael LaVoie and Thaddeus Antoszewski to take a photo at the Red Hot & Boom celebration in Altamonte Springs. Instead, Officer Antoszewski took a close-up picture of LaVoie's genitals.

## *Annapolis, Md.*

Curious observation about child psychology, by the Hon. Cynthia A. Carter, an alderman in Annapolis, from an interview in *Small Arms Review*:

Question: Should it be illegal to make these toy guns?

Answer: Absolutely!

Q: Really?

A: Absolutely! And if I had my way it would be.

Q: Making toy guns should be a crime?

A: Yes.

Q: And what should be the punishment?

A: The same as it would be if you made a real gun. Not every child can distinguish between a real gun and a toy gun. Their minds are not developed that way.

## *Washington, D.C.*

One American politician, the choice of 1.2% of the electorate, is still able to dream boldly, from *WorldNetDaily.com*:

Patrick J. Buchanan says that he could win the November 7th election if he were allowed into the debates with Bush and Gore.

# Sighting in the Second Amendment

## by Jacob G. Hornberger



We should not let the hoopla associated with the Million Mom March cause us to lose sight of the real purpose and meaning behind the Second Amendment: the ability to protect ourselves from the tyranny of our own government.

Virtually all the arguments in the gun-control debate have revolved around gun violence in American society. The proponents of registration, licensing, waiting periods, gun buy-backs, and even gun confiscation aim to rid our society of gun-related deaths.

But as their opponents have so ably pointed out, the means that the advocates of gun control are advocating are not likely to achieve their ends. People who violate laws against violence are not likely to feel constrained by gun-control laws. And people who do obey the gun-control laws are going to be less able to defend themselves against those who don't obey the laws.

Moreover, there is no

reason to believe that a war on guns will rid American society of guns any more than that a war on drugs has eradicated drugs from our society. Those who wish to purchase illegal guns will be able to do so on the black market as easily as they purchase drugs on the black market.

Thus, the ultimate consequence of gun control would be a society in which violent antisocial people are armed while peaceful, law-abiding people are disarmed. Of course, that's a prescription for disaster for those who are disarmed.

But despite its obvious importance, being able to protect oneself from murderers, rapists, robbers, burglars, and the like is not why the people of the United States enacted the Second Amendment to the Constitution in 1791. The true purpose of the amendment — one that modern-day Americans forget at their peril — was to protect us not from private thugs but rather from government ones.

Don't forget that revolutions are, by their very nature, wars against one's own government. Keep in mind that when George Washington and Thomas Jefferson revolted against England in 1776, they were British, not American, citizens. At various times throughout history, people

have taken up arms against their own government because of what they considered to be nasty and brutal acts that their own officials had committed against them.

Historically, the biggest threat to the freedom and well-being of a people has lain not with some foreign government but rather with one's own government. And as Thomas Jefferson pointed out in the Declaration of Independence, if a government "crosses the line" by engaging in overly tyrannical conduct against its own citizens, it is the right of the people to meet force with force, even to the point of violent revolution.

Resistance to tyranny and violent revolution, however, requires an essential ingredient — weapons. In the absence of weapons, there is only one course of action in the face of government brutality — obedience. A disarmed society is an obedient society, a society in which, at the extreme, people obey their own government's orders to follow the line into the gas chambers.

This point was recently reflected by what Fidel Castro said about the U.S. government's raid on the home of the Miami relatives of Elián González. He commented that his forces would not need to be armed to conduct a similar

raid in Cuba because Cuban citizens are not permitted to own guns. What he failed to say, of course, is that because of gun control, the Cuban people also lack the means to overthrow the gun-toting communist thugs who rule over them.

"But in America, our leaders are democratically elected. We are the government. There's nothing to fear here." But given the proper circumstances, a democratically elected government can be even more tyrannical than a totalitarian one. Remember: the very purpose of the Constitution and the Bill of Rights is to protect us from our own democratically elected government officials!

When citizens are well-armed, government officials must think twice before going too far down the road to tyranny against their own citizens. Thus, the right to bear arms protected by the Second Amendment is the best insurance policy that the American people could have against tyranny.

*Mr. Hornberger is president of The Future of Freedom Foundation in Fairfax, Va., ([www.fff.org](http://www.fff.org)) and co-editor of The Tyranny of Gun Control.*

### THE FUTURE OF FREEDOM FOUNDATION

11350 Random Hills Road, Suite 800  
Fairfax, VA 22030  
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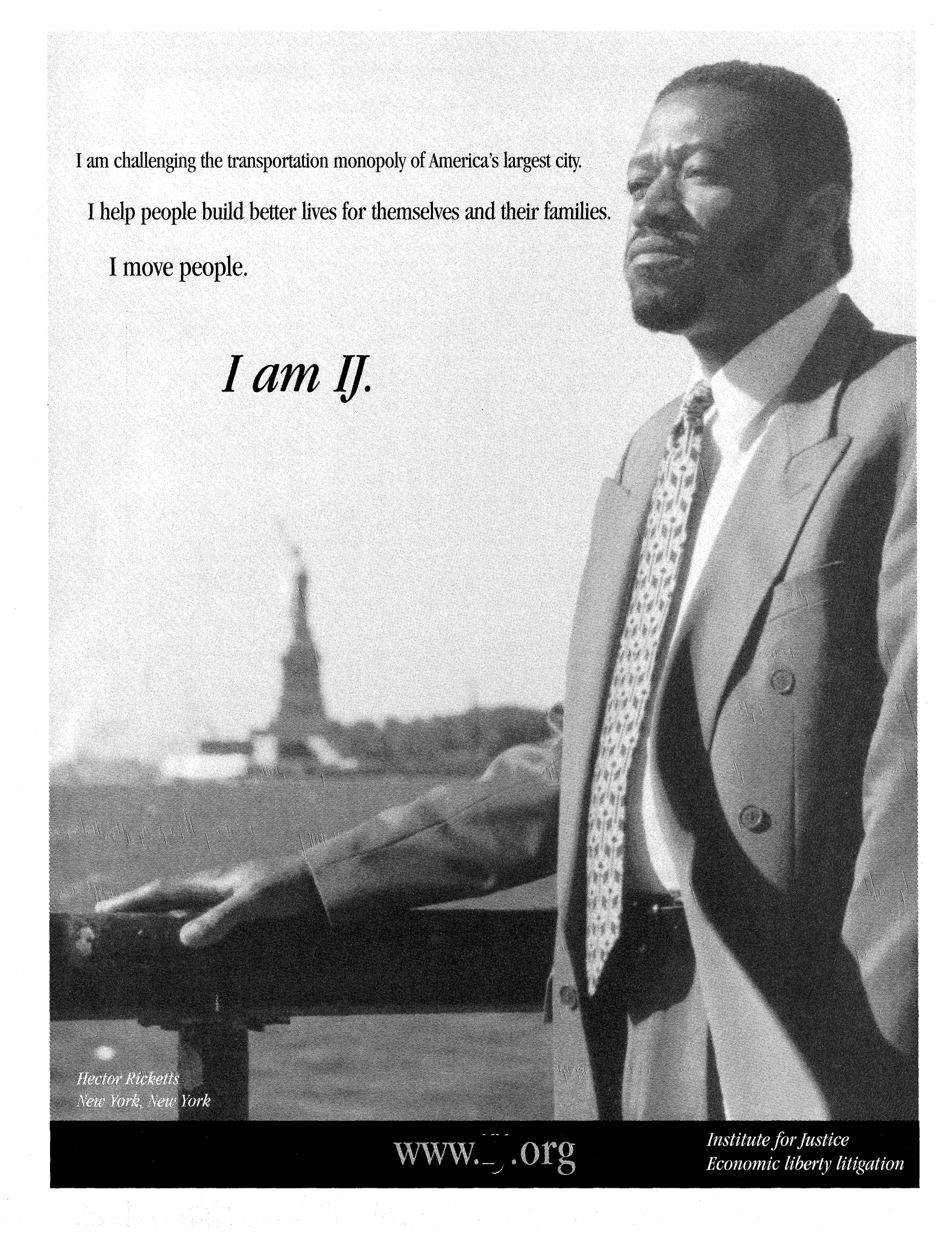
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