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By Jessica Bayne

Japan is America's current obsession. On the surface, the American preoccupation with Japan is economic—a trade deficit—but our obsession with Japan is not limited to statistical analyses of American timber exports and Japanese automobile imports. The Japanese are a socio-cultural "other" as much as they are an economic competitor. Americans view Japanese economic success as a threat to the primacy of the American way of life—America as the "victor of the Cold War" and as the lone superpower. The economic power and success of Japan is the result of a Japanese social and historical experience that seems anomalous to many Americans. Japan is the symbol of a fate which permits and sustains the economic and social ills of American society.

This article can explore only a bit of the American ideology which is reflected in the current fascination with Japan, beginning with the premise that Japan has become an ideological image. What Americans understand of Japan (in popular rather than academic circles) is not contextualized as part of Japan's history, social hierarchy, or cultural system; rather, these symbols are used to define the Japanese as culturally and socially aberrant when compared to the American standard. Focal points in this discussion of the Japanese include emphasis on long work weeks, quiescence of Japanese labor, and the relative homogeneity of the labor force with the idea that prevailing American assumptions about Japanese labor do not present an accurate picture of the Japanese reality. Instead, they seem to expose an American preoccupation with American labor. The search for cultural reasons for Japanese success is obscure. To Americans, Japanese are the perverts of Michael Crichton's Rising Sun, while at the same time strange echoes of the 1950s in America. It is as if Americans can only accept the 1950s image of a successful Cold War economic power. The social structure, "family values," and work ethic of that past success were the basis of US economic success.

The Japanese Work Force
The American media has lauded Japan for its innovations in labor management. Management experts tell Americans to be "more like the Japanese in our work habits," and Pete Harrill argues that "the Japanese don't need lessons in the work ethic... If a worker fails to do his part in the group enterprise, he usually plunges into a deep pool of personal agony and shame." (Harrill 85) Ironically enough, in an article for The Journal of Labor Research, Andrew Gordon, a noted historian of Japanese labor relations, recalls an anecdote about a Japanese businessman who lauded American workers in the 1920s for their "work ethic" and condemned Japanese workers for their laziness and inability to save. (Gordon 239)

The "group enterprise" in Japan has a long history of labor-management conflict. The enterprise is protected by a paternalistic structure that includes stable employment which is assumed to be for a lifetime, seniority based promotion, re-assignment, "equitable" salary distribution between white and blue collar workers, and company (enterprise) unionism within the individual company leading toward white and blue collar participation, flexible work rules, and labor management councils. (Kawahita 232)

Women are not as highly represented in the Japanese work force. As Japan's society grays and the work force shrinks," women have been recruited in greater numbers. (Neff 58) In the United States, women were highly represented in the early twentieth century textile industry. (Gordon 244) Women's participation in the paid work force declined between 1950 and 1976. (Osawa 625) When women did participate, it was between the ages of fifteen and twenty-five, before they were married. (Osawa 636) However, women did participate in "non-paid" or "self-employed" labor—what Americans recognize as "cottage" industries and agricultural work. In 1960, 46.5 percent of the Japanese female labor force was employed as "unpaid" workers, as compared to 5.6 percent for the United States. (Osawa 635) In 1979, this number had declined to 24.1 percent, evidence for increasing Japanese industrialization. In 1980, 29.5 percent of Japanese women were paid laborers which is 20 percent less than American women. (Osawa 631) The percentage of Japanese women who work, both paid and unpaid, hovered at around 45 percent in 1980. In order for this to be a meaningful number, it must be stressed that Japan is undergoing a transformation from a family based economy in which women could work within the home, to an industrial economy, in which women had difficulty integrating into the paid work force.

Common knowledge claims that the Japanese work longer hours than Americans. An article in Esquire magazine stated that "inventing excuses for not working is one of the finer American pastimes." (Harrill 85) Juliet Schor's, The Overworked American: The Unexpected Decline of Leisure, explores the reality behind the myth of the "underworked" American. She turns common sense on its head by arguing that Americans work harder than the employees of most industrialized nations.

There is a continued assertion that Japanese employees dedicate more of their time to paid labor and work-related

Common knowledge claims that the Japanese work longer hours than Americans.
The average American worked between three and six more hours per week. However, it has been suggested that Japanese labor statistics are incorrectly cited; "Japanese companies routinely underreport the hours their employees work. A recent survey found that 55 percent of employees worked unpaid and unrecorded overtime." (Weisman)

Japanese employees regularly spend more time than their American counterparts in work-related activities and unpaid overtime. This is not possible because of the mythic "workaholic" Japanese mentality, but because women are not as highly represented in the Japanese workforce. The dynamics of the single salary household, where one partner has full responsibility for domestic duties, permits the dedication of additional time to work-related activities. "Coerced," or socially-necessitated, female labor includes company dinners, weekend conferences, and domestic tasks like child care, housework, and dinner preparation. As previously discussed, women are not as highly represented within the Japanese labor pool as they are in the United States. "Necessary labor" is vital to a description of the American labor pool. Americans are paid for more hours than the Japanese. In 1987, the average American man worked 46 hours a week. (Horrigan & Markey 13) The average American woman worked 43 hours a week in 1987, but she spent additional hours on "necessary work"—domestic duties which are as vital for full integration into the workforce as company dinners and weekend conferences. (Horrigan & Markey) Negligent mothers are not socially accepted as good workers in the United States. High representation of women, who work shorter hours cross-culturally in the American work-force, lowers the total average of hours worked by women and men. Just as it is nearly impossible to document the hours spent by Japanese employees on work-related activities, it is also difficult to document the unpaid "necessary labor" hours of American employees. "Work," for the purposes of cross-cultural comparison, must imply "paid" work because the dynamics of "necessary labor" are culturally determined.

It is very difficult to measure how much Americans and Japanese workers are paid comparatively. In terms of buying power, comparisons are dependent on the relationship between the yen and the dollar. The most recent data seems to imply that Japanese manufacturing workers are paid two dollars an hour more than their American counterparts; however, any comparison between Japanese and American pay scales is full of difficulties. Japanese workers have different and, in many cases, better benefits than American workers. The proportion of Americans engaged in manufacturing has been in a steady decline since the 1970s. The US Secretary of Labor under the Reagan administration, William Brock, argued in a symposium on US/Japanese Labor Relations that "Conventional wisdom has always told us that American workers make more money than Japanese workers do, but it simply isn’t true. Japanese workers make more money per hour, and so do Italian, German, and French workers." (Brock 227)

Cross-cultural comparisons of Japanese and American labor are not contextualized. The American media displays a superficial understanding of the dynamics of Japanese workforce in which additional time is spent on the job but benefits are larger and the one-salary household is the primary means of consumption. American labor suffers from similar misconceptions. The American media stresses the "unpaid" labor of the Japanese and ignores the necessary labor of Americans. Comparisons of Japanese/American pay scales do not take into account the relative units of consumption of the one-salary household in Japan, versus the two-salary household and the increasing numbers of single parent households in the United States. American perceptions of Japanese labor are nostalgic and narcissistic. Peter Harrill writes,

Tokyo is a city that always reminds me of the America in which I grew up. The language and faces are different, but the mood, spirit, and lack of menace are like New York in the 1950s... I do wish that there would be a major outbreak of karoshi [death from overwork] in the cities of the United States. (Harrill 83,85)

Karoshi typifies, in the minds of many Americans, the Japanese work ethic. Though Japanese culture instills a strong work ethic, it also marks them as deviants from traditional American values.

A Look at Japanese Culture

The New York Times stated that Japanese men are ashamed to show affection to their girlfriends. Vending machines sell bouquets to "let young men avoid the embarrassment of having to admit to shopkeepers they are buying something for a sweetheart, an unaccustomed gesture in Japan." (Steingold A12) Along these lines, "In 1987, the [Japanese] government asked for some radical changes in male work habits: Cut down on overtime, take your wife to dinner. The government even designated November 22 as National Couples Day." (Harrill 85) Although there may be significant cross-cultural differences in the relationships...
between men and women, these articles give the false impression that Japanese men are reticent about expressing love to their wives. Based on such reports, Americans perceive the Japanese as inhuman and unloving. These cultural differences fall into a long standing racist image of Asians and foreigners as exotic and aberrant.

Michael Crichton's *Rising Sun* is a "masterpiece of American xenophobia" which describes the Japanese as sexually perverse and attributes Japanese economic success to the decline of American "family values." (Taylor 51)

*It's completely natural to them... I won't let anybody cut me... None of those things with knives or swords. At lot of them, they are so polite, so correct, but when they get turned on, they have this... this way.* (Crichton 64)

If Crichton's book were not a *New York Times* bestseller, one could dismiss his work as racist pornography. Crichton's novel centers around the murder of a beautiful American woman by the Japanese. Readers are subjected to a vivid account of her brutalization and death. Cheryl Austin is a "prostitute" for the Japanese, but for the Americans she is a wayward Texas orphan who really wants "the ring on the finger and the kids and the dog in the yard." (Crichton 63) Crichton reaches beyond the conspiracy theories or loose comments of the *New York Times* and *Esquire*, who claimed that Japanese men do not love their wives.

A New Perspective

Our obsession with Japan is not only inaccurate and perverse, it is unhealthy. Cultural constructions of an "other" will not reduce the US trade deficit, but cultural evaluations of the American labor force may help the United States design a labor strategy which is more appropriate to the American social system. A recent *Time* magazine cover story polled both Japanese and Americans and asked what they thought about each other. Unfortunately, this is the wrong question. The question should be, "what do Americans think of themselves?" A long hard look at the American reality will disgust those who thought the American family including white male workers, was the cause of our success, and not an educated, well-paid, stable work force. Unless America is able to look away from its "Japanese reflection," it will be embroiled in a series of misconceptions about its own national identity. As in the myth of Narcissus, America will drown in its own blurry reflection.

The *New York Times* stated that Japanese men are ashamed to show affection to their girlfriends.

Bibliography


Jessica Bayne is a Columbia College junior and Associate Editor of Helvidius.
Japan and Its Future Role at the UN: An Interview with the Ambassador of Japan
By Richard Ponzio

Japan’s higher status as an international economic leader in recent years has led to a growing political debate within Japan addressing the country’s future political role in the world. Although Japan raised 13 billion dollars (20 percent of total contributions) to cover the costs of the Gulf War, the western media still criticized the Japanese government for not supplying troops. Because of its constitution, Japan was unable to send troops into combat in the Middle East. Presently, however, a proposal to permit Japanese citizens to serve in the UN Peace-keeping Forces is receiving support in the lower chamber of the Japanese Diet. The proposal is expected to gain acceptance by the less important upper chamber this spring. For now, the world anxiously waits to see if Japan will increase its role as a political leader.

Japan attaches great importance to the upcoming UN Conference on Environment and Development (UNCED) and its preparatory process. Japan is particularly concerned about the ongoing negotiations on the Framework Convention on Climate Change, the Convention on Biological Diversity, and the forest agreement, which it hopes will be completed in time for the UNCED. Contrary to industrial giants, like the United States who have failed to set limits for emissions of gases that contribute to global warming, Japan has been committed to making the sacrifices necessary to foster environmentally sound and sustainable development. The delegation representing Japan is also a key contributor to the development of the Global Environment Facility (GEF) which provides grants to be used to explore ways of assisting developing countries to protect the global environment and to transfer environmentally benign technologies. Japan is again taking a leadership role in addressing global environmental issues while countries such as the United States refuse to contribute to the core fund of the GEF. In the past three years, Japan has committed itself to providing 300 billion yen ($2.2 billion) in bilateral and multilateral assistance to protect the environment. As the concern for environmental balance grows in the world, Japan, with its technical expertise and financial resources, is at the cutting edge in formulating solutions.

The following interview with the Ambassador and Permanent Representative to the United Nations, Mr. Yoshio Hatano, was held on 20 February 1991, two weeks prior to the fourth and final preparatory committee meeting for the UNCED.

Helvidius: For the past twenty years, there has been talk about Japan assuming permanent representative status on the Security Council. With the end of the Cold War and the 50th Anniversary of the UN only three years away, can we expect to see the creation of a permanent seat for Japan in the near future?

Ambassador Hatano: It is not for me to say. It is for the member countries of the United Nations to decide if Japan is suited to be a permanent member of the Security Council. Japan must be granted this position with the blessing of all member nations, not through back-door dealings.

Helvidius: Suppose, hypothetically, that Japan received the status of a permanent member on the Security Council. How would you feel about Japan assuming veto power, or do you feel the veto should be eliminated for all permanent members since it retards the process of selective security?

Hatano: We have not formulated any strong views in regards to the elimination of the veto power on the Security Council.

Helvidius: As a current two year member of the Security Council, what role will Japan play: the role of an average rotating member or a more influential force which attempts to increase the UN’s capacity to maintain international peace and security?

Hatano: We intend to play a useful and closely involved role. The Security Council must be prepared to pay the bill for a decision. We must be able to explain to our taxpayers that they have been well represented. During the Gulf War, Japan raised $13 billion for the allied forces by levying a corporation and gasoline tax. Let me also note that Prime Minister Kaifu was stunned last year when Japan’s role in the Gulf War was criticized by the western press, even after making enormous [economic] contributions.

Japan has been committed to making the necessary sacrifices to foster environmentally sound and sustainable development.

Helvidius: For the past year, there has been much debate within Japan about participating in UN peace-keeping operations. Although Prime Minister Miyazawa’s proposal suffered a setback last November, do you feel it is only a matter of time before the Diet passes the legislation which allow Japanese citizens to play an active role in UN peace keeping operations?

Hatano: Presently, a UN Cooperation Bill is being considered which would enable Japan’s self-defense forces to participate
in peace keeping activities abroad. It is constitutionally difficult to change our past way of thinking. I am not quite sure what is going to be the fate of the bill, but I would like to see it pass.

Helvidius: With the end of the Cold War and reemergence of the UN as a player in international politics, the opportunity exists to strengthen and restructure particular organs of the UN such as the Secretariat. What reforms will Japan pursue over the next few years?

A UN Cooperation Bill is being considered which would enable Japan's self-defense forces to participate in peace-keeping activities, abroad.

Hatano: We have promoted the need to streamline the Secretariat. I would like to note here that Secretary-General Ghali has implemented drastic reductions in the number of Under Secretary-Generals, and we applaud his initiative. There are many other suggestions floating around, but the time is not appropriate for me to officially state [sic] them.

Helvidius: A major focus of everyone's attention this year will be the UN Conference on Environment and Development (UNCED). Concerning cross-sectoral issues, Japan has placed a high priority on effectively addressing questions pertaining to financial resources and the transfer of clean technologies. As a country with the ability to provide expert technical assistance and other types of aid, what initiatives has Japan undertaken?

Hatano: The most important initiative my country is undertaking is the "Wise Man's Meeting" which will convene in Tokyo this April. At this meeting, a small, high-level group of financial and policy leaders will discuss financial issues relating to the UNCED. In addition, a very important conference on climatic change where Japan has introduced a number of bold initiatives is currently taking place in New York. A member of the Japanese delegation is, in fact, co-chairing the meeting. To address global environmental issues such as climate change, pollution of international waters, and depletion of the ozone layer, Japan would like to see a steady growth in the role of the Global Environment Facility. Japan would also like to see the Convention on Biological Diversity and the forest agreement completed in time for the UNCED.

Helvidius: In a speech addressed to the General Assembly this past November, you stated that the government of Japan stands ready to utilize its knowledge and experience to foster cordial relations among all nations of the Middle East. Would you please elaborate on this statement?

Hatano: At this time we are participating very actively in different aspects of the situation in the Middle East, especially in the areas of economic and financial cooperation. In the search for a political solution, we render our services to all sides, and we have established good relations with both Israel and the PLO.

Helvidius: The United States' relationship with Japan is presently experiencing some turbulence. Do you foresee the present trade tensions between the United States and Japan as having a negative impact on the American-Japanese working relationship at the UN? Could a power struggle within the UN system occur between the United States and Japan?

Hatano: I don't think so. My relationship with the US delegation is one of cooperation. Ambassador Pickering and I have worked closely and effectively together. The trade friction between the United States and Japan is a bilateral matter and should have no impact on the multilateral negotiations at the UN.

Helvidius: Do you have any final remarks for students at Columbia who are interested in pursuing a career in diplomacy?

Hatano: The foreign service has been exciting. The world is a lot smaller now, and the relationship between countries needs closer attention now than it did fifty years ago. One can't separate international problems from domestic problems today. The top graduates from Japan's top universities are entering the Japanese Foreign Service. Likewise, the standards of the US Foreign Service force their recruits to be highly qualified. If you have an interest in public affairs and have the ability to empathize with other cultures, give a serious look to a career in diplomacy. I look forward to working with Columbia graduates who become members of the American Foreign Service in the future.

Ambassador Hatano graduated from Princeton University in 1956.

Richard Ponzi is a Columbia College sophomore.
A Japanese View of Americans

By Jennie Smith

When Yoshio Sakuruchi, the Speaker of the Lower House of the Japanese Diet, spoke of the inferiority of American labor, a strange chemical behavior plagued Americans, as if the remark had been a long-awaited confirmation of weekly news opinion polls. Americans seem to feel the loss of Japanese respect as gravely as any economic loss. While radical groups in other nations may burn the US flag daily, Americans focus on the condescension of one Japanese politician. This heightened sensitivity to the opinions of the Japanese may reflect a fear that the Japanese will deprive US citizens of the post-occupation status enjoyed for so long in this country. Americans enjoy Japanese deference to their customs, industries, culture, military influence, and civilian presence. During a year of living in Japanese homes, attending a Japanese high school, and struggling with traditions I still do not understand, I found that the Japanese populace holds Americans in high regard, even if that respect is not voiced by the political elite.

Kiichiro, my host father while I lived and studied in Oita, Japan, is a fifty-two year-old kimono dealer who works long hours in a store bearing his family name and crest. In taking me into his house, he showed me a world that was at once foreign and familiar. He would drink whiskey and sing Beatles songs while his wife snickered at his every missed note, and we ate dried squid for snacks. One night, I asked Kiichiro why he had decided to take an American into his house, and as his drunkenness deepened, he told me about the post-war Japan that was his childhood. For him, there was none of the conflict that a sudden infusion of Western culture brought to an older generation. He watched John Wayne movies for entire days, played "General MacArthur" with his friends, and was not aware of the need to distinguish the new American country of the movies from his own Japanese background. This distinction was not easy for him to make; occupation-era Japan was neither the Japan his parents had known, nor the America that occupation forces had hoped to provide. America was his dream. Aside from brushing the US border on his group honeymoon to Canada, I was the closest

Kiichiro had ever come to the United States. His wife, an America aficionado who loves Audrey Hepburn and prefers bread to rice, later told me that the gentle, "Americaphile" Kiichiro used to abuse her for implying that the people of America and other countries were equal in intelligence and industriousness to the Japanese.

Kiichiro's double-edged perspective did not surprise me as much as it might have. I did not see his nostalgia toward the America of his childhood as belying his belief in US inferiority. The complex Japanese code of respect allows them to genuinely admire America while also harboring feelings of Japanese superiority or memories of a catastrophic war. Such attitudes have prevailed throughout the history of Japan's interactions with the West, beginning with their 1854 and 1858 treaties with Commodore Perry. The Japanese adopted the motto "wakon yosai," a term meaning "keep Western technology and reject Western ideology."

With the advent of controlled and deliberate Westernization came forceful swings in attitudes towards the West. Some Japanese even advocated interbreeding among Japanese and Westerners so as to "improve" the Japanese race, while others wanted to unite with the rest of Asia to prevent the evil spread of Westernization. Only later did the now recognized concept of Japanese "superiority" arise. Ironically, much of the "superiority" was really a response to prohibitive immigration laws enacted by the US in the early part of this century. The Japanese, after having reckoned themselves equal to Westerners, found themselves grouped with the Chinese in our immigration laws and barred from entering the country. Japanese resentment and pride intensified due to further rejections from the West after World War I, when the Paris Peace Conference of 1919 turned down Japan's proposal to abolish racial discrimination in the League of Nations. In its early racist rejection of Japanese and other Asians, America helped catalyze such anti-Western reactions.

In the long aftermath of World War II, Japanese sentiments of "superiority" rarely surfaced. In fact, they were usually concealed—as in the case of Kiichiro—with embarrassment. These feelings simply do not exist for most Japanese. For example, I met some elderly women in the rice fields and conversed briefly with them. These women remember eating only rice and salted plums during a war in which they lost sons. After overcoming their polite shyness, the women demonstrated a sincere interest in America as we chatted next to tunnels they had carved into the mountainside to protect them from the bombs of 1945. I compare the
sentiments of these elderly Japanese to those of my veteran grandfather, who intentionally misdirects Japanese tourists and boycotts the Japanese owned golf courses.

The American media has perpetuated a misconception by portraying young Japanese, stunted in social immaturity by their parents' money and care, and clinging to American fads with fanaticism. The distinct interests of Japanese youths in the English language, heavy-metal music, Los Angeles culture, and Western-style weddings are tempered by the absolute severity of their student lives, standardized school curriculum, cram schools, job training, and a rigid discipline. These characteristics facilitate the connection between being serious and being Japanese. Thus, newer, distinctively-American imports specific to young people, such as rap music or pizza, are valued as occasional releases for contained energies. Much of what we credit as American influences in Japan have become Japanese in much the same way that imports like pasta and constitutionalism have become American staples. While this love of release may lead young Japanese to associate America with a more carefree country than their own, their interest in America is still not satisfied by the many available American products and trends or their numerous Japanese-made imitations. Through my friends' patience with me, their concern that I adjust to Japan slowly and without prodding, their incessant questioning, and their desire to travel to or study in America, I found a deep Japanese desire to understand Americans.

Reflecting upon this interest is a generation-spanning shift in "Westernization," by Japanese standards, to "Americanization," well after the changes forced by the World War I occupation. While some changes are official-for instance, the English language is now uniformly taught with an American, rather than British, accent. Other changes are more subtle, as demonstrated by observations that Japanese and American persons get along famously well at international conferences. Europeans and Japanese, althoughcordial, are on stiffer terms. Even those Japanese who have never met an American do not feel distanced from the United States; America is everywhere, and the identification process begins early.

When statements of Japanese officials, like Sakauchi's, conflict with the view of the Japanese people who maintain a love of America (and not just American), there is something wrong. The Japanese are acutely aware that their political representatives, top bureaucrats, and company heads are an elite group whose opinions do not reflect those of the Japanese majority. This elite minority becomes estranged from the general populace at the educational stages. In recent years, up to 94 percent of the bureaucrats in a single ministry have been Tokyo University graduates, while the remaining elite are graduates from one of Japan's prestigious, formerly-imperial universities. There are kindergartens, grade schools, junior high schools, and high schools associated with specific universities, so as to provide a one-track entrance into schools like Tokyo University. In some cases, children of the elite are subjected to kindergarten entrance exams for placement that should lead them into the top universities. Although the entrance exams to Tokyo University are merit-based, admission policies consider other, extraneous factors; the children of politicians and bureaucrats constitute a large proportion of Tokyo University's student body. Top-level bureaucrats are highly regarded in Japan, and common practice allows them to "retire" into the presidencies and vice-presidencies of Japan's largest corporations.

As oligarchical as this system may seem, it is tremendously effective in coordinating Japanese industry, trade, legislation, and budget balancing, but it does not reflect the opinions of the populace. Unfortunately, it is from this elite realm that the voice of Japan is carried to us. This is the voice through which the Japanese people are judged. Most Japanese are, by our standards, apolitical, and even their newspapers reflect little more than a moderate consensus of political opinion. To most Japanese people, the assertion that American workers are lazy is irrelevant. Their deeper interest in, and love for, America is fed by the ideas of possibility and fantasy that our "dreamland" culture never fails to provide.

Bibliography

Jennie Smith is a Columbia College first-year student.
Have We Failed Our Children?: A Look at Public Policy For Abused Children
By Michelle Ressler

Child abuse has been documented in American society for many years. Until the late 1960s, however, little had been done to protect the rights of minors in part due to the widespread view that family problems are a private matter and are not the government's responsibility. This article will analyze public policy towards abused children and examine the role of the government bureaucracy in handling their cases.

Child Abuse: An Overview
Child abuse and neglect may be defined as:

[the] physical or mental injury, sexual abuse, negligent treatment, or maltreatment of any child under the age of 18 by a person who is responsible for the child's welfare under circumstances which incite the child's health or welfare is harmed or threatened thereby. (US Public Law 93-237)

The US Advisory Board on Child Abuse and Neglect has declared child abuse and neglect a national emergency. (HHS 100-294) While the number of reported incidents of child abuse and maltreatment has skyrocketed in recent years, officials believe that many cases of child abuse still remain unreported. (Field notes) According to national surveys, "in 1974, there were about 60,000 cases reported, a number that rose to 1.1 million in 1980 and more than doubled during the 1980s to 2.4 million." (HHS x) Nationally, child abuse reports have increased by 188 percent since 1980. (Newsweek 70)

Whether the increase in reports is primarily the result of a change in public awareness, or whether it largely reflects actual increases in child abuse, is unknown. (HHS x)

The identification of child abuse as a national emergency has been based on three findings. First, the number of reported cases of child abuse, neglect, and abandonment has increased greatly. Second, the policy devised to protect abused children is not working. Finally, the money allocated to aid abused children is not being properly spent (HHS vii) As a result, child abuse has increased, and more children are dying.

The causes and manifestations of child abuse are complex. The myth that child abuse affects only lower-income, minority families is unfounded, although such families are over-represented in the statistics on child abuse. While in some respects all families may be vulnerable, "it is most useful to understand child abuse and neglect as symptoms of a dysfunctional family." (Guardian 9) Although child abuse can affect any family, it is reported disproportionately within groups that are under the most stress. (HHS 17) Families at risk often experience several stress factors, including financial pressures, social isolation, a cycle of abuse in which the perpetrator of the abuse was also abused as a child, and the presence of children with special needs, such as cocaine babies. (Field notes) While the impact of economic stress remains great, the change in the family structure in recent years—from children living with two parents to children living with single parents;—has resulted in another stress which makes children more vulnerable to abuse. In many instances:

[the lack of] supported extended family increases the stress that families experience and the kinds of support available to them. It also decreases the monitoring by the family itself of potentially abusive and neglectful behaviors. (HHS 24)

A History of Legislation
The history of legislation concerning child abuse and neglect is short. While child abuse has always occurred in American society, legislative intervention did not take place until the late 1960s. The first documented case of child abuse was that of Mary Ellen Wilson, one which resulted in public outcry and the formation of the Society for the Prevention of Cruelty to Children. (Nelson 7-8) Wilson's case came to the attention of the public and the courts in 1874 when a neighbor of her guardians reported that the child was being abused. Because no agency existed that was willing to become involved in the case of a child over which it did not have custody, an appeal was made to Henry Bergh, the founder and president of the Society for the Prevention of Cruelty to Animals. Bergh championed Wilson's case and persuaded his friend and counsel, Elbridge T. Gerry, to petition the court for a writ de homine repelendo, an old English writ which removed a person from the custody of another. His efforts resulted in the formation of the Society for the Prevention of Cruelty to Children, which was the first child protection agency legitimized by the English and American legal doctrine—parenspatriae—[stating] that public courts have surrogate parental authority to protect the property rights (and now all
The subsequent movement which championed the rights of children was based primarily on the efforts of private organizations which lobbied state legislatures. In contrast, strong management groups opposed the first child labor laws. [see *Hammer v. Dagenhart*, 247 US 251 (1918)]

In 1909, Theodore Roosevelt became the first President to address children's issues, and by 1912, the Children's Bureau in the US Department of Labor was established. (Dobelstein 198) The Social Security Act of 1935 helped to pave the way for modern child welfare programs by protecting abused children, yet the dilemma of finding an effective system which can deal with the ever-growing problems still exists. A closer look at the structure of child protection agencies together with the systems implemented to protect children at risk of harm may provide some answers to the current problems associated with protecting abused children.

The Bureaucracy

To properly evaluate policy towards abused children, it is necessary to understand the structure of the child welfare system and the process by which abuse reports are filed. The system developed to protect abused children has two branches which were created by each state's legislature and follow national guidelines: Child Protective Services (CPS) which monitors families with abused children, and Foster Care which places children in temporary, licensed foster care homes until the child is no longer in danger. (Field notes) The obvious aim of all programs which deal with abused children and their families is to do whatever is "in the best interests of the child." (Kadushin 21)

Once a report of abuse is made, an investigation is begun within 24 hours. If abuse is found, a protective service investigator will determine whether the abuse is severe enough to require the placement of the child in an emergency shelter. (Guardian) A detention hearing is required within 24 hours of emergency placement of the child, at which time a judge in the juvenile court system will determine if the child is to be declared dependent and a ward of the state. (Guardian) Otherwise, a child may be released to the custody of his parents and referred to the appropriate community resource, and voluntary supervision by Protective Services begins. (Guardian)

If the child remains in the custody of the state, a hearing takes place before a judge or a general magistrate. The child's case then either goes to trial if his parents contest the allegations, or the parents sign a "plan" in which they agree to meet certain stipulations to regain custody. (Guardian) Attorneys for the state, for the parents, and for the children, called guardians *ad litem*, attend all pre-trial motions and hearings. Most cases of child abuse are referred to the Protective Services unit of the State's Department of Social Services, which monitors the family and sees to it that the conditions of the plan are met. The most severe cases of abuse are directed to the Foster Care unit of the system, but the average child's stay in the system is limited by law to 18 months. At this time a review of the case takes place and a decision is made either to return the child to his home or to terminate parental rights and begin adoption procedures. Most children, however, remain in the system for years. (Kadushin 22)
The caseworker plays a central role in the system. Social workers are often the people who have the most contact with abused children and their families. Experts on child abuse Alfred Kadushin and Judith Martin explain:

As in all treatment situations, the worker attempts to develop a relationship of trust by being empathetic, accepting, and genuine. In working with an abusive client population, more emphasis is put on providing a structure of unambiguous expectations and being more than ordinarily supportive. (Kadushin 22)

The social worker attempts to prevent further abuse and tries to remedy the problems which led to the abuse. Yet, parents who are confronted by the protective service workers often resist the efforts of social workers. When parents do not keep appointments with the social workers, the workers must "accept the expectation of limited goals and small gains." (Kadushin 22)

Social workers have become increasingly overwhelmed with caseloads of two or three times the manageable level.

Employee burnout and a high job turnover rate complicate the workings of the child care system and can render public policy ineffective. Child protective workers have a higher stress level than welfare workers with clerical duties. (Nelson 89) These problems result from the large number of cases each social worker must handle. (HHS xii) Although the number of cases has increased dramatically within the past ten years, resources have not kept pace, and social workers have become increasingly overwhelmed with caseloads of two or three times the manageable level. (HHS 73) Cases are passed from one level of the bureaucracy to another, and the result is often fatal. Additionally, the skills necessary to become a caseworker in many parts of the country are minimal.

In most of the country a CPS caseworker need not possess either a Master's (MSW) or a Bachelor's Degree in Social Work (BSW). Indeed, fewer than ten percent of CPS staff nationally have a BSW, and fewer than three percent have an MSW degree. Many lack even basic education in normal and abnormal child and adolescent development. (HHS 71)

As a result of the situation of the social worker, many analysts doubt the effectiveness of the current policy for abused children.

Impact of Policy

The impact of the policy for abused children is measured by its lack of success. The most recent national study, conducted by the U.S. Advisory Board on Child Abuse and Neglect, reports that the efforts to strengthen policy have failed. (HHS 94) Legislators are wary to intervene in what some consider to be family matters, while others insist on intervention on behalf of abused children. The change in the structure of the family:

[evokes] a polarized reaction ... liberals habitually [reach] for bureaucratic responses, even when they were counterproductive, and conservatives [reject] government programs even when they would work. (Gals ton 41)

Lawmakers have failed to enact any long-term programs which attack the issue of child abuse directly. Instead, they simply address the issue of the day and respond to immediate crises. Regrettably, the nation also seems to be turning its back on the issue of child abuse, and public opinion has turned against those who fight for the rights of abused children. John E. B. Meyers, professor of law at the University of the Pacific in Sacramento, explains that while the number of scholarly publications on the issue of child abuse has "been impressive...[and] the number of prosecutions [of perpetrators] has skyrocketed, the backlash is already underway, and is gaining strength daily." (Meyers 38) Meyers attributes this reaction to four distinct factors:

• the "overreaction phenomenon" in which legislators react negatively to the long, mandatory prison terms claiming that children make up claims of abuse and calling for the cessation of intervention in families of abused children;

• the "knowledge gap" in which authorities, who are inadequately trained in techniques of interviewing children, use improper or suggestive interviewing techniques on children;

• the "McMartin fallout," a case in which children's testimony was deemed inconclusive, may have given the mistaken impression that child abuse cases are completely without merit;

• the idea that society has a blind spot, and American culture loses interest in social issues and emphasizes its desire that unpleasant subjects such as child abuse disappear. (Meyers 39-42)

This backlash may also be attributed to a growing conservative political climate in this country. In sum, there has been a decline in societal response to the issue of child abuse, a lack of new, stronger policy, and a decline in the enforcement of existing policy for abused children.

Tragically, the failure of the child protection system to adequately protect children at risk of abuse and to aid those who have already been abused is resulting in unnecessary
The case of Joshua DeShaney epitomizes society's failure to protect abused children when they cannot protect themselves.

The case of Joshua DeShaney, whose plight came into the public eye when his case reached the US Supreme Court in 1989, epitomizes society's failure to protect abused children when they cannot protect themselves.

DeShaney v. Winnebago County Department of Social Services: A Case Study

Joshua DeShaney, a four year old boy, was repeatedly abused by his father. Joshua's mother and his guardian ad litem filed suit against Winnebago County, Wisconsin, its Department of Social Services (DSS), and various individual employees, including Joshua's caseworker and her supervisor, Cheryl Stelke. They alleged that the state, in its failure to protect Joshua, had deprived him of his liberty in violation of the due process clause of the Fourteenth Amendment. (DeShaney at 1001) Significantly, this case marks the first real attempt to claim that Wisconsin had a legal obligation, by the fact that it had created the DSS, to protect Joshua from the abuse by his father.

This tragedy might have been prevented had the DSS acted on its suspicions of abuse. Joshua's plight first came to the attention of Winnebago authorities in January 1982:

[when] his father's second wife complained to police, at the time of their divorce, that he had previously 'hit the boy causing marks and [was] a prime case for child abuse.' (DeShaney at 1001)

The DSS interviewed the father but did not pursue the matter. One year later, Joshua was admitted to the local hospital with bruises and abrasions, at which time the examining physician notified the department, and an order removing Joshua from his home into the temporary custody of the hospital was obtained. As part of the DSS, the Child Protection Team (CPT), consisting of a pediatrician, a psychologist, a police detective, the county's lawyer, DS caseworkers, and hospital personnel, met to consider the circumstances of Joshua's case and to decide whether it was appropriate to keep Joshua in the custody of the court. The CPT decided there was insufficient evidence to keep Joshua in the custody of the court. Based on its recommendation, the juvenile court dismissed Joshua's case and returned Joshua to the custody of his father. Randy DeShaney, Joshua's father, was referred to counselling services and his girlfriend was encouraged to move out of the home (as Joshua's father had accused her of the abuse), and he voluntarily signed a performance agreement with the DSS in which he agreed to accomplish these goals. Only one month later, the caseworker who handled Joshua's case received a call from an emergency room employee that Joshua had been treated for "suspicious injuries." (DeShaney at 1001) The caseworker decided there was no basis for action.

Joshua's caseworker visited him monthly for the next six months. During her visits, she noted that Joshua had anumber of injuries on his head, which she termed "suspicious," he had not yet been enrolled in school, and his father's girlfriend had not moved out of the home. The majority opinion of the Supreme Court states that "the caseworker [Ms. Kemmeter] dutifully recorded these incidents in her files, along with her continuing suspicions that someone in the DeShaney household was physically abusing Joshua, but she did nothing more." (DeShaney at 1001) In November 1983, Ms. Kemmeter received another call from a hospital emergency room employee that Joshua had been treated for injuries which might have been caused by child abuse. During the next two home visits, Ms. Kemmeter was told that Joshua was too ill to see her. Again, the DSS took no action. Finally, in March of 1984, Mr. DeShaney beat Joshua so severely that Joshua suffered extensive brain damage and is expected to spend the rest of his life in an institution. (DeShaney at 1002)

Originally, Joshua's suit was filed in the US District Court for the Eastern District of Wisconsin. His attorneys claimed that Joshua had been deprived of his liberty without due process of law (a violation of the Fourteenth Amendment), because the state should have protected him from his father's abuse, of which the DSS should have been aware. The court granted judgment for the state of Wisconsin. The case was appealed to the Seventh Circuit Court of Appeals, which affirmed the lower court's ruling, and rejected the argument that "once a state learns that a particular child is in danger of abuse [that] a 'special relationship' arises between it and the child which imposes an affirmative constitutional duty to provide adequate protection." (DeShaney at 1002) Once again, the case was appealed, and the Supreme Court agreed to a review because of the inconsistent approaches taken by the lower courts in determining whether a state has an affirmative obligation to protect the rights of abused children.

The Supreme Court's role in DeShaney is interesting. The Justices refused to recognize that the "Constitution itself dictated a more active role" for the state. The narrow 5-4 decision demonstrates the difficulty advocates for abused children have had in defending children's rights. The implications of the DeShaney decision are discussed in the Harvard Law Review:

Failing to acknowledge its exercise of political choice in a universe far more malleable and multifaceted than it claimed, the Court took refuge in a silence resonating with unspoken premises and unstated values .. Joshua's fate is the legacy not only of an abusive father, but also a derelict state protection agency that ignored multiple reports of suspected parental abuse. (Harvard Law Review 108)

Experts on policy for abused children view DeShaney as an
example of how a dysfunctional system can undermine efforts to protect children from child abuse. (HHS 43) The majority opinion chose to interpret the Fourteenth Amendment narrowly without a demand for action by the state. Justice Blackmun rebukes this narrow interpretation in his dissent where he calls for a "sympathetic" reading of the Constitution, using the elements of "fundamental justice" combined with the realization that compassion should not be outside the jurisdiction of the Court. (DeShaney 1012) Blackmun remarks that:

it is a sad commentary upon American life, and constitutional principles—full of ... proclamations about 'liberty and justice for all,' that this child, Joshua DeShaney is now assigned to live out the remainder of his life profoundly retarded. Joshua and his mother, as petitioners here, deserve—but are denied by this Court... (DeShaney at 1013)

The Supreme Court denies thousands of children, like Joshua, state protection and then fails to take responsibility for the resulting tragedies.

A Case of Missed Opportunities

When Ms. Kemmeter "knew the phone would ring some day and Joshua would be dead," she recognized the peril of Joshua's situation. Several opportunities existed where Ms. Kemmeter could have forcefully intervened on Joshua's behalf, but her failure to recognize these opportunities resulted in tragedy.

Legally, deprivation implies causation, meaning the state's failure to protect Joshua DeShaney from his father caused the abuse. (DeShaney F2d at 302) The state, however, argues that it was not at fault and did not cause the abuse of Joshua by his father, and therefore, the negligence of a state employee is not punishable by law. (DeShaney F2d at 302) While the Court failed to recognize a state's responsibility in protecting children, DeShaney epitomizes the problems pervading child protection services throughout the country. When Mr. DeShaney failed to fulfill his promise and enroll his son in a Head Start program, or when he failed to remove his girlfriend from the household. When the DSS ignored these warning signs, it assumed the risk that a danger existed. To the DSS workers, Joshua was just another case to file.

System Problems

Before improvements can be made, several problems must be addressed in the child protection system and the current policy towards abused children. One problem is the overload of cases. This has occurred because the number of child abuse cases has risen, and the process of identifying cases of child abuse has become more complex. As a result, investigations of child abuse are not kept up to date. A survey of state child protection agencies reports that approximately one-third of all agencies do not routinely investigate reports of abuse within the first 24 to 48 hours, as required by law. (HHS 35) These compromises to the safety of the children are harmful, but the repercussions are more disastrous when the "professionals] who serve [the] children and [the] families fail to report suspected cases of child maltreatment because they have no confidence in the capacity of CPS to respond appropriately." (HHS 35) This allows tragedies like that of Joshua DeShaney to occur.

While it is necessary at this time to expand resources to meet the increasing number of cases flooding the system, monies allocated to child protection agencies are not being appropriated. (HHS 35) Although Congress has allocated $48 million to the agencies, only $25.3 million has been appropriated at the authorized levels. Without funding it is impossible to adequately monitor all the cases which CPS sees annually.

The lack of basic training and education requirements for child abuse caseworkers must be addressed. The Executive Summary on Child Abuse reports that the deficiencies include an "adequate knowledge base, [an] inadequate application of knowledge, and major shortcomings in the status, recruitment, training, supervision, and caseloads of CPS caseworkers." (HHS 38) The development of standardized requirements for the education and the training of caseworkers would result in the better handling of cases within the system.

Recommendations for the Future

A national crisis exists for the intervention on behalf of abused children in dangerous situations. The following recommendations for the future are suggested:

• An expansion of human resources in a manner commensurate with the increasing number of cases in the system is needed. This would increase the
number of caseworkers in each department which deals with abused children. If caseworkers are presented with a manageable number of cases to monitor, it follows that the care of these children would only improve. Obviously, a caseworker with only 25 cases can give more attention to each family than a worker with 125 cases.

• Monetary resources should be expanded so that the required services for abused children are available. More money means better services for children and higher salaries for social workers, who traditionally have been poorly paid. Additionally, an increase in funds will provide services which can help in the prevention of abuse in the first place; greater funding means that families with children at risk of harm will be immediately referred to community resources which would otherwise not be available.

• National guidelines should be established to ensure proper training of caseworkers. Each worker should have either a BS W, or an Associate Degree combined with extensive on-the-job training. Each social worker should be able to pass a minimum reading and writing skills examination. They should also be recruited from areas where problems of child abuse are most prevalent, because social workers who can relate to at risk families can make clients feel at ease.

• A program should be implemented on a nationwide basis where lay persons are trained as child advocates. Attorneys, court appointed special advocates, or guardians ad litem should be appointed to advocate for children when their cases are heard in court. National studies have shown that lay persons are the most successful in establishing a meaningful relationship with abused children and their families, because they are better able to analyze the needs of abused children. Lay guardians deal with the children and their families from when their case enters the system until it is discharged. By implementing this program, some of the burden will be removed from caseworkers so that their efforts may be directed elsewhere.

• A national computer system needs to be established in which the names of child abusers, their aliases, their descriptions, and other vital information is stored. The availability of this information can assist employers in screening for positions which involve contact with children, such as teachers or day care workers. This on-line system will also help attorneys and prosecutors to investigate and prosecute child abusers in each state.

Conclusion

The policy for abused children and the system implemented to protect them is failing. Joshua DeShaney's case is only one of many cases with tragic results. The legislature should pass laws to protect abused children and provide appropriate funding for those programs on a federal and state level. Unfortunately, the Supreme Court decided, in DeShaney that the state can not be held responsible for its failure to protect the rights of children. It is crucial to realize how important happy and healthy children are. The means to achieving this end is an adequate and well funded policy to protect our children.

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Michelle Resler is a Barnard College sophomore and Editor-in-Chief of Helvidius.
A New Covenant for American Security

By Governor Bill Clinton, D-Arkansas

The following is an edited version of a speech given by Governor Clinton at Georgetown University on 12 December 1991.

We have entered a new era where we need a new vision and the strength to meet a new set of opportunities and threats. We face the same challenge today that we faced in 1946 with the end of World War II - to build a world of security, freedom, democracy, free markets, and growth in a time of great change. Anyone running for President right now, Republican or Democrat, is going to have to provide a vision for security in this new era.

Given the problems we face at home, we first must take care of our own people and their needs. We need to remember the central lesson of the collapse of communism and the Soviet Union. We never defeated them on the field of battle. The Soviet Union collapsed from the inside out—from economic, political, and spiritual failure.

Make no mistake: foreign and domestic policy are inseparable in today’s world. If we are not strong at home, we cannot lead the world we have done so much to make. If we withdraw from the world, it will hurt us economically at home.

We cannot allow this false choice between domestic policy and foreign policy to hurt our country and our economy. Our President has devoted his time and energy to foreign concerns and ignored dire problems here at home. As a result, we are drifting in the longest economic slump since World War II, and, in reaction to that, elements in both parties now want America to respond to the collapse of communism and the crippling recession at home by retreating from the world.

I have agreed with President Bush on a number of foreign policy questions. I supported his efforts to kick Saddam Hussein out of Kuwait. I support his desire to pursue peace talks in the Middle East. I agree with the President that we cannot turn our back on NATO. But, because the President seems to favor political stability and his personal relations with foreign leaders over a coherent policy of promoting freedom, democracy, and economic growth, he often does things I disagree with. For example, his close personal ties with foreign leaders helped forge the coalition against Saddam Hussein, but also led him to side with China’s communist rulers after the democratic uprising of students. The President forced Iraq out of Kuwait, but as soon as the war was over, he seemed so concerned with the stability of the area that he was willing to leave the Kurds to an awful fate. He is rightfully seeking peace in the Middle East, but his urge to personally broker a deal has led him to take public positions which may undermine the ability of the Israelis and the Arabs to agree on an enduring peace.

In the aftermath of the Cold War, we need a President who recognizes that in a dynamic new era, our goal is not to resist change, but to shape it. The President must articulate a vision of where we are going. The President and his administration have yet to meet that test—to define the requirements of US national security after the Cold War. The defense of freedom and the promotion of democracy around the world are not merely a reflection of our deepest values; they are vital to our national interests. The stakes are high. The collapse of communism is not an isolated event; it is part of a worldwide march toward democracy whose outcome will shape the next century. For ourselves and for millions of people who seek to live in freedom and prosperity, this revolution must not fail. Yet, even as the American Dream is inspiring people around the world, America is on the sidelines, a military giant crippled by economic weakness, with an uncertain vision.

We face two great foreign policy challenges today. First, we must define a new national security policy that builds on freedom’s victory in the Cold War. The communist idea has lost its power, but the fate of the peoples who lived under it and the fate of the world will be in doubt until stable democracies rise from the debris of the Soviet empire.

Secondly, we must forge a new economic policy to serve ordinary Americans by launching a new era of global growth. We cannot do one without the other. We need a new covenant for American security after the Cold War, a set of rights and responsibilities that will challenge the American people, American leaders, and America’s allies to work together to build a safer, more prosperous, more democratic world. The strategy of American engagement I propose is based on four key assumptions about the requirements of our security in this new era:

• The collapse of communism does not mean the end of danger. A new set of threats in an even less stable world will force us, even as we restructure our defenses, to keep our guard up.

• America must regain its economic strength to maintain our position of global leadership. While military power will continue to be vital to our national security, its utility is declining relative to economic power.

• The irresistible power of ideas rules in this age of information. Television, cassette tapes, and the fax machine helped ideas to pierce the Berlin Wall and bring it down.
Our definition of security must include common threats to all people. On the environment and other global issues, our very survival depends upon the United States taking the lead.

Guided by these assumptions, we must pursue three clear objectives. We must restructure our military forces for a new era. We must work with our allies to encourage the spread and consolidation of democracy abroad. Finally, we must reestablish America's economic leadership at home and in the world.

Restructuring our Military Forces

Today's defense debate centers too narrowly on the size of the military budget. We can and must substantially reduce our military forces and spending, because the Soviet threat is decreasing and our allies are able to and should shoulder more of the defense burden. Our defense needs were clearer during the Cold War, when it was widely accepted that we needed enough forces to deter a Soviet nuclear attack, to defend against a Soviet nuclear offensive in Europe and to protect other American interests, especially in Northeast Asia and the Persian Gulf. The collapse of the Soviet Union shattered that consensus, leaving us without a clear benchmark for determining the size or mix of our armed forces. A new consensus is, however, emerging on the nature of post-Cold War security. It assumes that the gravest threats we are most likely to face in the years ahead include:

• the spread of deprivation and disorder in the former Soviet Union, which could lead to armed conflict among the republics, or the rise of a fervently nationalistic and aggressive regime in Russia still in possession of long-range nuclear weapons;

• the spread of weapons of mass destruction, nuclear, chemical and biological, as well as the means for delivering them;

• enduring tensions in various regions, especially the Korean peninsula and the Middle East, and the attendant risks of terrorist attacks on Americans traveling or working overseas;

• the growing intensity of ethnic rivalry and separatist violence within national borders, such as we have seen in Yugoslavia, India and elsewhere, that could spill beyond those borders.

To deal with these new threats, we need to replace our Cold War military structure with a smaller, more flexible mix of capabilities, including rapid deployment, nuclear deterrence/technology, and better intelligence. To achieve these goals, I would restructure our forces.

Now that the nuclear arms race finally has reversed course, it is time for a prudent slowdown in strategic modernization. We should stop production of the B-2 bomber. That alone could save $20 billion by 1997. Since Ronald Reagan unveiled his "Star Wars" proposal in 1983, America has spent $26 billion in futile pursuit of a fool-proof defense against nuclear attack. Democrats in Congress have recommended a much more realistic and attainable goal: defending against very limited or accidental launches of ballistic missiles. This allows us to proceed with research and development in missile defense within the framework of the ABM treaty—a prudent step as more and more countries acquire missile technology.

Although the President's plan does reduce our conventional force structure, I believe we can go farther without undermining our core capabilities. We can meet our responsibilities in Europe with less than the 150,000 troops now proposed by the President, especially as the Soviet republics withdraw their forces from the Red Army. We can defend the sea lanes and project force with ten carriers rather than 12. We should continue to keep some US forces in Northeast Asia as long as North Korea presents a threat to our ally, South Korea.

The administration has called for a 21 percent cut in military spending through 1995, based on the assumption, now obsolete, that the Soviet Union would remain intact. With the dwindling Soviet threat, we can cut defense spending a third by 1997.

We must also not forget about the real people whose lives will be turned upside down when defense is cut deeply. The government should look out for its defense workers and the communities they live in. We should insist on advance notification and help communities plan for a transition from a defense to a domestic economy. Thirty-one percent of our graduate engineers work for the defense industry. These engineers, technicians, and other highly skilled workers are a vital national resource at a time when our technological edge in a world economy must be sharper than ever before. I have called for a new advanced research agency — a civilian DARPA (Domestic Advanced Research Projects Agency) — that could help capture the brilliance of scientists and engineers who have accomplished wonders on the battlefield.

The defense policy I have outlined keeps America strong and still yields substantial savings. The American people have earned this peace dividend through 40 years of unrelenting vigilance and sacrifice and an investment of trillions of dollars. They are entitled to have the dividend reinvested in their future.

America needs to reach a new agreement with our allies for sharing the costs and risks of maintaining peace.
Helvidius

While Desert Storm set a useful precedent for cost sharing, our forces still did most of the fighting and dying. We need to shift that burden to a wider coalition of nations, of which America will be a part. One proposal worth exploring calls for a UN Rapid Deployment Force that could be used for purposes beyond traditional peacekeeping, such as standing guard at the borders of countries threatened by aggression, preventing attacks on civilians, providing humanitarian relief, and combatting terrorism and drug trafficking. In Europe, new security arrangements will evolve over the next decade. While insisting on a fairer division of the common defense burden, we must not turn our back on NATO. Until a more effective security system emerges, we must give our allies no reason to doubt our constancy.

Promoting Democracy Around the World

As we restructure our military forces, we must reinforce the powerful global movement toward democracy. US foreign policy cannot be divorced from the moral principles most Americans share. We cannot disregard how other governments threaten their own people, whether their domestic institutions are democratic or repressive, or whether they help encourage or check illegal conduct beyond their borders. This does not mean we should deal only with democracies, or that we should try to remake the world in our image. Recent experience from Panama, Iran, and Iraq shows the dangers of forging strategic relationships with despotic regimes. It should not matter to us how others govern themselves. Democracies do not go to war with each other. The French and British have nuclear weapons, but we do not fear annihilation at their hands. Democracies do not sponsor terrorist acts against each other; they are more likely to be reliable trading partners, protect the global environment, and abide by international law.

President Bush too often has hesitated when democratic forces needed our support in challenging the status quo. I believe the President erred when he secretly rushed envoys to resume cordial relations with China barely a month after the massacre in Tiananmen Square, when he spurned Yeltsin before the Moscow coup, when he poured cold water on Baltic and Ukrainian aspirations for self-determination and independence, and when he initially refused to help the Kurds. The administration continues to coddle China, despite its continuing crackdown on democratic reforms, its brutal subjugation of Tibet, its irresponsible exports of nuclear and missile technology, its support for the homicidal Khmer Rouge in Cambodia, and its abusive trade practices.

In the Middle East, the administration deserves credit for bringing Israel and its Arab antagonists to the negotiating table. Yet, I believe the President is wrong to use public pressure tactics against Israel. In the process, he has raised Arab expectations that he will deliver Israeli concessions and has fed Israeli fears that its interests will be sacrificed to an American imposed solution. We need a broader policy toward the Middle East that seeks to limit the flow of arms into the region, as well as the materials needed to develop and deliver weapons of mass destruction, promote democracy and human rights, and preserve our strategic relationship with the one democracy in the region, Israel. An American foreign policy of engagement for democracy will unite our interests and our values.

We need to respond more forcefully to one of the greatest security challenges of our time, to help the people of the former Soviet empire demilitarize their societies and build a free political and economic institutions. Congress has allocated $500 million to help the Soviets destroy nuclear weapons and for humanitarian aid. We can do better. As Senator Sam Nunn and Representative Les Aspin have argued, we should shift money from marginal military programs to this key investment in our future security. Together with our G-7 partners, we can supply the Soviet republics with the food and medical aid they need to survive their first winter of freedom in 74 years.

Just as President Kennedy launched the Peace Corps 30 years ago, we should create a Democracy Corps today that will send thousands of talented American volunteers to countries that need their legal, financial, and political expertise.

Restoring America's Economic Leadership

Our second major strategic challenge is to help lead the world into a new era of global growth. Any governor who has tried to create jobs over the last decade knows that experience in international economics is essential, and that success in the global economy must be at the core of national security in the 1990s. Without growth abroad, our own economy cannot thrive. US exports of goods and services will be over a half-trillion dollars in 1991 — about ten percent of our economy. I believe the negotiations on an open trading system in the GATT are of extraordinary importance. I support the negotiation of a North American Free Trade Agreement, so long as it is fair to American farmers and workers, protects the environment, and observes decent labor standards. Every one billion dollars in US exports generates 20-30,000 more jobs. How can we lead when we have gone from being the world's largest creditor country to the world's largest debtor nation owing $405 billion? When we depend on foreigners for $100 billion a year of financing, we are not the masters of our own destiny.

I have spoken before of rebuilding our nation's
economic greatness, for the job of restoring America's competitive edge truly begins at home. I have offered a program to build the most well-educated and well-trained workforce in the world, and put our national budget to work on programs that make America richer, not more indebted. The private sector must maintain the initiative, but government has an indispensable role.

I have mentioned a civilian advanced research projects agency to work closely with the private sector, so that its priorities are not set by the government alone. We have hundreds of national laboratories with extraordinary talent that have put the United States at the forefront of military technology. We need to reorient their mission, working with private companies and universities, to advance technologies that will make our lives better and create tomorrow's jobs.

Now we must understand as never before that our national security is largely economic. The success of our engagement in the world depends not on the headlines it brings to Washington politicians, but on the benefits it brings to working middle-class Americans. Our "foreign" policies are not really foreign at all. We can no longer define national security in the narrow military terms of the Cold War, or afford to have foreign and domestic policies isolated from each other. We must devise and pursue national policies that serve the needs of our people by uniting us at home and restoring America's greatness in the world. To lead abroad, a President of the United States must first lead at home.

Half a century ago, this country emerged victorious from an all-consuming war into a new era of great challenge. It was a time of change, a time for new thinking, a time for working together to build a free and prosperous world, a time for putting that war behind us. In the aftermath of that war, President Harry Truman and his successors forged a bipartisan consensus in America that brought security and prosperity for 20 years. That is the spirit we need as we move into this new era. As President Lincoln told Congress in another time of new challenge, in 1862:

The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew and act anew. We must disenthrall ourselves and then we shall save our country. Fellow citizens, we cannot escape history.

Governor Clinton is currently seeking the Democratic Nomination in the 1992 Presidential campaign.

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**Second-Hand Smoke and Public Policy: It's Not Just Hot Air**

By Eli Schulman

As long ago as 1890, the Supreme Court of Louisiana upheld an ordinance prohibiting smoking on streetcars, recognizing the "material annoyance, the inconvenience, and the discomfort" that smoking causes the majority of passengers, and further recognized that, "there is not only discomfort, but possible danger to health from the contaminated air." [State v. Hedenhain, 7 SD 621 (11890)] Over 100 years later, an ever-growing body of scientific evidence continues to document the severity of health hazards posed by second-hand smoke, known in scientific circles as environmental tobacco smoke (ETS), inhaled by non-smokers, "involuntary smokers." While the scientific community has evaluated ETS, public policy has, to this point, lagged hopelessly behind. Public policy must accept the challenge of environmental tobacco smoke head-on, and work toward a ban on smoking in enclosed public areas. To best understand how public policy should evaluate ETS, it will be helpful to consider the dangers posed by environmental tobacco smoke, the paths through which public policy might seek to respond to these dangers, and the obstacles which policy efforts might encounter in confronting the problem.

**The Dangers of Environmental Tobacco Smoke**

A burning cigarette emits over 4,000 chemicals, including 43 known carcinogens. The impact of these toxins is severe; carbon monoxide and other gases interfere with the blood's ability to carry oxygen. Tar particles can accumulate in the lungs and may cause lung cancer. Although smokers face the greatest risk of disease, non-smokers inhale the same harmful substances in lesser quantities through environmental smoke. Sidestream smoke emitted from the end of a burning cigarette and the exhalations of a smoker constitute environmental tobacco smoke. Engineers confess that ventilation does not adequately remove tobacco smoke from indoor environments. In fact, many buildings' ventilation systems recirculate air in an effort to conserve energy, resulting in the further spread of carcinogens throughout the building.

Many non-smokers experience the effects of these carcinogens immediately. The World Health Organization, which monitors global health concerns and publishes reports on health issues like smoking, has identified many harmful effects of ETS. These respiratory symptoms include chronic coughing, reduced levels of lung functions, and the aggravation of asthma, as well as the simple irritation of the eyes, the nose, and the throat.

A 1986 Surgeon General's report remains the
preeminent study on the effects of environmental tobacco smoke. Its findings lead to three major conclusions:

- "[I]nvoluntary smoking is a cause of disease, including lung cancer, in healthy non-smokers."
- The children of parents who smoke exhibit greater respiratory problems than the children of non-smokers do.
- Separating smokers and non-smokers within the same air space does not eliminate non-smokers' exposure to ETS.

Since 1986, an increasing number of studies have traced the deleterious effects of second-hand smoke, supporting the Surgeon General’s conclusions. A study sponsored by the Environmental Protection Agency (EPA) estimates that ETS is responsible for the deaths of approximately 53,000 Americans annually, making passive cigarette smoke the third leading preventable cause of death in the United States.

Both private and public sectors have begun to take notice of the threat posed by ETS. Forty-two states have restricted tobacco smoke pollution in public places, and the US government has restricted it in all government buildings. Many private domains also restrict smoking, and over one third of American businesses are completely smoke-free. Public transportation is becoming increasingly regulated: the Interstate Commerce Commission prohibits smoking on all regularly scheduled buses, and Congress has outlawed smoking on all domestic flights under six hours. Starting 1 January 1992, all accredited US hospitals became smoke-free. These actions, however, while positive steps in the right direction, are neither widespread enough nor sufficiently restrictive. They fall considerably short of a comprehensive public policy banning smoking from all indoor public spaces.

The Response of Public Policy
Public policy must respond to ETS in an equitable, but comprehensive manner, utilizing regulatory, legislative, and judicial instruments of change. The regulatory sphere offers realistic prospects for future improvements. Under its congressional charter, the Occupational Safety and Health Administration (OSHA) has legal authority to prohibit smoking in the workplace. This past summer, the National Institute for Occupational Safety and Health, an advisory body to OSHA, submitted a report urging OSHA to classify ETS as a "potential occupational carcinogen" that should be eliminated from all workplaces.

The workplace is perhaps the best target for progressive action. The danger of sustained exposure to ETS in enclosed areas is, as demonstrated earlier, well-documented. The regulatory mechanism with which this action could be achieved (OSHA) is already in place and has been advised to take action. In addition, the passage of a regulatory measure stands to be executed without as much of the long-winded political entanglement that a legislative action would involve.

Once OSHA establishes regulations, it will be possible to build on its momentum with greater local, state, and federal legislation aimed at eventually banning smoking in all indoor public places. A comprehensive national legislative package would, of course, be ideal, but in light of political realities, such as the significant strength of the tobacco lobby, it is not likely. To date, the more noteworthy regulations aimed at protecting the public from the dangers of tobacco smoke have come on the state and local levels.

One example of the progression of smoking control legislation in the country is the Clean Indoor Air Acts of New York City and New York State. The acts prohibit smoking in waiting areas, hallways, conference rooms, restrooms, and other common areas of all workplaces. Smoking is permitted in single occupancy offices with the doors shut, or in specially designated enclosed rooms. Employee eating areas and lounges must be at least 50 percent smoke-free. These acts also restrict smoking in a number of public areas, such as business establishments, retail stores, and indoor theaters, arenas, and stadiums. Restaurants must designate at least 50 percent of all seats as a contiguous smoke-free section. Smoking is also restricted on mass transportation vehicles, in restrooms, and in elevators. Most of these regulations include provisions allowing for separate, enclosed smoking areas.

Columbia University's smoking regulations have been established in accordance with the guidelines set forth by
the Clean Indoor Air Acts. According to the acts, smoking is prohibited in all public areas of primary and secondary schools. In schools of higher education, smoking is permitted only in separate, enclosed lounges making up no more than 50 percent of the total lounge area. Smoking is also permitted in a specially designated section of a cafeteria, provided that it is contiguous and does not exceed 50 percent of the seats. If student demand exists, the smoke-free section must be enlarged to encompass 70 percent of the seating area. University compliance with these regulations has been favorable, but, there remains a noticeable paucity of "smoking permitted" signs around campus. According to the compliance requirements of the acts, signs must be posted indicating both where smoking is prohibited and permitted. Smoking permitted signs must state: "Warning: Smoking and Breathing Secondhand Smoke Is Dangerous To Health." The absence of such signs should be reported to building officials.

Litigation

The judicial arena has proven to be a forum for ETS claims. In a 1989 child custody case, Satalino v. Satalino, 544 NY St. 2d 154 (1989), the father argued that his smoke-free home would provide a healthier environment for his child, since the mother was a smoker. A doctor testified on the father's behalf, emphasizing the special risks which the carcinogens in tobacco smoke pose to a young child's developing tissues. While the New York Supreme Court did not award the father custody due to other considerations, the court made a strong statement by affirming that parental smoking should be a relevant factor in determining "the suitability of a household environment in which a child is to be placed." The same claim has been asserted in cases pending in California and Michigan, and the impact of ETS on children, in particular, continues to gain increasing attention.

The effects of ETS have recently been applied to a broader scope of the law. In McKinney v. Anderson, 924 F.2d. 1500 (9th Cir. 1991), the Ninth Circuit Appeals Court ruled that forcing a non-smoking prisoner to share a prison cell with a person who smokes five packs a day may, in fact, constitute a violation of the Eighth Amendment's prohibition against "cruel and unusual" punishment.

One of the most promising areas for the potential judicial success of ETS legislation is in the working environment. In October 1991, two attorneys filed a landmark class action suit against the tobacco companies. The suit consists of a claim on behalf of 60,000 non-smoking flight attendants who allege that they suffered serious health problems as a result of their exposure to ETS while working on airplanes. One of the plaintiffs, Norma Broin, never lived with smokers or smoked herself, but nevertheless, two years ago, at the age of 32, she was diagnosed with lung cancer and had one of her lungs removed. She noted that many of her colleagues, who were also non-smokers, were often advised by their doctors to quit smoking. The suit involves claims of liability on the part of the tobacco companies for breach of warranty, fraud, and misrepresentation of tobacco products' dangers, and seeks compensatory and punitive damages. As a result of this case, smoking was banned from most domestic flights in 1990, but it is still permitted on international flights.

The most famous tobacco-related court case, Cipollone v. Liggett Group, Inc., 93 F.2d 541 (3rd Cir. 1990), indirectly affects the ETS issue. It involves a failure to-warn claim set forth by the family of the late Rose Cipollone against the cigarette companies whose cigarettes she smoked. The case has been in court since 1983. It focuses on the question of whether Congress intended to preempt state tort claims by requiring the tobacco industry to place a warning label on cigarette packages. Since cigarette manufacturers have not reimbursed plaintiffs in a liability suit, a decision in favor of the Cipollone family would help break the industry's image of invulnerability that has prevented additional plaintiffs from bringing suits.

Judicial support for confronting the dangers of ETS will pressure both OSHA and Congress to act more expeditiously, and will ultimately set the groundwork for litigation to function as an enforcement mechanism in the future. A prudent public policy, however, would be substantially more efficient, as it would entirely preempt the need for such litigation.

Finally, the government and the private sector must accept the responsibility for educating the public about the dangers of ETS. Parents must be informed about the dangers

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ETS presents to children. If education solidly underlies the entire public policy effort, fewer restrictions will have to be imposed, because many will be voluntarily chosen.
Helvidius

Obstacles and Prospects for Success

It would be naive to assume that smoking will be banned from all enclosed public places without challenge, and obstacles must be addressed. On a theoretical level, many believe that a ban on smoking constitutes an infringement of smokers' rights. Smoking regulation does not ignore the rights of smokers; rather, it weights them against the neglected rights of non-smokers. Given the danger of ETS to non-smokers, smoking is not merely a personal risk, but an unreasonable invasion of the right of non-smokers to breathe clean air.

Those wary of imposing constraints on American business may also be apprehensive about increased regulation. ETS policy, like the 1965 Federal Cigarette Labeling and Advertising Act, does not disregard corporate concerns, but seeks to establish a balance between the interests of the public health and of the national economy. This policy will actually help businesses throughout the country by increasing productivity and reducing the number of days missed from work. These measures will also, cut maintenance bills and significantly diminish companies liability.

Fundamentally, some people claim that ETS is not harmful at all. International precedent in this area provides valuable support. In 1986, the Tobacco Institute of Australia (TIA) printed an advertisement declaring "there is little evidence and nothing which proves scientifically that cigarette smoke causes disease in non-smokers." When TIA refused requests to withdraw the ad, the Australian Federation of Consumer Organizations sued. In a landmark decision, 6.2S TPLR 2.77 (1991), the Australian Court granted an injunction against the use of the ad, concluding that there is "compelling scientific evidence" that cigarette smoke causes disease in non-smokers.

The EPA study attributing an estimated 53,000 deaths per year to ETS, despite being unanimously approved by the EPA’s Science Advisory Board, has been the target of similar challenges. While the EPA report calls for additional research on the effects of second-hand smoke, it advises that "existing scientific conclusions already provide a compelling rationale for reducing involuntary exposure to tobacco smoke." A need exists to legislate additional changes in public policy concerning environmental tobacco smoke.

Public policy has only begun to respond to the dangers posed by ETS. Regulatory, legislative, and judicial avenues have all demonstrated the potential to bring forth meaningful changes, but if public policy is to reflect anything close to current scientific evidence, then the status quo can be seen as a poultry beginning. Serious efforts must be made to demonstrate the need for progressive ETS policies encouraging people to heed this call better than they have heeded the Surgeon General’s warning on cigarette packages. Perhaps we will then be able to look ahead to a smoke-free America.

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Eli Schulman is a Columbia College first-year student.
Lawyer-Bashing in the Western Tradition: 350 BC to 1992 AD
By Robert Gaudet, Jr.

Heard any good lawyer jokes, lately? If so, you're not alone. Contemporary Americans hear law-related humor frequently, but usually don't realize that such jokes are exceedingly unoriginal. Complaints about too many lawyers did not begin with Vice-President Dan Quayle's 1991 remarks to the American Bar Association, nor did legal satire originate on MTV Comedy Hour. Legal criticisms thread through Western tradition. Many criticisms against lawyers are justified or explicable because of high costs, lengthy procedures, immoral behavior, greedy motivations, and legal monopolization. At the same time, lawyers provide necessary services and leadership to American society.

Many reforms under consideration could reshape the Bar's image, but never completely. Lawyers are not societal aberrations. They simply reflect the culture which both forms and ridicules them. Centuries before Christ was born, ancient Greek literature satirized lawyers and their New Logic. The Bible portrays Christ's antagonists as conspiring lawyers, or Pharisees, who try to extract self-incriminating statements from Him. At the height of the Roman Empire, the legal profession thrived. As Rome waned, the profession crumbled with it. Saint Augustine's Confessions (400 AD) decries legal contentiousness and rhetoric. Legal satire frequent Medieval and Renaissance Literature. In the late sixteenth century, Montaigne and Shakespeare criticized lawyers. Jean-Jacques Rousseau and Goethe take parting shots in their prominent eighteenth century works, Discourse on the Sciences and the Arts and Faust, respectively.

Historical Satire
Aristophanes' The Clouds follows an Athenian tradition oikonom — an abusive and inventive style of comedy. The Clouds depicts Socrates as a rhetorical Sophist who is paid to teach his students the art of contentious argument based on ridiculous logic. Although Aristophanes misrepresents Socrates, his description of Sophists is clear. According to one character, the Athenian Sophists "offer a course called The Technique of Winning Lawsuits. Honest or dishonest, it's all one." (Penguin 29) According to the translator, William Arrowsmith, "The technique of winning lawsuits" literally translates from the Greek as the ability to "overcome the truth by telling lies." (Penguin 152) Lawyers, therefore, tell lies. According to Aristophanes, deception is inherent in the legal profession, especially since rhetoric and lying are an essential part of any lawyer's education. The Clouds contrasts the rational power of piety (Philosophy or Old Logic) against the rational power of prose and formal logic (Sophistry). When Sophistry asks, "What sort of men are lawyers?" Philosophy responds, "Why, they're all Buggers." (Penguin 107) With the tools of rhetoric, lawyers "make a mockery of all morality, systematically confounding good with evil and evil with good." (Penguin 101) Like some modern lawyers, Athenian Sophists were frequently motivated by wealth in a profession that "proved to be an extremely lucrative source of income." (Penguin 103) For all their criticisms, the Athenian perceptions of lawyers hold to a double-standard. Athenians mock Sophists but demand their services. The satiric stand-off in The Clouds takes place in a court-room setting, demonstrating the implicit acceptance of litigiousness. Both democracies, ancient Athens and the contemporary United States, are litigious and overpopulated with lawyers.

The Bible portrays lawyers as argumentative and worldly. Like the Sophists, Pharisees are synonymous with lawyers and receive monetary compensation for teaching the law. Just as the Sophists antagonized ancient Greek philosophers, the Pharisees hinder Christ: "when the Pharisees heard that He had silenced the Sadducees, they came together. And one of them, a lawyer, asked him a question to test him." (Matthew 27:34) In the Gospel according to Luke, "a lawyer stood up to put Him to the test" (Luke 7:30) Christ speaks of divine commandments, but the Pharisees are preoccupied with worldly laws. Each lawyer forces Christ to prove himself. Jesus Christ derides the legal profession in undeniable terms:

Woe to you lawyers also! for you load men with burdens hard to bear, and you yourselves do not touch the burdens with one of your fingers...Woe to you lawyers! for you have taken away the key of knowledge; you did not enter yourselves, and you hindered those who were entering. (Luke 11:45-52)

By obstructing Christ's attempts to teach the divine truth, lawyers block the gates of Heaven. By creating contention, they remove the key of knowledge or caratás, which initiates universal brotherhood. Their analytical minds resist spiritual understanding. Like the laws that they argue, lawyers are bound to the world. They are also blamed for humanity's imperfectability:

Always at the center of worldly disputes, usually at the very hub of power, judges and advocates are the sitting ducks of social satire, a fate which they have never relinquished throughout the history of Western civilization. (Tucker 2)

Pilate, too, was at the "very hub of power" and judged against Christ. The worldly and spiritual spheres are typified by the Pharisees and Christ.

Saint Augustine's Confessions (400 AD) describe his experiences with a "worldly career" in law, making the same distinction as Christ between worldly and divine laws. (Penguin 123) Though he once studied the law, Augustine claims his intentions were misguided: "Those studies of mine. . . were designed to fit me for the law so that I might gain a great
name in a profession where those who deceive most people have the biggest reputations. Such is the blindness of men, that blindness should become an actual source of pride!” (Penguin 55) Like Greek Sophists, lawyers of Augustine's time were thought to "make the worse into the stronger argument," as Socrates remarked in The Apology. (Hackett 23) Sir Augustine, like Aristophanes and Plato, refers to rhetoric as "the arts of deception, to be used not against the life of any innocent man, though sometimes to save the life of the guilty." (Penguin 70) Augustine's perceptions span Western history, because they are markedly similar to the opinions of previous, and later, writers on lawyers. Modern-day American perceptions also criticize attorneys' ability to set the guilty free.

Medieval and Renaissance satires of lawyers are found in The Canterbury Tales, Piers Plowman, and London Lickpenny. After the Medieval Period, the economic roots of feudalism weakened and the middle class grew. According to some, "the legal profession... introduced the most dramatic social changes and... fostered the growth of mercantile enterprise." (Tucker 11) As targets of satire, lawyers were a symbol of the transition from traditional feudal rights to the centralized early modern urban state. Lawyers were often accused of indulging in sin. Some followed Biblical precedent and criticized lawyers for worldly studies. If they were reading law, some Medieval thinkers reasoned, lawyers could not also be studying the Bible. In addition, legal studies encouraged "contention, avarice and duplicity." (Tucker 19) Some late Medieval criticisms sound familiar to contemporary Americans, including "pandering to the rich, ignoring the querelahe of the poor, prolonging or delaying litigation, padding fees, and engaging in a greedy scramble for lands." (Tucker 10) Many Medieval writers felt there were simply too many lawyers!

"Pettifoggery," a term coined in the sixteenth century, refers to the unscrupulous practice of law. Pettifoggers were poorly-educated "lawyers of inferior status" who practiced petty litigation. (Tucker 31) They overcharged clients, fomented disputes for personal gain, claimed fees from both parties in a lawsuit, and helped themselves at all costs. Curiously enough, the pettifogger closely matches our stereotypical greedy corporate lawyer. Literature often referred to the pettifogger as a "devil or diabolically inspired, as an ignomorious, or as lust-driven." (Tucker 31) Although many satirists thought that lawyers caused the increases in litigation, other accounts show that "the courts would have had far less business without the litigiousness of greedy citizens." [emphasis added] (Tucker 34) Medieval and Renaissance satires demonstrate the longevity of stereotypical representations, but also show that lawyers may simply represent pre-existing social contention.

Montaigne and Shakespeare, writing in the late sixteenth century, capture vicious contemporary attitudes toward lawyers. Themepopular lawyer-bashing exclamation comes from Henry VI, wherein the butcher cries "[t]he first thing we do, let's kill all the lawyers" (IV, ii, 2) In King Lear, the Earl of Kent says, "This is nothing, fool," and the Fool responds, "[t]hen 'tis like the breath of an unfee'd lawyer - you gave me nothing for't" (I, i) The Fool observes that lawyers do nothing without payment. Shakespeare succumbs to the stereotype of a rapacious, money-motivated lawyer that we first noted in The Clouds. Montaigne, a contemporary of Shakespeare, includes a telling footnote in his essay On Experience (1580):

When King Ferdinand sent out colonists to the Indies, he wisely provided that they should take no legal scholars with them, for fear that litigation might breed in that new world, jurisprudence being by nature a science productive of alteration and division. He agreed with Plato that lawyers and doctors are bad provision for any country. (Penguin 345)

Do lawyers create dissension? Montaigne thinks so. Athenian and Medieval satirists also blamed the attorneys for excessive litigation.

Eighteenth century literature reflects similar perceptions of lawyers. Although Goethe once studied law at the University of Strasbourg, he presents the lawyer-devil stereotype in Faust. Mephistopheles tells a student that, concerning law: "I'm well acquainted with that discipline, whose laws and statues are transmitted like a never ending pestilence." [emphasis added] (Bantam 121) Mephistopheles, who takes pleasure in worldly entertainment, claims the law as his own, just as Christ rejected worldly law in favor of divine commandment. Faust seeks an escape from the legal and scholarly melancholia which besets others. Rousseau's Discourse on the Sciences and the Arts (1750), praisesM(montaigne's footnote in On Essays, praises the Spanish for not burdening their colonies with attorneys:

[A] remnant of humanity led the Spanish to forbid their lawyers to enter America...Could it not be said that they believed that by this single act they had made reparation for all the evils they had brought upon those unfortunate Indians? (Hackett 7)

Rousseau takes the extreme position that placing lawyers in Spanish colonies would be an additional evil. Fielding’s 19th century The Author's Farce depicts an Underwold in which the devil refuses "to admit any more lawyers because the kingdom is already too full of them." (Tucker 85) Unwelcome in the Spanish colonies, and not fit for Hell, the 18th and 19th century lawyer could only remain at home and tolerate the satire!

Contemporary Satire of the Legal Profession
Negative perceptions of lawyers are not limited to
historical literature. Popular media frequently recounts, and probably recreates, these stereotypes. According to one Newsweek writer, " [a]acking lawyers is more American than apple pie. " (Lawsuit Cha-Cha 58) Even American zoos cash in on lawyer-bashing. The Dallas Zoo has an Adopt an Animal program that allows patrons who "think of lawyers as vipers who paralyze their prey " to name snakes after the lawyer-of-their-choice. (Forked Tongue 62)

Popular jokes about lawyers abound. Should you ever fall short of lawyer humor, simply listen to the lyrics of popular musicians like Don Henley, whose "Gimme What You Got" song from The End of the Innocence album pokes fun at lawyers: "You cross a lawyer with the Godfather, baby, [he'll] make you an offer that you can't understand." Of course, Henley's point is clear - verbal technicalities and unscrupulous lawyers can render simple legal tasks unintelligible to the layman. Curiously enough, law-school students and lawyers, themselves, seem to know the best lawyer jokes. A Columbia Law School student related the following joke to me: "Why don't sharks attack lawyers? Professional courtesy." Whether at the Dallas Zoo, or in everyday humor, lawyers are depicted as predatory persons with uncertain behavior and motivations.

Public perceptions of lawyers reach well beyond one-liners. A Harris poll rated the legal profession lower than garbage collectors in the public esteem. (Stern 213) Though once deemed prestigious, US lawyers now rank "ignominously at the bottom of the barrel." (Brown 6) Between 1976 and 1985, the Gallup poll found that 30 percent of respondents "rated the honesty and ethical standards of lawyers low or very low." (Abel 163) Consider the following informative statistics:

- Do lawyers work harder for rich clients than for poor ones? And does the legal system favor the rich? 60 percent of Americans say, "Yes."

- Do "lawyers needlessly complicate their clients' problems?" 30 percent of Americans say, "Yes."

- Do lawyers "fail to keep clients informed or to ensure that clients understand the situation, take on work for which they lack experience, and overcharge?" 40 to 60 percent of Americans say, "Yes." (Brown 164)

Given these statistics, Vice-President Quayle's remarks at the 13 August 1991 American Bar Association meeting must have validated many Americans' perceptions. "Does America really need 70 percent of the world's lawyers?" asked Quayle, who is himself a member of the Indiana bar. Another government official, Marlin Fitzwater, boldly stated that, "You never get into trouble attacking lawyers. Everyone ought to take every opportunity they can to bash lawyers. It's so easy." (Lawsuit Cha-Cha 58) But most Americans, like associate Professor at Columbia University James R. Russell, do not say, "I'd rather join Shakespeare in Hell than go to Heaven, if there are lawyers in [Heaven]," simply because it's easy to do so. People dislike, and even hate, lawyers for complex reasons that resonate throughout the Western tradition.

Why Do People Dislike Lawyers?

Why does the public bash lawyers? The high costs of legal action are one common complaint. Some critics argue that lawyers are the only winners in an expensive litigation process: "enormous prices for legal fees, frustration, and stress lead to the all-too-frequent result that hostilities increase."

You cross a lawyer with the Godfather, baby, [he'll] make you an offer that you can't understand. (Don Henley)

(Gerber 86) The process of discovery, or pretrial search through the opponent's records, wastes time and money—an expense that is passed on to the client. The high costs are elevated by a legal "monopoly - a state-approved monopoly, like a public utility" that allows lawyers to self-regulate their industry and, hypothetically, elevate profits. (Stern xvii)

Economic pressure has caused a marked decline in professional quality. As law firms become increasingly business-oriented, public confidence decreases. (Brown 50) MegaLawFirms have become more common, leading to the loss of a professional atmosphere. Law becomes a trade, and the intimate lawyer-client relationship weakens. Large business firms are also less accountable to the individual client. When economic factors become a major concern, people also worry about greed. Money does not motivate all practicing attorneys. Many lawyers may intend to work at a big firm temporarily to pay off loans, after which they will resume a career in public interest law. Unfortunately, they are often held to the big firm by "golden handcuffs" that accustom them to their high-income lifestyle. (Lost Freedom) Even though these lawyers have valid concerns - to pay back loans, live well, and support a family comfortably ~ they are often perceived as greedy money-seekers.

The legal profession's intimate connections to politics heighten public suspicion. Neither politicians nor lawyers are highly-regarded for their ethical standards. Since judges are politically appointed, are they truly impartial? Some critics think not. For example, the Association of Trial Lawyers paid $1.5 million for the campaigns of congressional candidates in 1990, making it the "ninth-largest political action committee expenditure in the country. " (Gergin 44) To many Americans, this influence might appear unethical, and lawyers seem to be taking control of the country with their undue political influence.

Public perceptions are also shaped by those lawyers who behave immorally or represent unpopular clients. Chairman of the Commission on Organized Crime, Irving R. Kaufman, found that the number of lawyers serving organized
crime groups created a "disturbing trend." (Brown 35) Some lawyers help launder money, give legal advice to diminish arrests and convictions, and shield criminals with attorney-client privilege. Often, professional detachment allows lawyers to disregard personal morality in order to presume their client's innocence. Some observers have remarked that the truth is no longer an issue during trials, most of which "have degenerated into gigantic lying contests." (Gerber 116) Many lawyers use "expert witnesses" to make their cases, but these witnesses "are not always qualified and prey upon the sympathy of the jurors." (Lemonick 46)

Legal technicalities seem frivolous and intentionally abstruse to many laymen. As we saw in Henley's lyrics and the Renaissance satires, lawyers often speak in a language that regular people simply don't understand. "Legalese" alienates clients and "creates a rhetorical and communication imbalance." (Gerber 79) Laymen may resent their dependency on lawyers to interpret the law. An experienced lawyer describes his clients' frustration as follows:

*a sense of impotence overcomes the client as he struggles to comprehend the vast ocean of rules, regulations, jargon and procedural machinations that even the most patient and articulate lawyer finds difficult to explain and justify to the layman.* (Torgov 64)

The lawyer asserts himself as a middleman between the client and the law, or between the client and his dispute. As a middleman, the lawyer is an "affront to the vision which men carry within them of a paradise lost, and hopefully to be regained, in which lambs and lions will congregate without special assistance." (What's Wrong With the Law?) Like the serpent in Eden, lawyers represent a lost innocence in which contention is a mark of society, and litigation is the sign of democracy. The lawyer is a shaman who "magically negotiates the costly perils of courts and legal maneuver." (Hamett 3) Though public sentiment criticizes the unnecessary complexity of legal affairs, many issues actually are complex, and "forces of change are constantly at work, shaping and reshaping legal conclusion." (Hamett 7) While many people may not understand legal "jargon," there are others who find the profession's English men's club trappings to be similarly exclusive. The public may be irked by lawyers' exclusivity, and popular attitudes could partially reflect such frustrations. Attorneys also represent the status quo. Educated in precedent, lawyers tend toward traditional habits, rather than innovative change. The best lawyers are used to "perpetuate the power of the haves and preserving their leverage over the have-nots." (Stem xix) By using the legal framework, attorneys "extend it by interpretation into many niches of social life." (Geison, ed. 110) Thus, any defects in the social system are validated through the practice of law and can be blamed on the lawyers.

Lawyers are the bearers of bad news. For most people, the lawyer "spells danger" because of the legal expense and courtroom hostility that they prefigure (Hamett 3) The lawyer's slippery ability to find a loophole, "engineering the potential escape from the seemingly inescapable obligation" seems under-handed and dishonest. (Hamett 98) Paul Smith, a second-year Columbia Law School student, remarked that, "Injobjody who wins a case complains about their lawyer." But, of course, not all clients win their case and those who don't are sure to blame their lawyer.

The Good News About Lawyers

The legal profession holds many ideals. Among the responsibilities of lawyers, Chief Justice Warren Burger said, "we place the public interest ahead of private gain." (Stem 3) The American Bar Association lists in its Code of Professional Responsibility "that every person in our society should have ready access to the... services of a lawyer of integrity and competence." (Stem4) Responsibility lists are easy for judges and bar associations to make, but difficult for many lawyers to uphold. Historically, American lawyers have contributed enormously to the public good. John Jay, Daniel Webster, Abraham Lincoln, and Stephen A. Douglas are but a few prominent American lawyers. There were 52 signers of the Declaration of Independence, and 25 of them were lawyers. (Abel 175) Revolutionary American lawyers were dedicated to republican principles in service of their new country. The lawyer does have a duty to serve his nation, especially since he is "intimately connected with the essential regulation of society's affairs." (Hamett 6) In fact, many lawyers "want to work in areas of desperate need, such as loan enforcement, environmental protection and legal services for the poor," but loan payments force them toward higher-paying jobs. (Ratzkin)

Lawsuits representing the individual may successfully check governmental or corporate power. Connecticut attorney Karen Koshoff co-chairs a breast implant litigation group at the Association of Trial Lawyers of America, and says that she "will sue people so that [she] can protect women." (Lemonick 46) In many cases, the "fear of lawsuits also forces drug companies to be honest." (Lemonick 46) When an industry does not ensure the safety of a product, litigation brings attention to the hazard.

Who do you think knows the most lawyer jokes? Lawyers, of course. The legal profession is highly conscious of public perceptions. Surveys indicate that "almost half of all practitioners worry that they are less highly regarded than other professions." (Abel 163) As a result, many attorneys actively strive toward higher ideals in order to improve their profession's image. Yet, lawyers' extroverted concerns seem to exceed healthy levels because "[l]awyers exaggerate public

Like the serpent in Eden, lawyers represent a lost innocence in which contention is a mark of society, and litigation is the sign of democracy.
distaste, displaying an almost paranoid belief that people view them as tricky, evasive, manipulative, overbearing, greedy, and cold." (Abel 163) Given historical attitudes toward their profession, it is no wonder that attorneys are highly sensitive to other peoples' perceptions.

**Conclusion: Reformation and Reflection**

How can lawyers reform their profession in order to achieve the high ideals that judges and bar associations have for them? David Hoffman, a Maryland law professor, suggested "Fifty Resolutions in Regard to Professional Depen'tment" in 1817 to improve the legal profession's image. Hoffman's resolutions included an end to self-promotion, unjust causes, or disingenuous tactics, and the renouncement of activities that compromise professional dignity or personal honor. (Gerber 57) Dan Quayle's 50-point program suggested at the 13 August, 1991 ABA meeting would cap punitive damages, discourage frivolous lawsuits (by making the losers pay the winner's legal fees), limit the waste of discovery, control the use of expert witnesses, and create alternatives for trials, like mediation and arbitration. When I asked Governor Bill Clinton, "Why does the public come down so hard on lawyers?" at a Democratic rally on 24 March in downtown New York, he responded, "Because we need more alternative dispute resolutions." Governor Clinton added that we should have lawyers keep people out of the courts rather than in [the] courts. Like Dan Quayle, Governor Clinton understands the need for arbitration and mediation to reduce legal costs and unclag the court dockets.

To reduce the costs of litigation, we should develop "flexible, inexpensive nonlawyer rates" that allow laymen to handle minor transactions on their own, or with minimal assistance. (Gerber 99) As a result, lawyers could focus on relevant matters for which they're qualified, improve their image, and free laymen from their heavy dependence on the shamanistic lawyer. Should law schools adopt "loan forgiveness" programs, ideally paying off student loans for graduates who pursue public interest careers, and should the IRS stop taxing such "forgiveness," then we could divert legal talent from the lucrative private sector and into the starving public sector.

The public hates attorneys because they reflect the contention of society and the imperfectibility of humans. The vices of Medieval society were also reflected by their lawyers: "Because he is the agent of a litigious client, the pettifogging lawyer is a personification of the client's greed." (Tucker 38) Americans, like ancient Greeks, are quick to sue when they want to protect their property, win compensation, or simply have their "day in court." How else does one explain the lawsuit of an American who claims that a bad haircut has "deprived him of his right to happiness?" (Lawsuit Cha-Cha 58) There is a double-standard in contemporary America: people praise the aspiring law school student, but curse the vile lawyer. Morley L. Torgov, an experienced attorney from Toronto, summarized his feelings in a *New York Times Magazine* article.

To be a lawyer is to be looked at askance, sooner or later, because the mirrors we hold up to our clients more often than not reflect men who have not quite lived up to their code, or who cannot fight their own complex battles, or who are simply defeated by a world God created and the devil keeps spinning... The mirrors I hold up must reflect realistic images, no matter what. That is precisely my job. I remind myself over and over that I am not out to win a popularity contest. (Torgov 64)

Regardless of what reforms we adopt, the public will always live in a "love-hate relationship" with the legal profession because each lawyer will continue to be "both hero and villain," depending on whether he wins or loses his client's case. (Harnett 3) As Western tradition indicates, basic human natures remain contentious. And where there is contention, there are lawyers. The attorney's responsibilities do not include seeking public approval, but simply doing one's job with strict adherence to ethical standards of professional responsibility.

**Bibliography**


Projections for the Palestinian Revolution
By Dave Eisenbach

Autonomy Equals Revolution

The establishment of an autonomous Palestinian state in the West Bank is not in the true interest of the Palestinian people. Those who think immediate autonomy would be another step toward a new and improved world order disregard the history of almost every revolution from 1789 to 1989. The history of Israel, the West Bank, and Jordan indicates that if the Palestinians remain patient, within 20 years, they will peacefully assume control of a democratic government with an established bureaucracy, legal system, and economy.

"Land for Peace" is a catchy phrase, but it is also a dangerous over-simplification which ignores political reality and historical trends. Israel's refusal to allow truly democratic elections and political freedoms has prevented Palestine from establishing a democratic tradition. Given the political oppression and violence of the last 25-year Israeli occupation, military and political withdrawal would be equivalent to the overthrow of an authoritarian or totalitarian system. Two centuries of history show that after the initial revolutionary euphoria wears off, the united revolutionary opposition (i.e. the Third Estate, Solidarity, and perhaps the PLO) splinters into conflicting groups that struggle to fill the power vacuum. Revolutionary states without democratic traditions slip into anarchy, civil war, and/or tyranny as in the cases of the late eighteenth and nineteenth century French governments. Even if the Palestinians were to establish a democratic government immediately after their autonomy was granted, the lack of a democratic tradition would make them susceptible to the same civil strife and tyranny that undermined the Weimar Republic.

United They Seem, Divided They Are

After withdrawal, the PLO would not assume power as a united coalition government. The history and structure of the PLO shows that it is not a team of players shooting at the same goal. The PLO is essentially a cartel of various self-interested groups united to increase their own power. The guerrilla groups, which formed in the late 1950s and early 1960s, did not receive much attention and support from Palestinians until after the 1967 June War. During the war, Syria, Egypt, and Jordan not only failed to liberate Palestine, but also surrendered the West Bank, the Gaza Strip, and Golan Heights. Palestinians attributed these humiliating losses to the incompetence of the Arab armies and to the Arab states' lack of concern for the Palestinian people. Consequently, many Palestinians joined guerrilla groups, such as the original Palestinian Liberation Organization, which was a puppet of Nasser, and Fateh, an independent guerrilla group led by Yassir Arafat (Cobban41). By 1969, most Palestinian military, political, economic, and social organizations saw that the only way to achieve their one common goal was to set aside their ideological conflicts and form an "umbrella organization" called the PLO. (Goldschmidt 406)

The PLO is a diverse coalition of eight parties, movements and guerrilla groups, each with different leaders, ideologies, and agendas. Most of the groups in the PLO espouse one of three programs. One type calls for the unification of all Arab states and the subsequent use of a united Arab army to liberate Palestine. This ideology was adopted by the Arab Nationalist Movement, the precursor to the Popular Front for the Liberation of Palestine (PFLP) led by George Habbash. A second type concentrates strictly on the liberation of Palestine. This limited commitment has been espoused by Yassir Arafat and his Fateh movement. The third type of group carries out whatever policies their state sponsors dictate, as in the case of the Iraqi-sponsored Arab Liberation Front, Libya's Popular Palestinian Liberation Front, and the Syrian-supported Vanguards of the popular War of Liberation, commonly known as Saqa.

The PLO constitution reveals the tenuous relationship between its members. Since the various organizations of the PLO espouse conflicting ideologies, the PLO's institutions and policies must reflect the ideologies and needs of all groups. The PLO's constitution rests the "supreme authority" of the PLO in the popularly elected 400 member Palestinian National Council (PNC). The PNC's members are chosen by an informal process of negotiation between the eight member groups because elections would be impossible to hold among a population in diaspora and under occupation. (Long 294) This process ensures that the PNC represents all ideologies. The PNC elects an Executive Committee to determine the
FLO's policies. The Executive Committee adopts policies based on consensus among all factions of the PLO. This decision-making process gives a disproportionate influence to smaller, radical groups who have been able to prevent the PLO from enacting conciliatory policies. (Long 294) The Executive committee must please all groups, or risk the dissolution of the entire organization.

The threat of the PLO's disintegration over an ideological dispute is very real. In 1968, a faction of the PFLP split from its parent group and formed the Popular Front for the Liberation of Palestine-General Command. In 1969, the Democratic Front for the Liberation of Palestine led by Nayif Hawatme also broke away from the PFLP. Power struggles have also splintered Yasir Arafat's organization, Fateh. In 1970, Khaled an-Nasir and his Victory Battalions split from Arafat. Since 1974, Iraq has supported Abu Nidal and his faction's struggle for control over Fateh. In 1976, a Syrian-supported renegade group, Revolutionary Fateh, unsuccessfully challenged Arafat's leadership.

By the early 1970s, all member groups of the PLO belonged to either of two ideological divisions. The mainstream group concentrated more on diplomacy, while the Rejection Front was more militant. In 1983 the PLO split into three factions. One set of members supported Arafat's pursuit of a diplomatic solution. The second group, the National Salvation Alliance, opposed Arafat's diplomacy. The third, the Democratic Alliance, supported Arafat on most policies except his close ties with the pro-West regimes of Jordan's King Hussein and Egypt's President Hosni Mubarak.

The various groups of the PLO often pursue their own interests at the expense of the whole organization. For example, in 1970, the PFLP defied the Palestinian National Council and committed a series of hijackings and bombings. The terrorist acts of the PFLP drew the entire PLO into a savage war with Jordan that killed 3,000 Palestinians and almost eliminated the entire PLO. On 20 June 1990, a militant faction of the PLO, the Palestinian Liberation Front, attacked an Israeli beach. The attack was a military failure, but it achieved its political goal of disrupting negotiations between Arafat and the United States. Although the Executive Committee of the PLO condemned the PLF's renegade actions, the Bush Administration broke off discussion with the entire PLO. The history and composition of the PLO indicates that once Israel's reign over the West Bank and Gaza Strip ends, this umbrella organization will fold and its various factions will fight for power.

Although the largest, best-armed factions of the PLO would be the main competitors for power, several other movements and groups will also compete. The Intifada has seen the emergence of new movements inside the occupied territories. Members of popular committees and mayors, who were responsible for distributing food, collecting garbage, and maintaining morale during curfews, have acquired the support of many Palestinians who resent the PLO leaders and their Tunisian seaside villas. Another source of competition would come from the militant Islamic fundamentalist group, Hamas. The past fractiousness of the PLO and the emergence of new challengers for power in the occupied territories indicate that if the Israelis withdrew without having first engendered a democratic tradition, they would not spawn democracy and liberty in the territories. Instead, a premature withdrawal would leave a power vacuum, along with several unrestrained and armed organizations with a desire to fill that vacuum. Autonomy would condemn the Palestinian people to a civil war. Thus, Palestinian autonomy would, like most revolutions, eat its own children.

Palestine Is Not Jordan... But It Will Be

The strong historical ethnic, economic, and religious ties between Palestine and Jordan indicate that a Palestinian-controlled democratic state will inevitably replace the Jordanian monarchy. Jordan and Palestine were the results of the 1916 secret Sykes-Picot agreement between Great Britain and France in which the two countries agreed that the British would control the area between the Egyptian border and eastern Arabia. The British chose this area, which later became Transjordan, because it provided a secure passage to India. An enclave around Jaffa and Jerusalem was to be formed and administered by an international government because Russia wanted to help administer the Holy Land. This arbitrary enclave became Palestine and Israel. The great powers established the borders according to their own interest and ignored the ethnic, historical, religious, and linguistic ties between the Palestinian and Transjordanian peoples. King Abdullah of Transjordan probably considered these ties when he seized Eastern Palestine, the West Bank of the Jordan River, in 1948 and annexed it in 1950.

The 340,000 West Bank Palestinians and the 480,000 Palestinian refugees that were added to Transjordan's 400,000 inhabitants in 1948 have greatly affected Jordan's political system. (Sahliyeh 10) Abdullah's need for the cooperation and loyalty of the Palestinians inspired him to grant them full Jordanian citizenship with equal political, educational, and economic rights. (Long 226) On 20 July, 1951 a Palestinian nationalist murdered Abdullah. A predominantly East Bank Bedouin army under the guidance of British officers guaranteed the succession of Abdullah's son Talal, but Talal's mental instability weakened the monarchy's influence over the West Bank. In order to retain its power, the monarchy promulgated a new constitution in 1952 which gave the West Bank...
Palestinians the right to participate in Jordanian politics. The constitution established a bicameral legislature. The lower house, the House of Representatives, would be elected by popular vote in three East Bank Bedouin districts, seven regular East Bank districts, and seven districts on the West Bank. (Long 230) This designation of districts ensured that East Bank representatives, who were assumed to be loyal monarchists, always had a majority. However, the monarchy still retained ultimate authority over government policy. The superficial political reforms appeased Jordan's potentially-rebellious public. Thus, the new constitution enabled the monarchy to survive the year-long transition from Talal, whose successors forced him to abdicate in January, 1952, to a regency council, and finally to Talal's young son Hussein, who assumed the throne in 1953. (Long 226)

Not even Israel's military occupation since 1967 has demolished the economic, political, religious, and ethnic bridges between East and West Bank. Hussein's desire to appeal to the West Bank Palestinians, in the hope of future reunification, has affected Jordan's political policies and institutions. Despite the disapproval of every Arab state, Hussein maintained a working relationship with Israel in order to influence West Bank politics. Hussein used his grandfather's practice of gaining loyalty through charity. With Israel's permission, Jordan gained indirect influence over the West Bank by giving consumer goods to the governors and mayors. These officials then traded these goods for loyalty, and thereby controlled the West Bank. Jordan's economic influence and the PLO's ideological inspiration dominated West Bank politics until the late 1970s, when the Likud government's Village Leagues and repressive activities began to radicalize nationalistic and Islamic movements, like the Hamas. The importance that the Palestinian's placed on goods and international terrorism declined, while the role of religious and local resistance leaders in daily life increased. The Jordanian-sponsored mayors became more influential during the Intifada because they organized the National Guidance Council and coordinated popular resistance.

Hussein altered Jordan's political institutions in order to maintain the possibility of reunifying the East Bank and West Bank. During the early days of the Israeli occupation, West Bank districts were allocated seats in the Jordanian parliament. In 1974, the Arab States recognized the PLO as the sole representative of the Palestinian people at the Rabat conference. Hussein would not cease allocating seats to the West Bank, thereby recognizing the PLO's authority over the West Bank. Instead he dissolved the entire parliament and ended Jordan's semblance of democracy. In 1983, Hussein used a new constitution to increase his influence in the West Bank. The West Bank was allocated seats which were filled by a vote of a new Parliament chosen by East Bankers. The new parliament, however, has not held influence over the West Bank, which has been controlled by local mayors and the PLO. (Long 231) Clearly, the political history of Jordan and Palestine are so strong that their political futures will be interwoven.

The true interest of the Palestinians is to establish a genuine democracy without suffering through a civil war. The establishment of an autonomous Palestinian state in the West Bank and Gaza Strip would condemn the Palestinians to a civil war which could plunge the entire region into war. A Palestinian democracy is possible, provided the region is not disturbed by war. After Hussein dies, there will be a crisis of legitimacy, similar to the one which beset the monarchy after Abdullah's assassination. In order to maintain the legitimacy of the monarchy, Hasan, Hussein's successor, will promulgate a new constitution to establish more democratic freedoms and rights, as in 1952 under Abdullah's successor Talal. This time, however, the king will not be able to subvert or abrogate the constitution because his people will demand political control. Since Jordan's economic woes will indubitably continue throughout this century, Hasan won't be able to buy the loyalty of his constituents, as Abdullah and Hussein had aptly done. Thus, within the next 20 years, a Palestinian majority will elect Palestinian official who will assert control over a nominally Jordanian state. Jordan will be Palestine.

Bibliography

Dave Eisenbach is a Columbia College junior.
A Look at the National Health Care Policy Crisis

By Congresswoman Geraldine Ferraro

The following is an edited version of a speech recently given by former Congresswoman Geraldine Ferraro at a Health Care Forum sponsored by Albany Law School.

While listening to this audience of distinguished health care professionals and academics, I am reminded of advice I received early in my political life: never try to explain things to people who understand them better than you do. I will not do so. What I can do is talk about my expertise -- how to move our political system to make change happen. Because I operate on the theory that politicians are educable -- at least some of us -- I look forward to hearing the various perspectives presented here today.

My own knowledge concerns how we turn ideas into reality. I want to look at health care and at the larger political context in which we find ourselves as we approach Election Day, and share my views about some specifics that any health care reform must include.

We have come to this juncture because things are not working. That may sound basic, but I have found in this debate that the more people look at the trees -- multi-payer, single-payer, reimbursement, or DRGs -- the more they forget that the forest is on fire. Our public officials are starting to understand that fact. On the American political calendar, 1992 is the year of health care - and it is about time. The question is no longer whether changes will come, but how, when, and which changes are to be made.

This message was carried in the electoral arena after Harris Wofford swept to victory in the senatorial race in Pennsylvania. Suddenly, Washington woke up and noticed that the American people want reform. Senate Republicans who had consistently ignored health care reform proposals for years suddenly found religion and introduced a health care bill.

Politically and economically, we have not seen such an overwhelming mandate for reform since we adopted Medicare in 1965. Ninety-one percent of Americans say our health care system needs basic change, and three Americans in four favor some form of national health insurance. A recent survey of Fortune 500 CEOs found that more than two in three now want some kind of universal system. There is no other issue where the AFL-CIO, Lockheed, American Association of Retired Persons, and the Children's Defense Fund agree. When the American Nurses Association, Bethlehem Steel, Gerald Ford, and Jimmy Carter are in the same tent - I can only believe that significant change is on the horizon. It has taken Washington a while to catch on to what the rest of Americans have long known: it is time to put health care front and center.

As the Government Law Center brings us together today to discuss four distinct models for reform, the Democratic Party holds town meetings on health care around the country, and each presidential candidate weighs in with a proposal, a movement for change is confirmed. I consider that politically healthy.

The real question is what change, in which direction, and how far? I hope to be shaping that reform in the United States Senate next year. Let me start by stating the key principles that I hope a national health care plan will contain.

Two key points are accessibility and affordability of health care. Every American must be able to get health care, and it should not depend on if one works, whether one is rich or poor, young or old, or sick or well. Rising health care costs have affected the accessibility of health care. Last week the Commerce Department reported spending $817 billion in 1991 on health care. I recently met a man who told me his insurance premiums went up 300 percent last year. That is outrageous. Only last week, Blue Cross/Blue Shield asked to raise rates by twenty-six percent. For many New Yorkers, that will be twenty-six percent more than they can afford, and they will lose their insurance. All of us know what it costs for our coverage and for prescription drugs. When adding the cost of our aging population with its rising demand for nursing homes, the growing H1N1 epidemic, the millions who use emergency rooms because they have no primary health care, a recipe for economic disaster is made. A new national health care plan must have lower costs for middle class Americans than the current policy contains. We need effective cost control mechanisms to contain spiraling inflation. Health care costs cannot continue rising more than twice as fast as the GNP.

When the American Nurses Association, Bethlehem Steel, Gerald Ford, and Jimmy Carter are in the same tent - I can only believe that significant change is on the horizon.

Almost everybody in the health care debate agrees you have to cut costs, but the question is how. We can save money with a far greater emphasis on preventive care. It costs $900 to give a mother prenatal care through Medicaid, but several hundred thousand dollars to care for a baby born disabled for lack of pre-natal care. We do not save money by taking care of people before they need it — we save lives, and we keep people healthy and productive
within our communities and our economy.

We can cut costs by broadening the diversity of providers and institutions, to deliver services in the most cost-effective ways. The health care system of tomorrow, particularly in underserved areas, may include a wider array of providers—nurse practitioners, physician’s assistants, and highly skilled and trained people to provide care where it is not now being provided. Not to supplant, but to augment, our physicians.

We must also cut the excessive cost of redundant administrative overhead. When we are spending a quarter of the health care dollar on administrative costs, we can do better. Some say we can save $70 billion by giving universal cards and centralizing record-keeping, but that would surprise me. What I do know is that there are real and significant savings to be found. I would suggest the idea of creating a standardized form.

We need to gain control of waste, fraud, and unnecessary treatment. This is time and money we could spend delivering quality care to those who need it. Public resources should be utilized in a better manner than they have been. America already has some of the best health care in the world, and a great capacity available in our hospitals. Now, we need to take the existing provider base out there and get them to work and think in terms of community health care more than they already do. That may mean that your institutions expand further into community health care centers, and create more satellite clinics for preventive community health care.

I favor more regional control and planning for several reasons. It may contain costs by allowing communities to efficiently develop and share resources, so that the people get the most out of the health care dollars we have. This allows us to make the best use of limited and expensive technology, prevents the needless duplication of scarce technological or health care resources, and makes health care more responsive to the specific issues in specific communities. Other, less expensive options in terms of long term care need to be created. With the demographic changes of this nation and the impact of HIV disease, we need more diverse options between being in a hospital or a nursing home.

Most of the debate involves the larger question of the overall structure of health care. I support a multi-payer health care system, like a pay or play system—where employers either provide employees health coverage on their own, or pay into a fund to support an expanded federal insurance plan. I do not favor a single-payer plan that just emulates Canada’s policy. Simple urgency dictates that we reject this plan. American families need real help now. I doubt that an immediate movement to a one-payer system is possible. Political resistance could delay necessary changes for years, and the needed benefits. I am not sure a one-payer system is the best way to meet all of these goals. Instead of grafting a Canadian-style system onto our specific national health care needs, we need to develop a system that is uniquely American and responds to our particular needs in terms of population and provider diversity, local controls, long term care options, and quality of care. Some parts of our health care system are the best in the world. Our goal should be to grow from our strengths, improve on them, and change what does not work.

I favor keeping free market competition between providers, hospitals, and payers to help control costs. Government bureaucracy needs a free market check and balance. Let there be no mistake—the breakdown of the current system shows that unbridled free market mechanisms alone are not enough. If they were, we would not be having this national debate. Systems that rely on those elements alone will not go far enough.

We need to spread the economic burden of paying for care equitably. For the system to be fair, all enterprises should participate in a common system and pay their fair share to reduce costs. It is not right for working people to pay taxes to support health care for others while they have none themselves, nor is it right that some companies bear the costs of insuring the uninsured while others do not. I do not propose that we balance our health care system solely on the backs of our businesses. If employers are forced to pick up all the health insurance costs, many small businesses would have to close their doors tomorrow. That would hurt workers, owners, and our economy further. A tax credit for small companies should be considered so that the costs for insurance are not too high.

There are different issues for large businesses. Employees of large corporations now pay for health care through lowered wages. Those that are now paying as much as twelve percent for health care costs may find they save money under a pay or play system, which might cost seven percent or eight percent. The larger principle is that while employers have a role to play, so do government, individuals, and new models of preventive and primary care.

We will not solve all of our problems by looking at the financing and reimbursement end of the system alone. That is only half the equation. We must also look at how we deliver care. These are issues best left to those who make their lives studying these issues. What I know from my perspective in the political system is that we will not accomplish such changes without some pain. The various voices and interests in the health care debate have to be prepared to change and compromise, and many players will have to give an inch while some give a foot. Right now we are all giving an arm and a leg, and that must change.

Frederick Douglass told us that "We may not get all we fight for, but we have to fight for all we get." We can have a healthy future for us, for our children, and for our nation. And if that is not worth fighting for, I do not know what is.

Former Congresswoman Ferraro is a Democrat from New York.
By Dawn Zuroff

A prior restraint is a court order banning publication of unpublished material. Clearly, this power needs to be squared with the fundamental right to a free press as guaranteed by the First Amendment to the United States Constitution. The extent to which exceptions to this First Amendment freedom can be justified has always been a matter of dispute.

Perhaps the most commonly accepted justification for the use of prior restraints is that they protect national security. National security is a vague concept which changes in meaning and connotation through time. In New York Times v. the US Government, 403 US 713 (1971), the government attempted to prove that the security of the nation would have been threatened by further publication of the Pentagon Papers, the compilation of US involvement in Indochina from 1945-1968. Thus, the government claimed that a prior restraint on publication was justified in order for US national security to be safeguarded. The press, on the other hand, claimed that national security was not threatened by the publication of a series of articles based on the Pentagon Papers. The press' right to be free of governmental interference was at the pinnacle of importance, while the government's claim to national security was not substantial enough to abridge such fundamental rights.

The press checks the internal workings of the government, which is essential to a free and democratic country. To others, however, it may merely act as a conduit of governmental propaganda and an omnipresent nuisance. Even Daniel Ellsberg, the man that initially exposed the Pentagon Papers, criticized the press for not being critical enough of the government. Referring to the press coverage of the war in the Persian Gulf, Ellsberg described the press as having been "the cheering section for the war in the gulf. The press usually relies upon handouts; it is not adversarial to the government." (Personal interview 2/21/91) "The pooling of reporters is the epitome of the censorship mentality," he said. In a pooled system, the army or government officials selectively report information only to a select group of press reporters.

The mere threat of prior restraints may cause an extra amount of precaution on the part of the press. To some, there may be certain cases where such restraints are indeed necessary. Are prior restraintsever constitutionally justified? Are they even necessary, or are newspapers responsible enough to impose their own internal restraints on publication? Where should the power lie? In the hands of the Judiciary? The Executive? Or the people? The Executive Branch has constitutional power to determine what is vital and essential to the security of the nation. However, "any system of prior restraints of expression bears a heavy presumption against its constitutional validity, and the government carries heavy burden of showing justification for imposition of such a restraint." (New York Times v. US, 403 US 713 [1971], at 2141).

The Original Intent of the Framers of the Constitution
The First Amendment was written: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press..." (US Constitution) According to Justice Douglas, in the Supreme Court decision in the Pentagon Papers case: "The dominant purpose of the First Amendment was to prohibit widespread practice of governmental suppression of embarrassing information." (403 US, at 2144) The Framers recognized journalism as a restless, cantankerous force. (Graham 5) At that time, the press was wildly partisan and often inaccurate. (Graham 5) Even though Jefferson once wrote that nothing printed in a newspaper can be believed, he nonetheless supported the notion that: "The basis of our government being the opinion of the people, the very first object should be to keep that right [of freedom of the press]." (Graham 5)

In Near v. Minnesota, 283 US 697 [1931], Justice Hughes quoted James Madison: "The great and essential rights of the people are secured against... executive am bition... by constitutions paramount to laws. This security of the freedom of the press requires that it should be exempt not only from previous restraint by the Executive, as in Great Britain, but from legislative restraint also." (Report on the Virginia Resolutions, Madison's Works, vol. IV, p.543 in 283 US 697, at 626)

Under the autocratic systems of government of the sixteenth and seventeenth centuries, criticism of authority was a crime and was punished as sedition. (Siebert 267) After the US Constitution was ratified, though, similar actions were instituted. The Alien and Sedition Acts of 1798 were four laws enacted by the Federalist-controlled US Congress, designed to destroy Thomas Jefferson's Republican party. Most controversial was the Sedition Act, which was devised to silence Republican criticism of the Federalists. It's broad proscription of spoken or written criticism of the
government, the Congress, and the President virtually nullified the First Amendment freedoms of speech and the press. (Harris vol. I) The significance of the Alien and Sedition Acts is that they took place when the struggle for freedom was directed against a government that thought that they had an inherent right to censor the press in order to prevent dissension. The European nations had lived for many centuries with the concept of a government as "divinely right." So, "wrong thinking" was suppressed and authorities were acting properly

The Framers recognized journalism as a Restless, cantankerous force.

when they curtailed the publication of material which embarrassed them. (Graham 41)

Near v. Minnesota (1931)

In Near v. Minnesota, 283 US 697 (1931), a state statute provided for injunctions against any "malicious, scandalous, and defamatory newspaper," and a state judge had enjoined a scandal sheet from publishing anything scandalous in the future. The Minnesota statute did not require advance approval of all publications, but came into play only after a publication had been found scandalous, and then only to prevent further and similar publications. Nevertheless, a majority of the Justices concluded that to enjoin future editions under such vague standards would, in effect, put the newspaper under judicial censorship. Chief Justice Hughes made clear, though, that the First Amendment's bar against prior restraints was not absolute. There are clearly circumstances in which prior restraints would be justified. For example, "no one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops."(283 US at 626)

In the Pentagon Papers case, unlike Near, the government sought to enjoin only readily identifiable material, not unidentified similar publications in the future. Also, the Pentagon Papers case did not deal with an overly broad statute, but rather with the specific claim of national security. In that sense, then, it was surely the first case of its kind.

The Exposition

The New York Times published two articles based on a 47 volume study, "The History of U.S. Decision-Making Process on Vietnam Policy. " These documents, compiled from Defense Department files, were to be known as "The Pentagon Papers." The study itself was classified Top Secret. There had been no authorization by government officials for its release to the press. Many of the individual documents, consisting of memoranda produced by high officials in the early sixties, were quoted directly by the newspapers without paraphrasing. (Graham 37) After reading the published articles, the US Attorney General, John Mitchell, sent a telegram to the r/mesrequestingafreezeon future publication of information from the study. In it, he advised that the key texts of the Pentagon Papers contained:

information relating to the national defense of the U.S. and bears a top secret classification. Publication... is directly prohibited by certain provisions of the Espionage Law.... further publication of information will cause irreparable injury to the defense of the U.S.... and such information could be used to the advantage of a foreign nation and... such knowledge and belief did willfully communicate, deliver and transmit said information by the publication thereof, to persons not entitled to receive such information, (see Espionage Act, no.24; 65th Congress [Title I in Udell])

In 1917 and 1918, towards the end of World War I, Congress passed the Espionage Acts, which limited the freedom of public discussion while the nation was at war. The purpose of the statutes was to suppress certain hazardous information in times of crisis. The Espionage Act was intended to punish those who were involved with obtaining information injurious to the US or advantageous to other nations.

The Times refused to halt publication of the Pentagon Papers, and then published the third of its series on June 15th. The Government then moved before U.S. District Court Judge Gurfein for a temporary restraining order, which Gurfein granted. The Times gave the District Court and the Justice Department a list of descriptive headings for the portions of the Pentagon Papers in the Times' possession. Subsequently, The Washington Post printed parts of the Pentagon Papers, as well. However, in this case, Judge Gesell of the DC District Court, did not grant the Government's motion for a temporary restraining order. The Government then appealed to the Court of Appeals for the DC Circuit which granted the Government a temporary restraining order and remanded the case back to Judge Gesell.

In less than a week, because of the urgency of the case, the Supreme Court heard oral arguments. By a 6-3 vote, the Court dissolved the injunctions by lower courts, permitting the newspapers to resume publication. The Justices were divided even more deeply than the six to three vote indicated, and each member voiced his own views in a separate opinion. The Court majority concluded that the government did not have the right to prevent the publication of the specific documents in question.

The Case Against Prior Restraints

Justice Hugo Black, who was ardently opposed to the use of prior restraints in virtually every case, argued that censorship of the Pentagon Papers was clearly not constitutional. He claimed that, "both the history and language of the First Amendment support the view that the press must be left free to publish news, whatever the source, without
censorship, injunctions, or prior restraints." (403 US at 2142) Only in this way would the press readily be able to criticize the government's wrongdoing.

Whereas Justice Black argued against prior restraints more absolutely and universally, Justice Potter Stewart included a specific set of circumstances under which prior restraints could be constitutionally justified. He pointed out that with the governmental structure created by the Constitution, "the Executive is endowed with enormous power in the two related areas of national defense and international relations." (403 US, at 2148) Thus, the press serves as a check on the Executive Branch's decision-making apparatus in the areas of national defense and international affairs.

Justice William Brennan defined a narrow case in which prior restraints would be justified: only when the nation "is at war." (Schenck v. United States, 249 US 47, at 52 [1919]) Strategic military information, like troop locations, must be protected by prior restraints when the publication of such material might cause irreparable injury.

The Argument In Favor of Prior Restraints

In Justice Marshall's opinion, the government argued that "in addition to the inherent power to protect itself, the President's power to conduct foreign affairs and his position as Commander-in-Chief give him authority to impose censorship on the press to protect his ability to deal effectively with foreign nations and to conduct the military affairs of the country." (403 US, at 2155)

Former members of the Johnson and Kennedy Administration claimed that the exposure of the Pentagon Papers would cause national harm because the papers were based only on partial access to government war policy documents. (Ungar 113) In fact, during the reign of the Nixon administration, at the time of the Pentagon case controversy, Kissinger was on a top secret mission negotiating with North Vietnamese officials in Paris on his way back from a secret visit to Peking. There was a fear in the White House among conservatives that unless the White House took a firm stand infavorofflightrestrictionsonhepress dangerous precedent could be established; reporters might feel encouraged, even obligated, to delve deeper into government affairs for more secret documents on American foreign policy, which could weaken law and order. (Ungar 114)

Chief Justice Hughes made clear, though, that the First Amendment's bar against prior restraints was not absolute.

Additionally, during the time of the delicate talks with the Chinese government during the Nixon years, there was concern that the Chinese government, a very secretive regime, might have felt that there was relatively little secrecy in the US, and would then have felt hesitant to discuss anything that could potentially harm their country’s reputation or any deals that they would make with the Nixon Administration. (Ungar 114)

District Court Judge Gurfein justified his issuance of the temporary restraining order to the Times, by claiming that "any harm that may result from not publishing during the pendency... is far outweighed by the irreparable harm that could be done to the interests of the US government if the government should prevail." (US v. New York Times, 71 Civ. 2662)

Chief Justice Warren Burger argued that, due to the haste in which the case moved from the District Court to the Supreme Court (less than two weeks after the initial publication), no District Judge, Court of Appeals Judge, nor any member of the Supreme Court knew all of the facts (403 US, at 2158) It was impossible to read the 7000 pages in a fortnight's span. Justice Burger made reference to the apparent hypocrisies underlying the case. The Times held the documents for three to four months prior to publication. He questioned why the government was criticized for holding the documents, while the press, acting similarly, was not even questioned. However, Burger's assessment does not acknowledge that the press' responsibilities to the public are not the same as the government's. Although it also has an enormous responsibility as the purveyor of information to the public, the press may print at its own discretion. In the Pentagon case, the newspapers chose not to print, initially, until they were sure of the usefulness and accuracy of its content and sources. The press certainly wants to stay away from accusations of libel and the like. Thus, Burger's claim that the press was just as guilty as the government for withholding information is unsubstantiated.

United States v. Progressive, Inc. (1979)

A few years after the Pentagon case, another controversial case came to the forefront of the still burning issue of freedom of the press versus national security. In this case, the Progressive magazine sought to publish an article entitled, The H-Bomb Secret; How We Got It, Why We're Telling It. The purpose of the article was to inform the public about nuclear weapons, specifically to show how easy it was to construct a nuclear bomb, obtain information about the construction, as well as the dangers associated with nuclear energy. The United States government thought that the dissemination of all of the information presented in a synthesized manner would cause immediate and irreparable harm to the United States. Specific concepts never before correlated could allow certain nations to bypass certain steps
Although it also has an enormous responsibility as the purveyor of information to the public, the press may print at its own discretion.

from communicating, transmitting or disclosing any restricted data to any person 'with reason to believe that such data will be utilized to injure the United States or to secure an advantage to any foreign nation.' (467 F. Supp. at 991) The term "restricted data" refers to "all data concerning: 1) design, manufacture, or utilization of atomic weapons; 2) the production of special nuclear material; or 3) the use of special nuclear material in the production of energy...." (467 F. Supp. at 994) Clearly, time is an extremely important factor when dealing with hostile nations and the potential destructive power that they might acquire. This time factor becomes critical when considering mass annihilation weaponry — witness the failure of Hitler to get his V-1 and V-2 bombs operational quickly enough to materially affect the outcome of World War II." (467 F. Supp. at 994)

The defendants claimed that the information in the article was easy to obtain. Although they acknowledged that freedom of the press is not an absolute right, they asserted that, in this case, the article "[did] not rise to the level of immediate, direct, and irreparable harm which could justify incursion into First Amendment freedoms." (467 F. Supp. at 991)

The outcome was that the government had sufficiently proven that a prior restraint was justified because this case fit into the narrow arena where potential for irreparable harm to the nation's security was sufficient enough to warrant infringement upon the magazine's First Amendment rights. It was also acknowledged that the *Progressive* case was different than the Pentagon Papers case in several important ways: First of all, that case contained historical data and, secondly, there were no substantial reasons given by the government, aside from the possible embarrassment of policy-makers, to believe that national security would have been in jeopardy had the series of *New York Times* articles been printed. Most importantly, in the *Progressive* case, the government was able to cite a specific statute that applied directly and unambiguously to the material in question.

From Prior Restraint To Censorship

During the war in the Persian Gulf, many news reporters, journalists, civil rights activists, and others criticized the government for imposing what they felt were harsh restrictions on the coverage of the war. A pooled reporting system was used. The government defended the pooled system for such reasons as: because most of the war was in the air, the journalists could not have been expected to fly in tiny planes that would fit only three people. Plus, it sought to protect the journalists from the dangers involved in a war of this magnitude.

However, many did not see the validity of the government's claim. In fact, there was a law suit filed in the District Court of New York. The plaintiffs were a group of sixteen journalists and small newspapers and magazines who charged that the Pentagon's post Vietnam press practices, especially the unprecedented access and censorship restrictions imposed as the Persian Gulf War began, violated the freedom of the press as guaranteed under the First Amendment. The plaintiffs also charged that these restrictions were representative of the government's emerging policy of censorship. The press was totally excluded from coverage of the Grenada invasion in 1983. The Defense Department failed to mobilize its press pool in time to cover the Panama invasion in 1989.

After arguments in Federal Court on March 7, 1991, US District Court Judge Leonard Sand dismissed the case on the grounds that the suit was too abstract; there was no reason to think that a similar situation would happen again. In his decision he stated: "The court can not now determine that some limitation on the number of journalists granted access to the battlefield in the next overseas military operation may not be a reasonable time, place and manner for restrictions to be valid under the First and Fifth Amendments." (Nation Magazine v. U.S. Department of Defense, 1991) In this case, the plaintiffs did have standing. On February 25, 1991, in an article from *The New York Times*, a Washington editor pointed out his frustration that, "the Administration want[ed] to use the legitimate theme of security, in some cases, to install a kind of blanket news management that we've never had in this century...." (Berke)

US Senator Simpson and many others have criticized Peter Arnett's reporting from Baghdad. They felt that Arnett had been led by the puppet strings of Saddam; that he was merely using Arnett as a pawn in his maniacal game of war. But Anna Quindlen, on the other hand, defended Arnett by acknowledging the magnitude of Iraqi censorship: Even with censored information, "I think it's better to be there and get part of the story than to leave a major area of the war uncovered." (Quindlen)
In the Pentagon Papers case, the government did not have a substantial argument other than an ambiguous clause in the Espionage Act that essentially accused Daniel Ellsberg of being a spy. This merely diverted attention away from the most basic issue surrounding the case — freedom of the press. Justice Brennan's assessment of the issue seems to be right: constitutional freedoms are not absolute, but there are few instances in which aprior restraint could be justified. The Schenck and Near cases provided that only when the nation is at war, is the government justified in preventing publication of potentially injurious information such as "sailing dates of transports or the number and location of troops." (Near v. Minnesota, 283 US 697, at 716 [1931])

What about the Cold War? The post World War II order has been enveloped by fear, due to the complete and total destructive power of nuclear weapons. Progressive took place when the nation was still enshrouded by the rhetoric of containment. Unlike the Pentagon case, Progressive was about current information, not history. This information, presented in a synthesized manner, could have proved disastrous in the unraveling of future events. An enemy nation on its road to creating nuclear weapons might have gained some vital information never before conceived. (One can only imagine what would have happened had Israel not bombed Iraqi nuclear facilities in the early 1980s. By doing so, Israel set Iraq back roughly ten years on its path to the construction of nuclear weapons.) The prior restraint of Progressive Magazine, for the above reasons, seems to be entirely justified.

Although the point of the Progressive article was to expose the dangers of nuclear weapons and the relative ease with which they could be designed, the US was in a precarious position. Globally, the US was gaining its emergence as a world hegemon. It did not want to scare its own citizens about potential hazards associated with the newfound enormous powers of nuclear weapons.

In this sense, the press is desperately needed to protect citizens from the immorality of governmental actions. But, the Progressive article could have been written with the same fervor, just without certain critical information. The average citizen probably does not need to know every detail about the construction of nuclear weapons, especially if this information would allow certain nations to come closer to certain realizations about nuclear weapons. The Supreme Court, in order to allow the publication of the article (without the dissemination of dangerous material) asked Mr. Morland, the author, and the US government to reach a compromise on what would be fit to print.

Usually, when the government has been able to benefit from the exposition of information, it has informed the public. When the disclosure of embarrassing information is at issue, however, the claim of national security has been continuously abused by the Executive Branch. The country has witnessed this time and again - remember the Watergate scandal and the Nixon tapes case? Thus, it is essential that the press serve as the fourth branch of government, to check the other three branches, especially the Executive Branch. As Justice Stewart pointed out in the Pentagon Papers case, "...the only effective restraint upon executive policy and power...may lie in an... informed and critical public opinion... a press that is alert, aware and free most vitally serves the basic purposes of the First Amendment." (403 US at 2148)

It is ironic that after the Bay of Pigs invasion failed, even President Kennedy acknowledged that perhaps the Times had been too self-restraining. He commented that if the full truth had been told in print, then the invasion might have been canceled, a fiasco avoided and many lives saved.

The average citizen probably does not need to know every detail about the construction of nuclear weapons.

(Ungar 102) When overclassification and overly stringent delineations concerning secrecy are used, the public does not have enough information to make an informed decision. Furthermore, overclassification costs the taxpayer an enormous amount of money.

Although the press is annoying and inaccurate at times, it nonetheless tests our country's commitment to the ideal of democracy. As Thomas Jefferson stated, "...if we [had] to choose between a government without newspapers or newspapers without government, I [would] prefer the latter." (Graham 5)

Bibliography
Books:
Cases:
**Is the Current Middle East Peace Process a Step Towards War?**

By Leron Kornreich

The purpose of the state of Israel is to ensure the strength, growth, and security of the Jewish peoples and to provide a bastion of democracy in a region that is infested with military dictatorships. The proceedings within the peace process in the Middle East must be viewed with these considerations in mind. "Occupied territories" is a misnomer. The West Bank is not a sovereign country and, under international consensus, it never has been. It is, therefore, incorrect to call it occupied because one cannot occupy something that does not rightfully belong to anybody. Rule of the territories is simply disputed. Many of the obstacles towards reaching a compromise arise because of the contradictory aims of Arab and Israeli leadership. Israel's goal is to reach an agreement without compromising its security. The Arab leaders are adamant about attaining the West Bank, the Gaza Strip, and the Golan Heights, which poses a direct threat to Israel's security. The Palestinian Liberation Organization (PLO), the terrorist group responsible for the hijacking of the Achille Lauro in 1985 and countless other attacks, declared its goal as "eliminating the Zionist presence in Palestine" in article 15 of the PLO Covenant Against Israel. Opposing views such as these are often close to irreconcilable, making the peace process a long and arduous journey.

Obstacles To Peace

The PLO now claims that their sole objective is to gain a homeland in the West Bank and in the Gaza Strip. However, the PLO was formed in Egypt in 1964, three years before Israel even gained the West Bank. It is, therefore, impossible to conclude that the primary objective of the PLO is only to attain the West Bank, because the conflict began before Israel controlled the West Bank and was over Israel's "right to exist" and not the Palestinian's claimed right to the territories. In fact, it is clearly stated in article eight of their covenant that their objective is "the retrieval of Palestine and its liberation through armed struggle."

If the issue at hand was really land, the Palestinians would have formed a state when given the opportunity was given under the 1948 partition plan. The struggle is over conflicting religious ideologies. The land is only a premise for the conflict. The Arab consensus is that Israel does not have the right to exist because it is a Jewish state. Their hostility towards Israel is rooted in their aversion to any Jewish presence, no matter what its size or location. Former Israeli Ambassador Abba Eban questions the longevity of a peace struck between Israel and the surrounding nations when one of the first steps in the process is gaining recognition of Israel as a country.

"Israel's legitimacy is not suspended in midair awaiting acknowledgement...There is certainly no other state, big or small, young or old, that would consider mere recognition of its 'right to exist' a favor, or a negotiable concession." (Davis 1)

Perspective

Despite the amount of news coverage that it receives, Israel is geographically a small country. When considering security, every inch of land should be a potential buffer against attack. The West Bank added strategic depth to Israel, providing an additional 31 mile buffer between Israel and Jordan at Israel's narrowest point. Without it, there are only nine miles of land between Israel's eastern border and the Mediterranean, making it easy to split Israel in half during an attack. In addition, heavily-populated and industrialized areas of Israel would be exposed. The West Bank's deep valley provides natural protection against attack, making it a barrier against a ground assault from Jordan. Israel's hesitation