the weekly Standard

SEPTEMBER 5 / SEPTEMBER 12, 2005 $3.95

WHAT I SAW AT THE VENICE BIENNALE
P.J. O'ROURKE

THE WAR PRESIDENCY, YEAR FIVE . . .

MATTHEW CONTINETTI on the antiwar Democrats
STEPHEN F. HAYES on the 9/11 Commission
CHRISTOPHER HITCHENS on the Iraq war
WILLIAM KRISTOL on Bush's challenge
IRWIN M. STELZER on means and ends
DEBORAH WEISS on the World Trade Center site

The value of seeing the whole forest.

by the parent company of Kraft Foods, Philip Morris International and Philip Morris USA

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Three Proposals for Malpractice Liability Reform

Last week, I argued that conventional reforms to the medical liability system such as reasonable caps on noneconomic damages reduce health-care costs and improve access to care. Although caps help, they are only part of the solution. This week, I present three other ideas for reform that offer substantial promise.

Patients and their health-care providers should be given more freedom to experiment with alternatives to the courts. Under federal law, patients and providers are supposed to be able to commit to alternative dispute resolution (ADR), in which an arbitrator resolves their cases with binding decisions. The evidence indicates that ADR compensates victims faster, more fairly, and with lower transaction costs than do the courts. ADR also can enhance incentives for doctors and hospitals to take more appropriate precautions against medical errors by replacing the current compensation lottery with a more consistent decision-making process.

Yet ADR is surprisingly uncommon. Its proponents argue that some state laws and judicial decisions make ADR agreements impossible to enforce. According to this reasoning, few agree to ADR because its decisions don't mean much. Its opponents argue that pro-doctor bias, or at least the perception of bias, is responsible for its unpopularity. According to this reasoning, patients are wary of ADR because arbitrators are more likely to favor those who pay for their services than individual plaintiffs.

Before we give up on ADR, however, we need to reform public policy to give it a chance. To give everyone more confidence in ADR, legal and regulatory reform should ensure that its decisions are both enforceable and impartial.

Data on adverse medical events collected by providers to improve the quality of care should not be admissible in malpractice cases. In general, such data are discoverable by plaintiffs, unless they fall under a state's specific statutory exception. Although this may seem to be in patients' best interests, a rule of discoverability involves a trade-off. It helps individual plaintiffs, but hurts patients as a group, by giving providers the perverse incentive to avoid learning about mistakes when there isn't a lawsuit. According to the Institute of Medicine, the costs of full discoverability exceed the benefits; reforming the rule will enhance providers' incentives to reduce the number of medical errors. Congress and several state legislatures have considered such reforms; they should adopt them immediately.

It should be easier to use clinical practice guidelines in malpractice trials. In general, procedural legal rules limit the use of guidelines—written statements of what constitutes appropriate care—as evidence. One possible reform would allow compliance with a guideline to be used as a defense against a charge of malpractice; another reform would allow failure to comply with a guideline, without a patient's written permission, to be used as evidence of malpractice.

Allowing guidelines to be used in court solves two problems. First, it would make trials more predictable. Second, expanding the role of guidelines would alert providers (and patients) to "best medical practices," which our health-care system desperately needs to do.

—Daniel P. Kessler

Daniel P. Kessler is a senior fellow at the Hoover Institution and professor at the Graduate School of Business at Stanford University.

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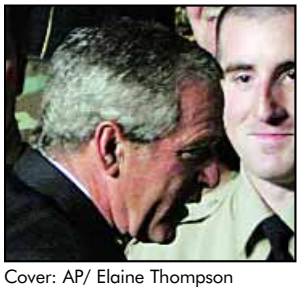

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Books & Arts

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BPA INTERNATIONAL

A Day to Remember

Late summer's here and the time is right for THE SCRAPBOOK to start getting excited and impatient about September 6—the day after Labor Day. Not because SCRAPBOOK JR. heads back to school after the long break. Not because John Roberts heads over to the Senate for his confirmation hearings. Not even because the people of Egypt head to the polls for what could be their country's first-ever not-entirely-rigged presidential election. Nope. None of that trivial stuff.

THE SCRAPBOOK can hardly wait for September 6 because two objects of significant cultural interest will formally debut on that date.

The first comes from HarperCollins, runs 538 attractively hardcovered pages, and costs $27.95 (but can be had at a discount from most major booksellers, so there's really no excuse not to run right out and buy a copy). We're referring, of course, to *The Weekly Standard: A Reader, 1995-2005*, editor William Kristol's hand-picked selection of some of the best essays and articles—more than 70 of them—to have graced this magazine's pages during its inaugural decade. Having looked the volume over, THE SCRAPBOOK can personally attest to its impressive range and quality: from P.J. O'Rourke on Hillary Clinton to Larry Miller on Johnny Carson; from Fred Barnes on Karl Rove to John Podhoretz on Rudy Giuliani; from Matt Labash on Canada to Harvey Mansfield on Harvard; from Christopher Caldwell on Europe to Reuel Marc Gerecht on the Middle East; from David Frum on World War I to David Tell on World War II—and much, much more.

Sweet Neocons


Sour Stones

Also due out September 6, from Virgin Records: The Rolling Stones' *A Bigger Bang*, their first studio album since 1997. Which is a landmark THE SCRAPBOOK wouldn't care squat about, quite frankly, except for the part about us. And what part might that be, you ask? According to the publicity buzz surrounding the new CD, the Rolling Stones—lead singer and principal lyricist Sir Mick Jagger in particular—think THE SCRAPBOOK and all those who share our political sensibilities are "sweet." And they've gone ahead and recorded an anthem to that effect, and timed its release to exactly coincide with THE WEEKLY STANDARD's tenth anniversary.

Isn't that nice?

Excerpted lyrics to "Sweet Neo Con" have been circulating around the Internet for several weeks now. Some may choose to accept the authenticity of these excerpts on faith. And some will no doubt ignore the "sweet" part and pay exaggerated attention to certain of the less attractive characteristics Sir Mick purportedly attributes to the subject of this song. The otherwise unnamed "Neo Con" of the title, for example, is said to be a liar, a warmonger, and a tyrant. We're even led to believe that one of the song's key couplets goes like this: "You call yourself a Christian, I call you a hypocrite / You call yourself a patriot, well I think you're full of sh— . . ."

Nah. Mick Jagger would never talk like that. ♦

The Best of Times, the Worst of Times

Let it be recordeth that when, in January 2004, "we the people of Afghanistan" didst promulgate a brand-new constitution—"in the Name of Allah, the Merciful, the Compassionate" and "Believing in the Sacred religion of Islam"—rich men and shepherds alike rejoiced, and even the *New York Times* editorial page found something nice to say. Something very, *very* nice, in fact. The Afghan blueprint was an "excellent foundation" for that nation's future, the *Times* announced, and the Bush administration was right to be "thrilled" by its "enlightened" compromise between "the goal of an Islamic state" and the need to abide by international human rights norms.

Let it further be recordeth, that the *Times* found reason to issue such a ringing endorsement of the Afghan constitution despite the fact that said constitution (1) established "an Islamic Republic" in which "no law can be contrary to the beliefs and provisions of the sacred religion of Islam"; (2) adopted a

national flag and insignia each of which prominently incorporates a "sacred phrase" about there being "no God but Allah"; (3) imposed explicitly sectarian religious tests and oath requirements on candidates for highest national office; and (4) formally ensured that these and other "provisions of adherence" to an "Islamic Republic" and its faith "cannot be amended," ever.

Maybe the *Times* was just in a really, really good mood that day? Who knows?

And who cares? That was then, and this is now, when it's the people of Iraq who've just made public a draft constitution. Rich men and shepherds alike have again rejoiced. But this time the *Times* finds the whole business "unsettling." And then some. Iraq's "badly flawed," "reckless," even "indefensible" constitutional proposal raises legitimate fears of an "Iranian-style Shiite theocracy" and altogether fails to promote national unity and peace, the *Times* complains. "Nor does it reflect well on the Bush administration," which has abandoned its responsibility to promote Iraqi respect for "women's rights and the rule of law."

The *Times*, let it finally be recordeth, is particularly exercised over provisions in the new constitution "declaring Iraq an Islamic state and prohibiting any legislation that conflicts with the fixed principles of Islam." Why this might be a problem in Iraq but not Afghanistan the *Times* does not explain. ♦

Uighurs Without a Country

Efforts on behalf of two Uighur men detained at Guantanamo, whose plight Ellen Bork recounted in these pages two issues ago, continued last week in federal district court in Washington. Lawyers for Abu Bakker Qassim and A'del Abdu Al-Hakim continued to try to get the men released into this country. The men have been granted better conditions on the base, but despite a determination that they pose no threat to U.S. or coalition forces, are still being held. The Bush administration refuses to allow the men to settle here but rightly will not return them to China, where they would be persecuted or killed. And no other countries where they would be safe have come forward to accept them.

As if on cue, also last week, Wang Lequan, the Communist party chief of Xinjiang, the Chinese region Uighurs know as East Turkestan, accused Rebiya Kadeer of engineering a terrorist plot. Mrs. Kadeer is a leading Uighur dissident and former political prisoner, released through the efforts of Secretary of State Condoleezza Rice. Chinese authorities have recently raided Kadeer's business and harassed her family and associates.

Fighting the war on terrorism depends on drawing distinctions. The Bush administration has repeatedly admonished China not to use the war on terrorism as a pretext for cracking down even harder on its estimated nine million Uighurs. The president might want to reiterate that position to Hu Jintao when he visits September 7. But the best way to send a message would be to settle Qassim, Al-Hakim, and the other Uighurs at Guantanamo here among the Uighur-American community, which has expressed a willingness to take care of them. ♦

Casual

Trend Stopping

The other day, on C-SPAN, I saw Bernard-Henri Lévy, the French intellectual, giving a talk plugging one of his books at a Barnes & Noble. Monsieur Lévy is a man with a vivid face, including a nose that doesn't disappoint, high coloring, and a small mouth worth watching. Yet I soon found my mind wandering from his heavily French-accented pronunciamentos about the state of the world. Instead I concentrated on his white shirt, worn under a black blazer, the top three buttons of which were unbuttoned down the front as were the cuffs of his shirt, which flapped loosely from under his jacket sleeves. Why this *déshabille*? Was Monsieur Lévy late getting to his talk and unable to finish dressing? But then not long after, I saw a photograph of him in a back issue of *Vanity Fair*, and, lo, there they were, the same three unbuttoned buttons down the front of his shirt, the same flapping cuffs.

Clearly, this was a look that the Frenchman was going for, a fashion statement. But as a fashion statement, what did it say: I am dashing, madcap, unconventional, I suppose. Whether other men on the continent are similarly unbuttoned these days, I do not know. But the other night I saw a version of the great Cary Grant-Rosalind Russell flick *His Girl Friday* introduced by the director and film historian Peter Bogdanovich, and damned if his shirt front and cuffs weren't similarly unbuttoned. "Peter, Peter, Peter," I hear Cary Grant saying. "Button up, my boy, button up."

Is a trend beginning: the unbuttoned male? Will it catch on? Will all men now have to go around with flapping shirt cuffs and *pupik*-plunging shirt fronts? Will shirt makers soon dispense with buttons on cuffs altogether? Is there no way to stop it?

Fred Astaire wore beautiful clothes as well and wittily as any man in the twentieth century. Billy Wilder claimed to have a recurring dream in which he asked Astaire where he bought his clothes, and, just as he was about to tell him, Wilder woke, ticked off at missing out yet again. But at one point Astaire began to wear a necktie at his waist in place of a belt. A bad move from an otherwise flawlessly elegant man: bad because it was too calculated and artificial, and finally silly.

I recently mentioned this to a friend now in his nineties, who told me that for a brief spell he, too, wore a necktie in place of a belt. He did so, he added, because his wife, taking her lead from the great dancer, had asked him to do it. "God," I said, "you must have loved her." Fortunately, the necktie as a belt substitute business did not catch on; it was the only production of Fred Astaire's that didn't have legs.

A number of people who love the movies agree that the last splurge of swell American flicks came in the 1970s, with the rise of the directors Martin Scorsese, Robert Altman, Bob Rafelson, and others. But one of the problems with these movies is that the clothes, especially the men's clothes then trendy—the long-collared shirts, the bell-bottomed trousers, the long sideburns (every man his own Elvis), the Afros and Jewfros and dopey helmets of hair worn over the ears—make so many of these films seem like goofy costume dramas. Perhaps through the magic of redigitalization, the clothes of the actors in these movies can be changed and the movies made freshly watchable.

I was sitting at Wrigley Field earlier this summer with a friend who is a physician, a hematologist. Looking at the tattooed back of a perfectly middle-class girl sitting in front of us, my friend said that if he were thirty years younger he would devote all his efforts to finding an effective way to remove all the tattoos that people in their twenties today are now having done. When these people get to fifty, my friend is confident, they are going to be looking around desperately for ways to remove their tattoos.

Tattooing by the middle class young is a trend whose sense I haven't come close to plumbing. The pain, the expense, the permanence—why would anyone put himself through this torture for such an aesthetically displeasing result? Because of the power, the only and immensely unsatisfactory answer is, of trendiness. Can a trend, once begun, be stopped? No one has ever found a way, short of embarrassing the trendsetters before things get out of hand.

I don't know if Monsieur Lévy is a trend-setter or not. He may well have picked up the way he wears his shirts from a now aging Alain Delon or some other Parisian more elegant than he. But I think he ought to be told, straightaway, to knock it off. Perhaps one man in the last fifty years looked good with the front of his shirt unbuttoned, and his name is Harry Belafonte. As for those flappy cuffs, one can only hope that Monsieur Lévy pours enough soup—preferably hot, rich, red soup—on them to prove to him that he needs to button up, and now.

Joseph Epstein

I'm one in a million.

Everyday nearly 1,000,000 Americans earn their living helping GM build and sell cars in the United States. I'm one of them. My name is Blake Wilson and I'm a body shop welder at the Corvette plant in Bowling Green, Kentucky. To me and my family, it's the most important job in America.

Blake Wilson

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The War Presidency

"During the last few decades, the terrorists grew to believe that if they hit America hard, as in Lebanon and Somalia, America would retreat and back down. . . . So now they're trying to break our will with acts of violence. . . . Their goal is to force us to retreat. . . . We will stay on the offense. We'll complete our work in Afghanistan and Iraq. An immediate withdrawal . . . would only embolden the terrorists and create a staging ground to launch more attacks against America and free nations. So long as I'm the president, we will stay, we will fight, and we will win the war on terror."

George W. Bush, speaking to National Guard soldiers and their families, Nampa, Idaho, August 24, 2005

These words needed to be said. In the face of mixed news from Iraq, and mixed signals from the administration, some of the president's supporters and subordinates have been going wobbly. They've been denying that the war on terror is a war, or that Iraq is central to that war. They've been defining down success in Iraq, and for that matter victory in the broader war on terror. Fortunately, the president made clear on Wednesday that he isn't buying the defeatism. He isn't heading for the exits.

Others want to. Republican strategist Grover Norquist, for example, recently told the *New York Times*: "If Iraq is in the rearview mirror in the '06 election, the Republicans will do fine. But if it's still in the windshield, there are problems." Norquist was reflecting real GOP congressional unease about the war and its implications for 2006.

But would it really be possible to put Iraq in the "rearview mirror" by the fall of 2006, even if we started leaving now? In any case, what Bush did in Idaho was to sever the link between war policy and the 2006 elections. He made clear that his time horizon is 2008. Congress can worry and complain, but Bush is not going to let his policy—U.S. foreign policy—be driven by such worries and complaints. So Republican senators and congressmen can stop the hand-wringing that the war isn't proceeding according to their electoral calendars. Instead, they can help the administration make the case for the necessity of victory, and could even follow the lead of John McCain in providing serious and constructive criticism of the war effort.

Meanwhile, the estimable George Will proclaimed last week that U.S. hopes for democracy in Iraq were "delusional," and that we had to be wary of further "overreaching." In particular, he took aim at a suggestion made in these pages some seven months ago that we consider bombing Syrian military facilities and/or occupying Syrian border towns in order to prevent terrorists from using Syria as a sanctuary from which to enter Iraq in order to kill Americans and Iraqis. No, Will said, "U.S. forces already have quite enough bombing and occupying chores."

Really? Occupying—maybe. But *bombing*? Is our Air Force overextended right now? Are we so weak that we can't deter or punish Syria? Some Bush supporters, especially those already inclined toward world-weary skepticism, have become convinced that we can't or won't fight the war so as to win it. That's a problem for the president. The solution is to explain that we have a strategy to win—not a strategy to withdraw—and to encourage the military to be aggressive and imaginative in carrying out that strategy, and to give it all the resources it needs to follow through.

Then, on Thursday, the day after the president's speech, the *Financial Times* ran a front-page story based on an interview with Major General Douglas Lute, director of operations at U.S. Central Command. Lute, still speaking off of old Rumsfeld talking points, and ignoring what the president had said a week before, said we were seeking to draw down troops over the next year in Iraq. Indeed, he seemed eager to proclaim this—and made the case for withdrawal based on Rumsfeldian dependency theory: "We believe at some point, in order to break this dependence on the . . . coalition, you simply have to back off and let the Iraqis step forward."

This is war-fighting as welfare reform. Is the problem with our allies and potential allies in Iraq really that they are too convinced we're staying? Isn't it more likely that they're now too worried that we're going to leave, creating

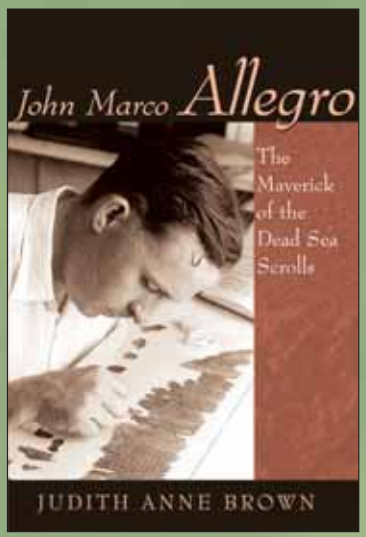
a dangerous dynamic in which Shiites, Sunnis, and Kurds each feel they have to fend for themselves?

And more important, if Iraq is the central front in the war on terror, who cares about dependency theory? Don't we need to defeat Zarqawi? Don't we need to dishearten terrorists in Iraq and around the world who, as the president said, "want us to retreat"? *We* need to win in Iraq. We're not doing someone else a favor. And in fact, private conversations suggest that the operational U.S. generals in the field (if not the planners at CENTCOM) are confident we can win—if we don't draw down troops too soon, and if we build up Iraqi troops to fight side by side with ours instead of pretending they can immediately replace ours.

There have been real failures in the execution of the war in Iraq, and a poor job has been done in recent months of explaining the war at home. On the latter front, Wednesday's speech is a good start. Now the president needs to ensure his own administration is executing a policy consistent with his words, and also that these words are followed up with many more. Wartime presidents need to explain and re-explain what's at stake. They need to keep the country informed about the war. They need to keep morale high. And they need to take command so that the military and political strategy aims at victory. The success of the Bush presidency depends on his success as commander in chief. So does the success of American foreign policy.

—William Kristol

EERDMANS



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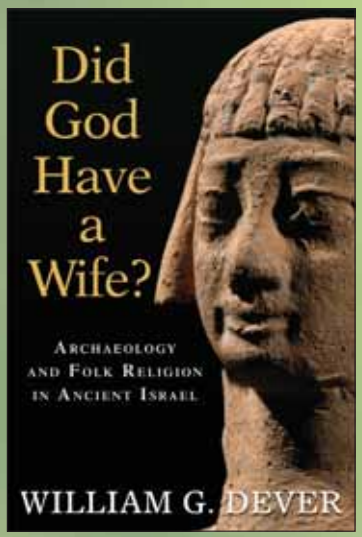

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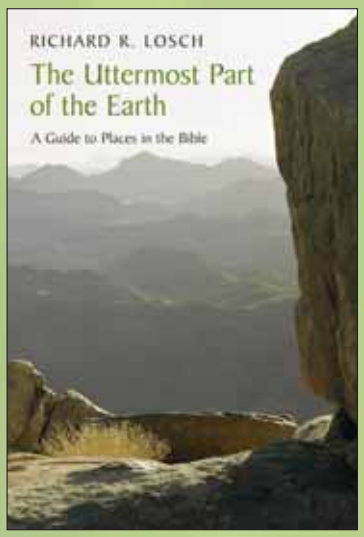

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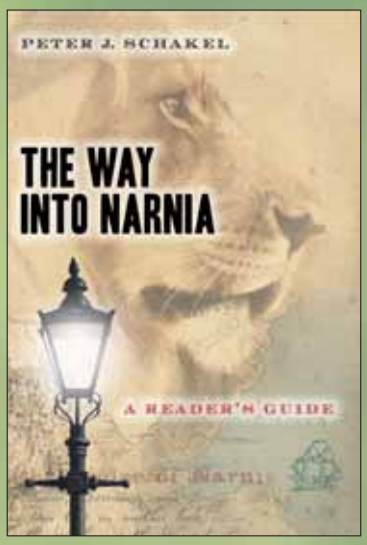

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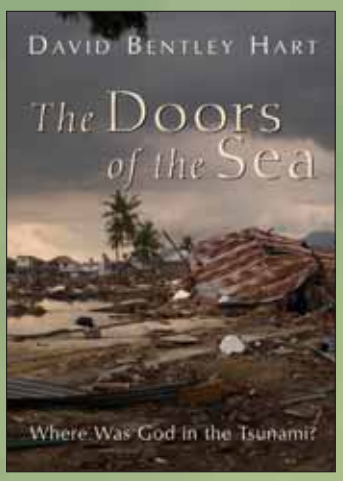

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The War Among the Democrats

And a dove shall lead them?

BY MATTHEW CONTINETTI

On August 16, Elizabeth Edwards, the wife of the failed vice presidential candidate, sent out an email. She urged recipients to sign an online petition in support of Cindy Sheehan, the bereaved mother of a 24-year-old soldier who was killed in Iraq last year. Since August 6, Sheehan has been camped outside President Bush's ranch in Crawford, Texas, demanding to meet with the president to discuss American withdrawal from the Middle East. Democrats, Edwards wrote, should support "Cindy's right to be heard." Democrats, she continued, should "listen to Cindy."

Two days after Edwards's email, in an appearance at a "listening session" in Marquette, Wisconsin, Democratic senator Russell Feingold announced his "target date"—December 31, 2006—for U.S. withdrawal from Iraq. "I am putting a vision of when this ends on the table in the hope that we can get the focus back on our top priority," Feingold said, "and that is keeping America and the American people safe." Three days later, in an appearance on NBC's *Meet the Press*, Feingold offered his analysis of the current political scene: "The Democrats are making the same mistake they made in 2002," he said, "to let the administration intimidate them into not opposing this war."

At first blush, Feingold's attempt at revisionism seems a doozy—it's well understood, if not universally agreed, that Democrats lost in 2002, and again in 2004, because of the public's perception that they were weak on national security. Besides which: Feingold is himself proof—along with Sheehan, Edwards, and a whole host of others—that no one is being "intimidated" into silence. Quite the opposite, in fact.

And yet Feingold should not be dismissed. He is just the latest sign that the antiwar wing of the Democratic party is resurgent, that the fault line that appeared between the party's hawks and doves in 2002 still has not been bridged, and that a growing divide between leadership and committed supporters threatens to bring the whole Democratic edifice tumbling down.

Some Democrats, of course, have been adamantly antiwar since the vote to authorize force against Iraq in October 2002. But the terms of the debate within the party are changing. During the 2004 Democratic presidential primaries, the central argument was over whether the Iraq war was justified in the first place. Dick Gephardt and Joe Lieberman both said it was, Howard Dean said it wasn't, and John Kerry said . . . well, he said something in between.

Today, though, the central argument is over how soon American forces should leave Iraq, and whether the United States should set a schedule for withdrawal. On one side are former presidential candidate General Wesley Clark ("It would . . . be a mistake to pull out now, or to start pulling out or to set a date certain for pulling out") and some of the party's most prominent senators, including minority leader Harry Reid ("A timeline . . . only empowers those who don't want us there"), Foreign Relations Committee ranking member Joe Biden ("A deadline for pulling out . . . will only encourage our enemies to wait us out"), Hillary Clinton ("I don't think we should be setting a deadline"), Indiana's Evan Bayh ("To cut and run at this juncture would be a terrible mistake"), and Lieberman ("The coalition should not create an arbitrary timetable to withdraw forces from Iraq"). There is also former president Bill Clinton, who is perhaps still the most important politician in the Democratic party, and who as recently as August 11 told CNN that, "whether it was a mistake or not, we are where we are, and we ought to try to make this strategy succeed."

On the other side, there is Feingold, Elizabeth Edwards (and presumably her husband John), Sen. Edward Kennedy ("America's goal should be to complete our military withdrawal as early as possible in 2006"), 122 members of the House Democratic Caucus, former Colorado senator and Democratic presidential candidate Gary Hart—and an enormous, angry army of liberal bloggers, pundits, and activists.

Last week, for example, liberal blogger Kevin Drum of the *Washington Monthly* published an op-ed in the *Los Angeles Times* in which he argued that mainstream Democrats should "have the courage to break ranks" and support "a gradual, phased withdrawal" with "specified interim goals" and "a hard end-date two years from now." "Being the first liberal hawk to seriously propose such a solution would also carry some rewards," Drum went on. "The antiwar left would finally have someone to rally around, and the Bush administration would finally have some serious competition."

The question is whether Democratic leaders should *want* to be the rallying point for the antiwar left. Sheehan, the movement's standard-bearer, has said that George W. Bush is the "biggest terrorist in the world," that Osama bin Laden is "allegedly" behind the attacks on the World Trade Center and Pentagon, and that American troops should withdraw from Afghanistan as well as Iraq.

Matthew Continetti is a staff writer at THE WEEKLY STANDARD.

Mocking Markos: the LittleGreenFootballs sendup of the Daily Kos proprietor

These are commonplace ideas among many members of the "antiwar left." But they are far from the center of American gravity.

"There are no prevailing institutions" in the Democratic party, a prominent centrist told me last week. "So the blogosphere is filling that vacancy." Antiwar bloggers were central not only to Sheehan's Crawford protest, but also to antiwar Iraq veteran Paul Hackett's campaign this summer for an Ohio House seat. Yes, Hackett—who livened up campaign appearances by calling Bush a "chickenhawk" and a "sonofabitch"—ended up losing. But he lost by a small margin, 48 to 52 percent, and was the first Democrat in decades to get over 40 percent of the vote in his state's second congressional district. Liberal bloggers, desperate for a win, quickly claimed Hackett's loss as a victory. They want him to run for the Senate in 2006.

The most influential liberal blogger is arguably the Democratic political consultant Markos Moulitsas, who runs *www.dailykos.com*. Last week Moulitsas declared open war on the liberal hawks in charge of his party. In a post entitled "The calm before the storm," he wrote that the Democratic Leadership Council, a centrist group that supports the war, is

> an aider and abettor of Right-wing smear attacks against Democrats. They make the same arguments, use the same language, and revel in their attacks on those elements of the Democratic party that seem to cause them no small embarrassment.
>
> Two more weeks, folks, before we take them on, head on.
>
> No calls for a truce will be brooked. The DLC has used those pauses in the past to bide their time between offensives. Appeals to party unity will fall on deaf ears . . .
>
> We need to make the DLC radioactive. And we will. With everyone's help, we really can.
>
> Stay tuned.

Moulitsas's threat was greeted with some befuddlement, and more than a few laughs. Charles Johnson, who blogs at *littlegreenfootballs.com*, is running a "Daily Kos Master Plan Countdown," and has produced several widely circulated (in blogosphere terms) Photoshopped images of Moulitsas's face superimposed on Dr. Evil's body (see above). There's a sense that the liberal bloggers may be taking themselves too seriously.

But there is also a sense that Moulitsas has been steadily accumulating opposition research on prominent New Democrats, and will make that research available in September. Who knows what that oppo may turn out to be, or whether it will succeed in making the DLC "radioactive." What is certain is that September will likely prove a crucial month for the Democrats.

That's because there will be plenty of opportunities to expose the party's divisions. In September, Congress plans to take up the defense authorization bill, which includes funding for the war, thus providing antiwar politicians with the chance to propose various amendments including, presumably, timetables for withdrawal. In September the Senate Foreign Relations Committee plans to hold a series of hearings on Iraq. Let's see what the Democratic members of the committee, including Biden, Kerry, and Barbara Boxer, have to say. And in September, Cindy Sheehan will likely take part in a war protest in Washington organized by the groups United for Peace and Justice and the International ANSWER (Act Now to Stop War and End Racism) Coalition. Which Democratic politicians or candidates will appear alongside her?

"If Bush doesn't get his act together, the Democrats benefit *without saying anything*," a Republican strategist told me last week. Most Democrats understand this. They have been content to let the headlines from Iraq speak for themselves. But that silence has also opened up a space for activists to scream and holler and grab front-page headlines.

It's a perilous moment. If pro-war Democrats do nothing, timetables and target-dates for withdrawal may soon become synonymous with American liberalism. Party leaders may be persuaded to follow Feingold's lead. And the Democrats' transformation into the antiwar party, in a post-9/11 world, will be complete. ♦

War on the Cheap

Are we serious or not?

By Irwin M. Stelzer

"We will accept nothing less than total victory over the terrorists and their hateful ideology," President Bush told the Veterans of Foreign Wars last week. But, as they say both on the streets of New York and the ranches of Texas, talk is cheap. We now have a choice—in the vernacular, it is to put up or shut up.

That choice can no longer safely be postponed. We can tailor our national security policies to the economic resources we are willing to commit to those policies, or we can commit sufficient resources to allow us successfully to implement the policies the president has decided are in the national interest. Put differently, if we want to continue to speak loudly, we will have to buy a big, expensive stick. If, instead, we decide that all we care to spend will buy only a tiny twig, we will have to speak more softly.

The first alternative, which we might call neo-realism (some will call it neo-isolationism) is both practicable and not without appeal. Here is what it would entail. Abandon the idea that we can only be secure if we spread democracy to the peoples of the world, all of whom we assume are yearning to breathe free. Even if they are, it is up to them to work out the means for attaining that goal, just as many of the countries of Eastern Europe did, without Iraq-style interventions on our part. We are not prepared to spend the blood and treasure to help them.

Abandon also the idea that we can participate in the real-world global economy by pretending that world markets are organized in a way that allows us to achieve Adam Smith-like efficiencies by espousing free trade. We are playing against a stacked deck, as recent experience with China shows.

First, currency manipulation guarantees China an advantage over and above the natural comparative advantage provided by its relatively low wages. Second, a lack of regard for property rights allows the Chinese government and other economic actors to steal American technology and intellectual property. Remember: The Chinese government feels it has made a commendable display of virtue by promising to stop using pirated software sometime in 2007—and that is the government that is supposed to prevent what passes for the country's private sector from engaging in such thievery. More important, the advantage China gains from distorting the patterns of trade provides the funds it is using to expand its military presence in the Asia-Pacific region, fund military exercises with Russia, and extend the reach of its fighter fleet, nuclear submarines, and aircraft carriers.

So if we are to tailor our policies to fit our unwillingness to shore up our military power in the world, we have to abandon our long-held and, it can be argued, myopic view that more-or-less rigid adherence to free trade serves our geopolitical interests. True, we will sacrifice some of the efficiencies that have brought us a plethora of consumer goods at prices so low that they have offset the devastating impact of high oil prices on consumer budgets. But we will have traded cheap T-shirts for greater control over our monetary policy, and put something of a strain on the resources China is devoting to its military build-up.

Then, we must reduce our military commitments around the world. NATO now only serves the interests of a Europe that sees it as a handy source of what are called "assets" for its new, underfunded European army. South Korea has made it clear that it considers the presence of American troops in its country, placed there by us to serve as a "tripwire" (read, cannon fodder) in the event of an invasion by the more-than-slightly-mad North Korean regime, a threat to the virtue of its women and the safety of its nation. So bring them home.

In short, just as Ariel Sharon has shortened his defense lines and improved Israel's security by withdrawing from Gaza, George W. Bush can improve U.S. security by concentrating the nation's resources here at home, available for defense of the homeland and rapid deployment if direct threats must be dealt with, surgically, elsewhere. There are more examples, but you get the idea. On a limited budget, we have to use scarce resources in a way that maximizes our security.

Call this concentration of limited resources on defending the homeland neo-realism—an adaptation to our unwillingness to devote the resources needed to implement our current policies. It might send chills down establishment spines, but so long as our politicians are unwilling to provide the men and money to meet the commitments inherent in our current policies, it is the road best taken.

But it is not necessarily the road we must take. If we are willing to devote the necessary resources to implement a policy that has at its core the assumption that we can only be secure if we take the fight to the enemy, if we encourage the spread of democracy, if we help form stable nation-states in areas that have traditionally provided a haven for terrorists, we can carry out such a policy. If we really believe that we are in a long-term war with the survival of our values at stake, we can win that war. Call this alternative to neo-realism the Bush-Blair doctrine.

That would entail, first and fore-

Irwin M. Stelzer is a contributing editor to The Weekly Standard*, director of economic policy studies at the Hudson Institute, and a columnist for the* Sunday Times *(London).*

most, devoting to Iraq the resources needed to eliminate what is called the insurgency, to retaliate if Syria refuses to close its borders to terrorists, and to protect the nation's infrastructure.

But there is more to waging war than fielding an appropriately sized battle force. The domestic economy must also be mobilized. Franklin D. Roosevelt could get Henry Kaiser and other shipbuilders to produce two large cargo ships every day during World War II, but George W. Bush can't get the huge American economy to produce enough ceramic inserts for safety vests for soldiers in Iraq. Or armor for their vehicles. That the great American production machine cannot be marshaled to keep the lights on and the air conditioners humming in Baghdad suggests that we are not serious about winning the hearts and minds of the Iraqi people.

Then there is oil. If we seriously believe we are at war with a version of Islam that preaches jihad and finds much of its support in the Middle East, we have to wean ourselves off foreign oil. Not by passing a subsidy-laden, Christmas-tree of an energy bill that will not now, not soon, and probably not ever reduce our imports of oil, but by imposing a tax on imported oil—a tax that forces consumers to pay the costs we impose on society when we fill our tanks, and that is high enough to make more prudent use of oil the economic choice. Such a tax need not increase the flow of funds to Washington's wastrels: It can be offset by parallel reductions in the job-killing, regressive payroll tax.

We must also decide that we are in a game where free markets cannot provide the security we need. Our oil companies, responsible to their shareholders for maximizing profits, cannot be expected to compete successfully for supplies with state-supported entities that are playing a geopolitical rather than a purely economic game. While the Chinese and the Indians vie for Canadian sources, and can draw on their governments for financing and other support that permits them to pay a premium for supplies, our companies must rely on capital acquired in the free market. And while China can promise "social housing" to Venezuela and weapons to Iran, in addition to money, in exchange for oil, our oil companies cannot. Oil producers do not live by cash alone, and unless our government intervenes on a scale similar to the Chinese, we will lose out in the race for new supplies of crude oil.

We can remain big players in the global economy, using the muscle provided by our vast market to extract concessions from the European Union, which discriminates against America's three most important exports (agricultural products, audiovisual products, and aircraft); to deter China from competing for energy resources on a non-economic basis; and to persuade Latin American countries not to enlist in Hugo Chávez's anti-American crusade. Trade policy in the service of national security might not please free-trade purists, but it should make sense to those whose view extends beyond mere economics to political economy—Adam Smith's term of choice.

Finally, there is the way in which our government has chosen to allocate resources. Instead of building adequate equipment for our troops, it has decided to lavish highway-bill pork on bridges to nowhere in Alaska and South Carolina. Little wonder that the president is finding it difficult to persuade Americans that the sacrifices being made in Iraq—by the narrow segment of society called upon to make any sacrifice at all—are worth bearing. The president likens the battle against Islamofascism to our earlier battle against Nazi fascism. But he has called on America to devote less than 5 percent of the wealth it produces annually to this battle, whereas FDR enlisted close to half of our annual GDP to rid the world of Hitler & Co.

Only if the president and the American people decide to yoke their domestic policy to the requirements of a foreign policy that aims to fight the war on terror, can we win that war. Otherwise, give way to the neorealists. ♦

Still at the Helm

North Carolina's beloved former senator continues to fight the good fight. **BY FRED BARNES**

Raleigh, N.C.

JESSE HELMS doesn't miss Washington. After 30 years in the Senate, he retired in 2002. "I was just so glad to get home," he says. Helms and his wife Dot live in the brick house that used to belong to her father. It's minutes from the state capitol and close to his small office. It's been their Raleigh home for more than a half-century. Their daughter Jane and her family live next door. Helms drops by his office most days, watches C-SPAN occasionally, but keeps his political activity to a minimum. Looking back at his years in Washington, he says: "I hope I haven't made too many people mad."

He made many people mad. His dogged and unflinching devotion to conservatism infuriated liberal Democrats and a good many Republicans. Now he's the one who gets upset. Helms is disappointed that so few senators have rushed to defend the sanctity of traditional marriage. He hates the excessive spending passed by Congress. Having made the eradication of communism in Latin America one of his chief causes as a senator, Helms is troubled by the resurgence of the Marxist threat and America's soft response to it. "We'll never be free of our responsibility" there, he told me. Helms believes the best thing that could happen in the region is for Cuban dictator Fidel Castro to die. "I wish I didn't think that," he says. "But I'm convinced of it."

Helms, 83, and forced by a nerve disorder to use a walker, has commenced a final fling as a public figure. His memoir, *Here's Where I Stand*, was published by Random House in August. He's not going on a book tour, nor is he doing radio interviews. Helms taped a single TV interview with Sean Hannity of Fox News. And he's granted a few interviews with print journalists he knew in Washington. All this will culminate with a banquet honoring Helms in Washington on September 20.

Since he left the Senate, Helms has done two things of note in North Carolina politics. Early in 2002, he endorsed Elizabeth Dole as his Senate replacement. He did so at the National Conservative Political Action Conference in Washington. The effect was to cut off any conservative challenger to her in the Republican primary. She won easily. Last year, Helms backed Richard Burr, a U.S. House member, for the Senate seat vacated by John Edwards, who ran unsuccessfully for the Democratic presidential nomination. Burr, too, didn't face a conservative Republican opponent. Helms aided Burr's late rally to defeat Democrat Erskine Bowles by introducing him at a gathering in Smithfield shortly before Election Day.

Now, Helms devotes time to answering written questions from historians and others. A biographer of British prime minister Margaret Thatcher, whom Helms befriended when she was a mere Tory backbencher, recently sent him ten questions. They included this one: "How pleased were you by Margaret Thatcher's reaction to the Soviet invasion of Afghanistan?" As you might expect, Helms was very pleased. "It was important for the Soviets to understand that their invasion would not be ignored or tolerated," he wrote. "Lady Thatcher did what was right without looking around to see who else would stand with her. She displayed the principled leadership I had seen in her when we first met."

To Judson Cox, the editor of the *North Carolina Conservative*, Helms expressed his irritation with politicians and activists who are conservative in name only. "It has become more acceptable to describe yourself as a conservative, but not everyone who uses that term about themselves is truly a conservative," he wrote. "I'm not comfortable with all the categories people want to sort themselves into to explain how they can be a conservative and support liberal ideas. Conservatism is a hard choice for a society that has become accustomed to big government and big entitlements promoted by liberals."

Like President Bush, Helms has been strongly influenced on the issue of combating AIDS in Africa by an unlikely source, U2 singer Bono. "In 2001, I was asked if I would meet with Bono, and I agreed," Helms writes in his memoir. "I will never forget Bono's compassion. . . . I had never heard of him, but my younger staff members had. They quickly educated me. . . . Since that first meeting, Bono and my wife and I have become friends." Helms goes on to characterize Bono as "an enormously impressive gentleman" and "this remarkable young man."

But his meeting with Bono and later support for increased funding for fighting AIDS wasn't the end of their relationship. Helms and his wife attended two dinners hosted by Bono and then did the unimaginable (at least in Helms's case)—attending a U2 rock concert. "While I may not have been as 'into' the music . . . I *was* very much in sync with the band's desire to use their public platform on behalf of people in desperate need," Helms writes.

This week, Helms is to tape a special message for churches on the

Fred Barnes is executive editor of THE WEEKLY STANDARD.

AIDS scourge, which he calls "a crisis that threatens to destroy entire populations in Africa." He asks, in his prepared remarks, what can Christians do? "First, resist the urge to turn away. . . . Remember Jesus' words to his disciples. When you care for the least of these, you care for me."

In his reflections, Helms is both kind and tough, just as he was as a senator. He strains to be positive about his political foes. In his memoir, he calls Edwards "a personable fellow." Of Jimmy Carter, he writes that "neither of us wanted anything but good for our citizens." Of course Helms reveres Ronald Reagan and praises George W. Bush for thwarting terrorists, post-9/11, and taking up the cause of democracy around the world.

Helms saves his tough talk for the mainstream media. He chuckles at formulas worked out by political reporters that showed he couldn't possibly win a statewide election, particularly in 1984 when he faced popular Democratic governor Jim Hunt. Helms says he almost began to believe the formulas. As it turned out, he never lost an election.

"How can the major media be so wrong so often?" Helms asks in his book. "The answer is obvious. They are profoundly out of sympathy with the ideals and goals of the American people. . . . The elite media—and you know who you are—are overwhelmingly produced by men and women who certainly have a smug contempt for American ideals and principles. . . . The major media automatically blame America first." Helms is thrilled by the arrival of the Internet as an alternative source of news. "Anyone who really wants the facts can find them on the Internet—24 hours a day."

As publication of his memoir neared, Helms was faced with a temptation. His publisher wanted to delay publication until this fall and have its release kicked off by an interview on *60 Minutes* with Dan Rather. To this idea, Helms, his wife, and his staff all responded with a hearty no. ♦

Jordan's Baathist Boom

The economy is humming, thanks to Iraqi cash.

BY LEE SMITH

Amman, Jordan

A GROUP AFFILIATED with Jordan's own Abu Musab al Zarqawi has claimed responsibility for the August 19 missile attack in Aqaba that targeted two U.S. Navy ships and killed one Jordanian soldier and injured a taxi driver in the neighboring Israeli resort of Eilat. Other Zarqawi plots have been interrupted, including a major chemical attack on Amman last spring, making this the first successful terrorist operation in Jordan—one of the Arab world's most security-conscious states—since the beginning of the Iraq war. Though it exposed a level of cooperation between Jordan and the United States many Jordanians were apparently unaware of, reactions here have been surprisingly blasé.

The night of the attack, I was dining with a group of Jordanians in one of Amman's fashionable night-life areas, and people seemed more concerned about the imminent return of Abu Qatada, a Jordanian-born fundamentalist sheikh whom the Blair government is only too happy to disgorge after the July bombings in London. "I really thought Jordanians would be freaked out when we finally got hit," says Rana Sweis, a 25-year-old Jordanian journalist. "And if it had happened two or three years ago, people would've been shocked and afraid. Things are very stable here, and Jordanians are very cautious. But look around you, everyone's out tonight."

Perhaps the relative calm is due to the fact that everyone else in the region has been hit considerably harder. Or maybe, as Fares Braizat, a researcher at the University of Jordan's Center for Strategic Studies, explains, it's because "Jordan was definitely not the target. If it was," he told me in his Amman office, "they would've gone after the capital here."

It's true that the missile attack, like the last successful terrorist operation in Jordan, which claimed the life of American diplomat Laurence Foley in October 2002, targeted Americans. However, as we saw when Western employees in the Saudi oil industry were killed, attacks in Muslim countries are often intended to bring attention to a government's relationship with Western concerns in order to embarrass the regime. As a recent Pew poll showed that 70 percent of Jordanians support attacks against Americans and other Westerners in Iraq, it's likely that much of that majority had not previously known that their government is a stalwart, albeit quiet, ally in the U.S.-led coalition's war. Now they know, and maybe the Royal Hashemite Court has some explaining to do.

However, targeting Aqaba suggests that the attack wasn't just a shot at the United States and its regional policies. It was also aimed at the Hashemite monarchy.

Aqaba is Jordan's only port and also its one Red Sea resort town. Throughout the region this summer the tourist industry has been repeatedly attacked, most spectacularly at Sharm al Sheikh, Egypt's Red Sea resort, where 88 people, mostly Egyptians, died. And in Lebanon, the series of bombs and assassinations that began with the February murder of a former Lebanese prime minister has virtually destroyed the summer

Lee Smith is writing a book on Arab culture.

tourism season, long a staple of the Lebanese economy. Perhaps Aqaba isn't yet as strong a tourist draw as Beirut or Egypt's numerous Sinai resorts, but the Jordanians are hoping to make good on the large investment they've poured into what they call the Red Sea Riviera, encompassing Taba in Egypt and Eilat in Israel.

Moreover, Aqaba is one of King Abdullah's pet projects, inherited from his late father, and he's provided the Aqaba Special Economic Zone Authority with some of the government's most progressive and talented officials. ASEZA is a duty-free zone built along the lines of Dubai's free zones and meant to encourage free trade. According to the much-publicized, perhaps overstated, plans for ASEZA, Aqaba's free-trade ethos and transparent management is meant to serve as a model for the rest of the country. If the Hashemites see Aqaba as their outlet onto the world, the operation there may have been meant to remind Jordan to watch its back.

In the meantime, Jordan's economy really has been transformed—thanks largely to Washington's political, diplomatic, and military engagement in the region. That is, if the Bush administration unleashed a lot of forces it didn't anticipate and can't control, some of those furies are working for the good.

In the last two years, Amman has grown exponentially, with new luxury hotels, malls, and restaurants that seem to be positioning this once undistinguished Arab capital as a second Beirut. Indeed, some of the cash coming in is a direct result of Syria's forced withdrawal from Lebanon. "Lots of Syrian money came after it left Beirut," says Braizat. "The Syrians are investing to escape Bashar [al-Assad's] regime."

So, what does it mean that Syria's merchant class is putting money into the coffers of the country's long-time regional rival? "If the private sector in Syria is connected to the private sector here," Braizat argues, "then this is cementing its relationship with the government here, and they don't see the [Syrian] regime surviving."

Others aren't so sure that Syrian investment means Bashar's reign is in trouble. "These are businessmen, and they like to have their bases covered," says Fateh Mansour, managing editor of *Al Hadath*. "Jordan's a good investment for them because we have a trade agreement with the United States, and they get access to Iraq."

The Syrians may want access to Iraq, but the real engine in the Jordanian economy right now is Iraqi cash, which arrived here with the fall of Baghdad. "Real estate prices have surged some 30 percent in the last year," says Braizat. One friend told me how an Iraqi offered him $50,000 more than what he paid for his apartment two years ago. "That's more than I've made my whole working life," the 35 year-old said.

And yet, there have been problems accompanying the Iraqi exodus into Jordan. The Iraqi government recently accused the kingdom of allowing members of Saddam Hussein's family and former regime in Jordan to finance insurgent groups in Iraq. Perhaps a more lingering concern is that the influx of Iraqis may throw off the country's delicate social structure, which balances a roughly equal number of citizens of Jordanian origin and those who are of Palestinian descent.

Mansour says there are already frictions with the Iraqis. "There's a joke going around that after all these years it's the Iraqis who are going to unify us—Palestinians and Jordanians are going to put aside our differences because of the Iraqis."

But what most seems to worry Amman residents is that the Jordanian economy will suffer if things get better in Iraq. Given that Jordan and Iraq are natural trading partners, such zero-sum math might seem strange, but there's not much free-market thinking in the region. After all, in a part of the world where riches have primarily come from oil, it's easy to think that there's only one chest of gold in the world, and if someone else has the key to it—Saudi Arabia, Israel, the United States, Iraq—then you and your family will starve.

It's true that Jordan hasn't exactly created all of its wealth out of thin air and owes much of its recent boom to what's happening next door in Iraq. Still, its economy shows results more persuasive than any amount of preaching by U.S. officials. "I've heard some talk lately among Palestinians about Jordan," says Braizat. "These are very nationalistic, totally Palestinian elements who talk about [wanting] Jordan back in control of the West Bank. Of course it's not going to happen. King Abdullah is not expansionist and is very determined to see Jordan, as it is now, succeed. The point is that some Palestinians don't see the Palestinian Authority experience as successful. But the Jordanian example, based on human capital and with limited resources, they see as very successful."

This estimation is a far cry from the decades-long belief shared by many, including Palestinian nationalists, that the Hashemite kingdom's days are numbered. The question is whether Zarqawi is in a position to do something about it, or whether he's the last vestige of a futile cause. ♦

The Memorial They Deserve

The politicized plans for Ground Zero are a travesty. **BY DEBORAH WEISS**

WHAT WAS that thunderous noise? It sounded like my upstairs neighbor's furniture falling, perhaps a bookcase. And why was everyone outside screaming? I wished they would be quiet (I'm not a morning person). Twenty minutes later, it happened again—the booming noise, the screams . . . and then the lights went out. The building started to shake. I fell to the ground. When I got up, I couldn't see a thing out my window. Not a ray of light, not a piece of debris, not the leaves that usually press against it. There was only darkness, dirt, and smoke. Just an hour before, it had been a beautiful, sunny day. I grabbed my cat and ran.

Outside, it looked like a nuclear bomb had hit. The once black tar on the streets, and the green benches and trees that constituted Battery Park, were covered with white. Shoes were strewn along the path, and empty baby carriages had been abandoned. People were running, and couldn't stop to pick things up.

Amidst the hysteria and screaming people, I picked a direction and ran, along the water, heading toward the tip of Manhattan. Out of the blue, Coast Guard rescue ferries appeared, and I jumped into one, along with about ten other people. A 15-year-old girl sat on the side of the ferry, her hands clasped in prayer. She crossed herself. No one spoke, but all had tears in their eyes. The air from the first fallen tower was thick. It was hard to breathe. Once we were a few yards out into the water, the second tower, which appeared to have been tilting in our direction, fell. It had not fully hit the ground before a Coast Guard worker suggested that we say a prayer for all those who had just died. We prayed. I swallowed hard.

CORBIS / Rob Howard

We made our way to a triage center in New Jersey, where we spent the day listening to the radio for updates on the number of deaths. We sat across the river watching helplessly as the towers burned. I stayed with strangers the next few nights until I made my way to the house of relatives. The apartment building was closed for two months. All my furniture had been contaminated and had to be replaced. I dealt with hazardous waste cleaners, agencies, and FEMA inspectors. My office, which was right next to the 7 World Trade Center Building, had one wall blown off. The office was displaced for eight months. But I was lucky. I lived.

Three thousand did not. And now the families of many of them are being forced to resist efforts by the left to hijack the memorial at Ground Zero. The plan? An "International Freedom Center," to be filled with a host of anti-American exhibits and exhibits that have nothing to do with 9/11. Debra Burlingame, sister of a 9/11 pilot whose plane was crashed into the Pentagon, and a member of the board of the World Trade Center Memorial Foundation, first blew the whistle on these plans in a June 8 article for the *Wall Street Journal*.

Burlingame noted that a "Who's Who of the human rights, Guantanamo-obsessed world" would be programming the International Freedom Center, with exhibits contemplated on topics such as Jim Crow, the Holocaust, the genocide of American-Indians, and pictures from the Abu Ghraib scandal. The message? We have to *understand* why all these events occurred in order to gain insight into why we were attacked. Seminars will be held at the IFC, presumably explaining how America brought 9/11 on herself and why the terrorists hate us.

The International Freedom Center is to be by far the largest tenant at the World Trade Center Memorial Cultural Complex. It will cover approximately 300,000 square feet, amidst a designer park with foliage, waterfalls, and retail shops. And the Memorial Center itself? Well, that will be squirreled away underground, in an area of only 50,000 square feet: one-sixth the size of the Freedom Center. Moreover, one will have to pass through the International Freedom Center and all its propaganda in order to get to the

Deborah Weiss is an attorney and political consultant in Washington, D.C.

actual memorial, where the names of those killed will be listed and artifacts from the site will be displayed.

The families of those killed or displaced on 9/11, survivors, neighbors, and others are understandably outraged. They argue that the site is hallowed ground. It should be a place to honor and remember the dead, including those brave firemen, policemen, and other heroes who gave their lives that day. Our ongoing culture wars can be conducted elsewhere. The site where the towers fell should pay appropriate homage to those who lie dead as the result of the terrorist attack.

It's not too late to put the center's space to more appropriate use. Because the ground beneath the fallen towers is owned by the Port Authority of New York and New Jersey, decisions about the site are being made by an alphabet soup of agencies, boards and commissions ultimately answerable to the state of New York and Governor George Pataki.

Inspired by Burlingame, a coalition of family groups and other opponents have started an organization called Take Back the Memorial, (*www.takebackthememorial.org*) to oppose the hostile takeover of the site. It has been coordinating protests and petitions, but so far, the cries of the 9/11 families are falling mostly on deaf ears.

Three exceptions are New York congressmen Peter King, Vito Fossella, and John Sweeney. They have joined in demanding a more appropriate memorial. On August 16, the Uniformed Firefighters Association of Greater New York officially withdrew its support for the memorial site plans, citing the inclusion of the Freedom Center. Feeling the heat, Governor Pataki has told the Freedom Center that it has until September 23, 2005, to address the objections of the 9/11 families. However, it is not clear what will be the consequences for failing to do so.

How will we memorialize the victims of 9/11? The answer ultimately tells us nothing about them, or about 9/11 itself. But it will tell us a lot about ourselves. ♦

The Specter of Superprecedents

The Judiciary Committee chairman's super bad idea. **BY TERRY EASTLAND**

SOMETHING TO LISTEN FOR during the Roberts confirmation hearings is an uncommon word, "superprecedent." Sen. Arlen Specter, chairman of the Judiciary Committee, used "superprecedent" in a July 24 op-ed in the *New York Times* previewing the hearings, which are scheduled to begin September 6. Specter began by noting that Sandra Day O'Connor, whom Roberts would succeed, was the decisive vote in many 5-to-4 decisions "on the cutting edge of issues confronting our society," none more important than *Roe* v. *Wade*, "the central issue."

Specter wrote that while some senators have announced their intention to ask Roberts whether he would overrule the landmark abortion case, the nominee could "answer [that question] or not as he sees fit." Specter invoked "confirmation precedents" to support the proposition that a nominee need not "spell out how he or she would rule on a specific case," but he emphasized that nothing forecloses "probing inquiries on the nominee's general views on jurisprudence," not least on "how to weigh the importance of precedent in deciding whether to overrule a Supreme Court decision." Then came the unusual word: "Some legal scholars attach special significance to what they call superprecedents, which are decisions like *Roe* v. *Wade* that have been reaffirmed in later cases."

Stare decisis—Latin for "let the decision stand"—is the doctrine that the Court's precedents should govern decisions in similar cases by later Courts. The kind of *stare decisis* Specter has in mind is constitutional—that in which the decision at issue is a construal of the Constitution. Precisely because of the difficulty of correcting a wrong constitutional ruling through the amendment process—Congress can far more easily enact a new law to respond to an erroneous statutory decision—the Supreme Court has on numerous occasions overruled a constitutional precedent. *Stare decisis* doesn't ordinarily concern a Court unless it decides that the previous decision, which one party or the other contends should govern the new question, was indeed wrong.

Specter thinks Roberts should discuss factors to be weighed in deciding whether to let a prior decision stand. Such factors (notably the need for stability and predictability in the law) are not legislated or found in the Constitution but are the justices' manufacture and thus reflect (presumably) how they think about the judicial office. For that reason, if anything is worth asking a prospective justice about, how the person might evaluate the force of a precedent having concluded it was wrong ought to be high on the list. But what would it mean to ask about a *superprecedent*? What, pray tell, is that?

As described by Specter, it's a decision like *Roe* that has been reaffirmed in later cases. Plainly, *Roe* itself is to be understood here as the superest of all for those in the business of superprecedentialism (neologisms being the fashion here). Specter attributed the term to unnamed legal scholars, a veritable invitation to the law bloggers to figure out who those people might be. Within hours, superprece-

Terry Eastland is publisher of THE WEEKLY STANDARD.

dent and its equivalents having been Googled and Westlawed and Nexised many times over, the results yielded up by the blogosphere were, well, interesting.

"Superprecedent," it turns out, has been mentioned in law journals, but almost always to mean a case whose holding is so clear and accepted that later cases governed by it settle rather than go to trial. As a result, such a case is undercited (so to speak) in judicial opinions. This, it turns out, is of concern to academics seeking to infer from the frequency of citations the kind of influence a given case might have. A superprecedent, by its very influence, leaves no markers by which that influence might be measured. This is obviously not the sort of superprecedent Specter had in mind. I called his office, which referred me to an article by William Eskridge and John Ferejohn in the *Duke Law Journal*. But that piece concerns "superstatutes," a different topic.

Maybe Specter *heard* some legal scholars *speak* of superprecedent in the cryptic way he described it in his *Times* op-ed. Or maybe he heard some of his Democratic colleagues on the committee—the Democrats being the party of *Roe*'s all-out defense—speak of superprecedents and mumble something about legal scholars who "attach special significance" to them. Plainly, the sense in which Specter's unnamed legal scholars understand superprecedents is one favorable to the perpetuation of the *Roe* precedent.

A Specter aide also used the term super-*stare decisis* in our conversation. "There is law so grounded in precedent that it would carry a definition of super-*stare decisis*" and thus would be "highly unlikely" to be overruled. The aide noted that super-*stare decisis* is "an idea that's been thrown out there"—a formulation that suggests it doesn't necessarily have Specter's endorsement, though of course he has long been a supporter of *Roe* v. *Wade*. Specter, I learned, may schedule time during the hearings for a panel of scholars to discuss super-*stare decisis*.

In that case, a scholar surely worth inviting is Earl Maltz of the Rutgers Law School, author of a 1992 *Notre Dame Law Review* article in which he used the term "super-*stare decisis*"—but by no means favorably. The title of Maltz's piece is "Abortion, Precedent, and the Constitution: A Comment on *Planned Parenthood of Southeast Pennsylvania* v. *Casey*," a 1992 case.

At issue in *Casey* were a series of Pennsylvania abortion regulations. Planned Parenthood said they violated the abortion right constitutionalized in *Roe*. Several parties—including the Bush administration—not only defended the regulations but also asked the Court to overrule *Roe*. (Roberts, who signed a 1990 brief in which it was noted that *Roe* was wrongly decided and should be overruled, knows *Casey* as well as anyone, since at the time he was still deputy solicitor general and doubtless helped prepare Solicitor General Kenneth Starr for the argument.) The Court sustained all but one of the regulations, but it pointedly declined to overrule *Roe*. Presumably, this "reaffirmation" of *Roe* is what makes the decision—to its defenders—a superprecedent.

Maltz's article usefully recalls key aspects of *Casey*. One is that the majority jettisoned *Roe*'s (obsolete) "trimester analysis," which, not incidentally, "had formed the basis of post-*Roe* abortion jurisprudence." A second is that the majority held to what it called "*Roe*'s essential holding" by recasting it to mean that women may choose to have an abortion before viability without "undue interference" from the state—hence the "undue burden" test. In making these moves, the majority "explicitly overruled contrary [abortion] holdings" in cases in which the Court had adhered to *Roe*. Only two members of the Court—John Paul Stevens and Harry Blackmun (the author of *Roe*) voted to retain "pre-existing law in its entirety." Maltz's article is a reminder of how the *Casey* majority treated *Roe*—hardly with the kind of deference presumably demanded of a superprecedent.

Moreover, the article provides a devastating analysis of the famous joint opinion in *Casey*. Written by Justices O'Connor, Anthony Kennedy, and David Souter, the opinion suggested that maybe even all three would have voted against the holding in *Roe*, had they been on the Court in 1973. Yet they were unwilling now to overrule *Roe*. Why? *Stare decisis*. In particular, the joint opinion contended that failure to follow precedent would undermine the Court's legitimacy and weaken the Court's ability to command public adherence to its decisions.

As Maltz pointed out, this analysis "reverses the accepted view" that constitutional decisions should have *less* protection under *stare decisis* because they are less amenable to correction by Congress than statutory decisions. "In essence," Maltz observed, "the opinion asserts that if one side can take control of the Court on an issue of major national importance, it can not only use the Constitution to bind other branches of government to its position but also have that position protected from later judicial action by a kind of super-*stare decisis*."

Roberts himself hasn't opined on super-*stare decisis*, which operates to protect only liberal precedents and indeed maybe only *Roe*. If he's asked about the concept, he would do well to tell the committee (with his usual wry humor) that *stare decisis* presents enough issues without having to supersize it.

Meanwhile, the Bush administration has plainly not accepted the idea of *Roe* as a superprecedent. Attorney General Alberto Gonzales told the Associated Press some weeks ago that the Court isn't obligated to follow a previous decision "if you believe it's wrong." The Court is at least two votes away from having a majority that might overrule *Roe*. If Roberts provides one of those votes, perhaps he'll write the opinion responding to the *Casey* joint opinion—and include a footnote summarily dispatching this notion of a superprecedent. ♦

High Noon in Tokyo

Prime Minister Koizumi's high stakes showdown.

BY DUNCAN CURRIE

SAY THIS FOR Junichiro Koizumi: He's a gambler, with a penchant for the bold stroke. At home, Japan's maverick prime minister seeks to overhaul the farming, highway, construction, banking, pension, and postal systems. Abroad, he dances nimbly around the limits of a pacifist constitution, sending warships for Operation Enduring Freedom, ground troops to Iraq, and boosting U.S.-Japan cooperation on missile defense.

Eriko Sugita / Reuters / Corbis

Such risk-taking can pay dividends. Or it can land one in a huge pickle, as happened to Koizumi in early August, when the upper house of parliament voted down his plan to privatize Japan Post. He responded with characteristic temerity, dissolving the lower house of the Diet and calling a snap election for September 11. On that vote hinges the proximate future of Koizumi's Liberal Democratic party (LDP)—and the political survival of one of George Bush's closest allies.

Koizumi, 63, has lusted after the privatization of Japan's postal system for years, at least since he served as a postal minister in the early 1990s. Which may seem odd, except that Japan Post doesn't just deliver mail. It doubles as the nation's principal savings-and-insurance institution, boasting roughly $3 trillion in assets. So, in effect, Koizumi wants to privatize the largest savings bank in the world.

According to recent polls, the crusading premier may get his way. The LDP, which has ruled Japan virtually without interruption since 1955, still commands far broader loyalty than its chief rival, the Democratic party of Japan (DPJ). As for Koizumi, his popularity had been slumping in the low 40s and high 30s—until postal reform went belly up and he chose to stake his signature initiative on a general election. His public support instantly shot above 50 percent, which for a Japanese prime minister is fairly high. Meanwhile, the government released fresh economic data showing a third straight quarter of growth, marked by crucial gains in exports and domestic private consumption.

That's the good news for Koizumi. The bad news? His LDP is tearing itself apart over post-office privatization. The issue has become the *raison d'être* of Koizumi's premiership, which tickles market-friendly LDP reformers but causes heartburn for the party's more statist old guard. Koizumi has promoted this cleavage: He vows to smash the "old LDP"

Duncan Currie is a reporter for THE WEEKLY STANDARD.

and create a "new LDP" more amenable to his reforms.

Such bluster should sound familiar to Japanese voters. Koizumi roared into office in April 2001 with flashy clothes, movie-star panache (he resembles a Japanese Richard Gere), and a bulging agenda for change. "If my party tries to destroy my reforms," he pledged, "I will destroy my party." His rallies looked more like rock concerts, replete with shrieking schoolgirls and starstruck housewives. As Koizumi's job ratings soared into the 80s, the LDP busily churned out Koizumi merchandise, including dolls of the premier wearing a lion-skin. The first issue of his email magazine proclaimed, "I am Koizumi the Lionheart."

But the lion's roar soon quieted into a kitten's purr—or so his critics chortled, as Koizumi got bogged down by government scandals, economic stagnation, and factional spats within the LDP. Some erstwhile comrades turned against him, and opponents tagged Koizumi a lame duck. "No Japanese prime minister has ever seen his popularity plunge more quickly unless he was caught in a scandal," wrote the *Guardian*'s Tokyo correspondent in April 2002. Though he had campaigned as an energetic reformer—"Change the LDP, change Japan" and "Reform without sacred cows" were two of his slogans—Koizumi had little to show for it a year later.

So what reversed his downward spiral? Five factors in particular. First, he managed to enact stricter accounting rules, which helped quell Japan's dire banking crisis. Second, Kim Jong Il's nuclear saber-rattling made many Japanese appreciate Koizumi's robust security posture. They may disdain the "cowboy" aura of his pal George Bush; but Koizumi is *their* cowboy—he's reportedly a big fan of *High Noon*—and his assertive diplomacy (especially on the North Korean abductee issue) has played well with the public. Third, Koizumi has repeatedly visited the Yasukuni Shrine, a memorial to Japanese war dead. This infuriates Beijing and Seoul—the shrine honors over a dozen Class-A war criminals and whitewashes Japanese militarism—but makes for good politics in Japan. (Though most Japanese probably know little of Yasukuni, they take umbrage at the Chinese and Koreans telling their premier what to do.) Fourth, the economy has ever so slowly come around to solid growth; in August, the Nikkei 225 index hit four-year highs. And fifth, Koizumi remains a dashing, telegenic leader, one whose personal gifts often eclipse his policy failures.

That said, he's hardly enjoyed a carefree summer, and the current bout of LDP infighting may scuttle his premiership. When, on August 8, the upper house of parliament defeated post-office privatization by a vote of 125 to 108, 22 MPs from Koizumi's party broke ranks. Since a Japanese leader cannot dissolve the upper chamber, Koizumi made good on his threat to fold the lower house—which barely passed postal reform—and call a snap election. He then purged the 37 LDP members who had opposed reform in the lower chamber from the party's official register of candidates.

After Koizumi's 37 expulsions, the LDP and its coalition partner, the Buddhist-backed New Komeito party, control a combined 246 of the 480 lower house seats, only five more than the 241 needed for a majority. The DPJ holds 175 seats. The Japanese media have floated multiple scenarios that could force Koizumi into early retirement. For example, the LDP-New Komeito bloc might win a plurality but not a majority. Or the DPJ might ally itself with the Communists, Socialists, LDP rebels, and/or New Komeito to form a majority. Or—and this seems rather unlikely—the DPJ might secure a majority outright.

What would a Koizumi loss mean for the United States? The consensus among experts seems to be: bad for Bush in the short term, but immaterial over the long haul. It's true, Koizumi is one of a kind. He gets on

famously with Bush. And his fierce devotion to the U.S.-Japan alliance led to his most historic decision: sending more than 500 noncombat troops from the Self-Defense Forces to help rebuild Iraq. Come December, Tokyo will have to decide whether to extend its Iraq mission—based in the southern backwater of Samawa—or bring the boys home.

If the DPJ takes charge, expect a hasty pullout. Party officials have zinged Koizumi's chummy rapport with Bush, and their election manifesto endorses a full withdrawal from Iraq by Christmas. DPJ boss Katsuya Okada, 52, may also use anti-Iraq sentiment to cozy up with New Komeito, whose pacifist members always opposed the mission. "It's a point on which Koizumi is vulnerable," says Thomas Berger, a Japan specialist at Boston University, noting that the Japanese public has largely soured on Iraq.

Losing Japan's help in Iraq would be a symbolic blow to the U.S.-led coalition, but it wouldn't be a disaster like the Spanish pullout in 2004. Nor would it do any lasting harm to the U.S.-Japan relationship. Either way, Koizumi is term-limited by his party and must step down by September 2006. And while the DPJ includes a patchwork of ex-Socialists and assorted anti-American oddballs, its core is made up of former LDP members, most of whom are staunchly pro-American. "There is a general consensus" on the need for warm ties with the United States, says Daniel Okimoto, a Japan expert at Stanford.

Indeed, long-term structural forces—the end of the Cold War, the rise of China, and the ballistic missile threat in East Asia—have been pushing Washington and Tokyo closer together for over a decade now. While the DPJ is untested—founded in 1998, it has never held power—and surely less keen on Bush's foreign policy than Koizumi, it cannot reverse those forces. The Bush White House will of course hope for another year with Prime Minister Koizumi. But no doubt they could live with a Prime Minister Okada. ♦

North Carolina's Big Mac

Meet Patrick McHenry, the youngest man in the House. **BY JOSEPH LINDSLEY**

PATRICK HENRY was one of the most passionate and fearless orators of his day. Now, a similarly named politician is ruffling feathers with a variation on the great man's battle cry: Says Patrick McHenry, a self-described "hardcore conservative" representing the 10th district of North Carolina, "Give me McLiberty or give me McDeath!"

Gray-haired at 29, McHenry is the youngest member of Congress, but that hasn't kept him from jumping into controversy on Capitol Hill. Proclaiming politics his favorite sport, he has proved to be "a major thorn in the side of Democratic House leaders," according to the Capitol Hill newspaper *Roll Call*. Last year, he rankled his three Republican primary opponents by knocking on tens of thousands of doors, while they settled for armchair campaigning in the summer heat.

"He's just a damn good politician, and I mean that in the most positive way," says 18-year House veteran Cass Ballenger, whose retirement from the 10th district last year made way for McHenry's candidacy, and who is most recently infamous for saying in 2002 that a querulous black congresswoman sparked in him a "little bit of a segregationist feeling."

McHenry, the first Catholic to represent his mostly Republican and evangelical district, had to be good to win in this tradition-loving, rural region stretching from the exurbs of bustling Charlotte to the Blue Ridge Mountains. Some voters were wary of putting someone so green and rowdy in the halls of power: How could a twenty-something real estate broker, after a mere two years in the state assembly, persuade voters he had the practical wisdom to lead, as against opponents already prominent in local politics and business?

Rep. Mike Pence of Indiana, head of the Republican Study Committee, of which McHenry is a member, insists the younger man shows no lack of maturity.

"He seems to be wise beyond his years," Pence says. "His confidence, his poise, and his premature gray hair can make you forget that he's a 29-year-old man." Also, McHenry has a young man's appetite for work. That—and the fact that his seat is safe—allows him to style himself a "conservative's conservative." As such, McHenry says he is committed to a diverse portfolio of issues, but he has been particularly keen on matters of House ethics.

On the floor, he branded Minority Leader Nancy Pelosi and Minority Whip Steny Hoyer hypocrites for demanding ethics investigations of Republicans while turning a blind eye to their own ranks. In a June 3 letter to Pelosi, he suggested that she herself might have violated House rules barring the use of official resources for political purposes.

Explains McHenry, "Nancy Pelosi [has] an agenda that she's going to burn down the House . . . so that the Democrats can have a shot, just a shot, at winning the next election. I'm not content to sit idly by while they do that. Their philosophy is

Joseph Lindsley is an editorial asistant at THE WEEKLY STANDARD.

AP / Jeff Willhelm

Patrick McHenry, after his August 2004 primary victory

totally wrong for America, and their way of achieving it is even worse."

A short, stocky Irish American, McHenry wishes more Republicans had his zest for battle on many fronts. The cosponsor of a constitutional amendment limiting the term of service of federal judges, he also rallied religious activists in front of the Supreme Court to protest the Court's banning the exclusive, religious display of the Ten Commandments on public property. Nor is he timid about bucking the GOP leadership: Representing a district that has lost textile jobs, he was one of just 27 Republicans to vote against CAFTA.

Despite growing up in a down-to-earth, apolitical family of seven, he has been keen on politics ever since his parents took him to a Ronald Reagan and Jesse Helms rally in Charlotte in 1984. To this day Helms remains one of his heroes.

At N.C. State, McHenry, a consummate networker, got involved in the College Republicans, and by the time he transferred to Belmont Abbey College, a small liberal arts school in easy-going Gaston County, he was serving the CRs in national leadership roles.

His College Republicans connections catapulted him into politics: CR friends helped him in his unsuccessful run for the state legislature while a college senior, and in his successful bids for the general assembly in 2002 and Congress in 2004. Today, many of his staffers are ex-CRs, causing critics to suggest that the congressman is too close to his home state chapter.

In June, two members of the state club accused him of pressuring them to vote for his preferred candidate in the College Republicans' hotly contested national election.

The *Hill* newspaper reported that McHenry's chief of staff, Jason Deans, admitted both he and the congressman made phone calls asking some members to abstain from voting, but they deny they threatened anyone. McHenry's accusers were also not pleased that he used CR volunteers in his congressional campaign; the two camps disagree on whether this violated any CR rules.

In last year's campaign, McHenry, a history major enamored of Stonewall Jackson and George Patton, directed his corps of college students in a door-to-door sweep of the district. He even threw in some technology of whose existence his older opponents may not have been aware: Dee Stewart, then his chief political consultant, hatched the idea of carrying portable DVD players to broadcast a personal message from McHenry as volunteers stormed through rural North Carolina.

For the fiercely contested, four-way primary, McHenry raised under $300,000, while his opponents garnered $450,000, $800,000, and $1.2 million, respectively. Yet McHenry advanced to the runoff against a county sheriff and won in a recount by just 85 votes.

McHenry believes his frankness about his ideas helped him recruit volunteers and win support. Billing himself as pro-gun, pro-family, pro-tax cut, and anti-gay marriage—and salting his speeches with references to the "Good Book"—he recognizes that he would have trouble getting elected in many other districts.

"You're going to have ideas that offend people," says McHenry. "I'm not willing to sell out my principles and values just to make someone else feel happy."

Stewart, his former consultant, predicts his friend will play the firebrand for some time, because of his youth, his safe seat, and his tenacity. Whether this will endear McHenry —more a "Newt" than a "Denny"— to his party leadership, or allow him to rise to power in the House himself, remains to be seen. Either way, he should be around for awhile. He is already, as he puts it, "pretty McClose to famous." ♦

A War to Be Proud Of

The case for overthrowing Saddam was unimpeachable. Why, then, is the administration tongue-tied?

By Christopher Hitchens

Let me begin with a simple sentence that, even as I write it, appears less than Swiftian in the modesty of its proposal: "Prison conditions at Abu Ghraib have improved markedly and dramatically since the arrival of Coalition troops in Baghdad."

I could undertake to defend that statement against any member of Human Rights Watch or Amnesty International, and I know in advance that none of them could challenge it, let alone negate it. Before March 2003, Abu Ghraib was an abattoir, a torture chamber, and a concentration camp. Now, and not without reason, it is an international byword for Yankee imperialism and sadism. Yet the improvement is still, unarguably, the difference between night and day. How is it possible that the advocates of a post-Saddam Iraq have been placed on the defensive in this manner? And where should one begin?

I once tried to calculate how long the post-Cold War liberal Utopia had actually lasted. Whether you chose to date its inception from the fall of the Berlin Wall in November 1989, or the death of Nicolae Ceausescu in late December of the same year, or the release of Nelson Mandela from prison, or the referendum defeat suffered by Augusto Pinochet (or indeed from the publication of Francis Fukuyama's book about the "end of history" and the unarguable triumph of market liberal pluralism), it was an epoch that in retrospect was over before it began. By the middle of 1990, Saddam Hussein had abolished Kuwait and Slobodan Milosevic was attempting to erase the identity and the existence of Bosnia. It turned out that we had not by any means escaped the reach of atavistic, aggressive, expansionist, and totalitarian ideology. Proving the same point in another way, and within approximately the same period, the theocratic dictator of Iran had publicly claimed the right to offer money in his own name for the suborning of the murder of a novelist living in London, and the *génocidaire* faction in Rwanda had decided that it could probably get away with putting its long-fantasized plan of mass murder into operation.

One is not mentioning these apparently discrepant crimes and nightmares as a random or unsorted list. Khomeini, for example, was attempting to compensate for the humiliation of the peace agreement he had been compelled to sign with Saddam Hussein. And Saddam Hussein needed to make up the loss, of prestige and income, that he had himself suffered in the very same war. Milosevic (anticipating Putin, as it now seems to me, and perhaps Beijing also) was riding a mutation of socialist nationalism into national socialism. It was to be noticed in all cases that the aggressors, whether they were killing Muslims, or exalting Islam, or just killing their neighbors, shared a deep and abiding hatred of the United States.

The balance sheet of the Iraq war, if it is to be seriously drawn up, must also involve a confrontation with at least this much of recent history. Was the Bush administration right to leave—actually to confirm—Saddam Hussein in power after his eviction from Kuwait in 1991? Was James Baker correct to say, in his delightfully folksy manner, that the United States did not "have a dog in the fight" that involved ethnic cleansing for the mad dream of a Greater Serbia? Was the Clinton administration prudent in its retreat from Somalia, or wise in its opposition to the U.N. resolution that called for a preemptive strengthening of the U.N. forces in Rwanda?

Christopher Hitchens is a columnist for Vanity Fair. *His most recent book is* Thomas Jefferson: Author of America. *A recent essay of his appears in the collection* A Matter of Principle: Humanitarian Arguments for War in Iraq, *newly published by the University of California Press.*

I know hardly anybody who comes out of this examination with complete credit. There were neoconservatives who jeered at Rushdie in 1989 and who couldn't see the point when Sarajevo faced obliteration in 1992. There were leftist humanitarians and radicals who rallied to Rushdie and called for solidarity with Bosnia, but who—perhaps because of a bad conscience about Palestine—couldn't face a confrontation with Saddam Hussein even when he annexed a neighbor state that was a full member of the Arab League and of the U.N. (I suppose I have to admit that I was for a time a member of that second group.) But there were consistencies, too. French statecraft, for example, was uniformly hostile to any resistance to any aggression, and Paris even sent troops to rescue its filthy clientele in Rwanda. And some on the hard left and the brute right were also opposed to any exercise, for any reason, of American military force.

The only speech by any statesman that can bear reprinting from that low, dishonest decade came from Tony Blair when he spoke in Chicago in 1999. Welcoming the defeat and overthrow of Milosevic after the Kosovo intervention, he warned against any self-satisfaction and drew attention to an inescapable confrontation that was coming with Saddam Hussein. So far from being an American "poodle," as his taunting and ignorant foes like to sneer, Blair had in fact leaned on Clinton over Kosovo and was insisting on the importance of Iraq while George Bush was still an isolationist governor of Texas.

Notwithstanding this prescience and principle on his part, one still cannot read the journals of the 2000/2001 millennium without the feeling that one is revisiting a hopelessly somnambulist relative in a neglected home. I am one of those who believe, uncynically, that Osama bin Laden did us all a service (and holy war a great disservice) by his mad decision to assault the American homeland four years ago. Had he not made this world-historical mistake, we would have been able to add a Talibanized and nuclear-armed Pakistan to our list of the threats we failed to recognize in time. (This threat still exists, but it is no longer so casually overlooked.)

The subsequent liberation of Pakistan's theocratic colony in Afghanistan, and the so-far decisive eviction and defeat of its bin Ladenist guests, was only a reprisal. It took care of the last attack. But what about the next one? For anyone with eyes to see, there was only one other state that combined the latent and the blatant definitions of both "rogue" and "failed." This state—Saddam's ruined and tortured and collapsing Iraq—had also met all the conditions under which a country may be deemed to have sacrificed its own legal sovereignty. To recapitulate: It had invaded its neighbors, committed genocide on its own soil, harbored and nurtured international thugs and killers, and flouted every provision of the Non-Proliferation Treaty. The United Nations, in this crisis, faced with regular insult to its own resolutions and its own character, had managed to set up a system of sanctions-based mutual corruption. In May 2003, had things gone on as they had been going, Saddam Hussein would have been due to fill Iraq's slot as chair of the U.N. Conference on Disarmament. Meanwhile, every species of gangster from the hero of the *Achille Lauro* hijacking to Abu Musab al Zarqawi was finding hospitality under Saddam's crumbling roof.

One might have thought, therefore, that Bush and Blair's decision to put an end at last to this intolerable state of affairs would be hailed, not just as a belated vindication of long-ignored U.N. resolutions but as some corrective to the decade of shame and inaction that had just passed in Bosnia and Rwanda. But such is not the case. An apparent consensus exists, among millions of people in Europe and America, that the whole operation for the demilitarization of Iraq, and the salvage of its traumatized society, was at best a false pretense and at worst an unprovoked aggression. How can this possibly be?

There is, first, the problem of humorless and pseudo-legalistic literalism. In Saki's short story *The Lumber Room*, the naughty but clever child Nicholas, who has actually placed a frog in his morning bread-and-milk, rejoices in his triumph over the adults who don't credit this excuse for not eating his healthful dish:

> "You said there couldn't possibly be a frog in my bread-and-milk; there *was* a frog in my bread-and-milk," he repeated, with the insistence of a skilled tactician who does not intend to shift from favorable ground.

Childishness is one thing—those of us who grew up on this wonderful Edwardian author were always happy to see the grown-ups and governesses discomfited. But puerility in adults is quite another thing, and considerably less charming. "You said there were WMDs in Iraq and that Saddam had friends in al Qaeda. . . . Blah, blah, pants on fire." I have had many opportunities to tire of this mantra. It takes ten seconds to intone the said mantra. It would take me, on my most eloquent C-SPAN day, at the very least five minutes to say that Abdul Rahman Yasin, who mixed the chemicals for the World Trade Center attack in 1993, subsequently sought and found refuge in Baghdad; that Dr. Mahdi Obeidi, Saddam's senior physicist, was able to lead American

soldiers to nuclear centrifuge parts and a blueprint for a complete centrifuge (the crown jewel of nuclear physics) buried on the orders of Qusay Hussein; that Saddam's agents were in Damascus as late as February 2003, negotiating to purchase missiles off the shelf from North Korea; or that Rolf Ekeus, the great Swedish socialist who founded the inspection process in Iraq after 1991, has told me for the record that he was offered a $2 million bribe in a face-to-face meeting with Tariq Aziz. And these eye-catching examples would by no means exhaust my repertoire, or empty my quiver. Yes, it must be admitted that Bush and Blair made a hash of a good case, largely because they preferred to scare people rather than enlighten them or reason with them. Still, the only real strategy of deception has come from those who believe, or pretend, that Saddam Hussein was no problem.

I have a ready answer to those who accuse me of being an agent and tool of the Bush-Cheney administration (which is the nicest thing that my enemies can find to say). Attempting a little levity, I respond that I could stay at home if the authorities could bother to make their own case, but that I meanwhile am a prisoner of what I actually do know about the permanent hell, and the permanent threat, of the Saddam regime. However, having debated almost all of the spokespeople for the antiwar faction, both the sane and the deranged, I was recently asked a question that I was temporarily unable to answer. "If what you claim is true," the honest citizen at this meeting politely asked me, "how come the White House hasn't told us?"

I do in fact know the answer to this question. So deep and bitter is the split within official Washington, most especially between the Defense Department and the CIA, that any claim made by the former has been undermined by leaks from the latter. (The latter being those who maintained, with a combination of dogmatism and cowardice not seen since Lincoln had to fire General McClellan, that Saddam Hussein was both a "secular" actor and—this is the really rich bit—a rational and calculating one.)

There's no cure for that illusion, but the resulting bureaucratic chaos and unease has cornered the president into his current fallback upon platitude and hollowness. It has also induced him to give hostages to fortune. The claim that if we fight fundamentalism "over there" we won't have to confront it "over here" is not just a standing invitation for disproof by the next suicide-maniac in London or Chicago, but a coded appeal to provincial and isolationist opinion in the United States. Surely the elementary lesson of the grim anniversary that will shortly be upon us is that American civilians are as near to the front line as American soldiers.

It is exactly this point that makes nonsense of the sob-sister tripe pumped out by the Cindy Sheehan circus and its surrogates. But in reply, why bother to call a struggle "global" if you then try to localize it? Just say plainly that we shall fight them everywhere they show themselves, and fight them on principle as well as in practice, and get ready to warn people that Nigeria is very probably the next target of the jihadists. The peaceniks love to ask: When and where will it all end? The answer is easy: It will end with the surrender or defeat of one of the contending parties. Should I add that I am certain which party that ought to be? Defeat is just about imaginable, though the mathematics and the algebra tell heavily against the holy warriors. Surrender to such a foe, after only four years of combat, is not even worthy of consideration.

When and where will it all end? The answer is easy: It will end with the surrender or defeat of one of the contending parties. Should I add that I am certain which party that ought to be?

Antaeus was able to draw strength from the earth every time an antagonist wrestled him to the ground. A reverse mythology has been permitted to take hold in the present case, where bad news is deemed to be bad news only for regime-change. Anyone with the smallest knowledge of Iraq knows that its society and infrastructure and institutions have been appallingly maimed and beggared by three decades of war and fascism (and the "divide-and-rule" tactics by which Saddam maintained his own tribal minority of the Sunni minority in power). In logic and morality, one must therefore compare the current state of the country with the likely or probable state of it had Saddam and his sons been allowed to go on ruling.

At once, one sees that all the alternatives would have been infinitely worse, and would most likely have led to an implosion—as well as opportunistic invasions from Iran and Turkey and Saudi Arabia, on behalf of their respective interests or confessional clienteles. This would in turn have necessitated a more costly and bloody intervention by some kind of coalition, much too late and on even worse terms and conditions. This is the lesson of Bosnia and Rwanda yesterday, and of Darfur today. When I have made this point in public, I have never had anyone offer an answer to it. A broken Iraq was in our future no matter what, and was a responsibil-

ity (somewhat conditioned by our past blunders) that no decent person could shirk. The only unthinkable policy was one of abstention.

Two pieces of good fortune still attend those of us who go out on the road for this urgent and worthy cause. The first is contingent: There are an astounding number of plain frauds and charlatans (to phrase it at its highest) in charge of the propaganda of the other side. Just to tell off the names is to frighten children more than Saki ever could: Michael Moore, George Galloway, Jacques Chirac, Tim Robbins, Richard Clarke, Joseph Wilson . . . a roster of gargoyles that would send Ripley himself into early retirement. Some of these characters are flippant, and make heavy jokes about Halliburton, and some disdain to conceal their sympathy for the opposite side. So that's easy enough.

The second bit of luck is a certain fiber displayed by a huge number of anonymous Americans. Faced with a constant drizzle of bad news and purposely demoralizing commentary, millions of people stick out their jaws and hang tight. I am no fan of populism, but I surmise that these citizens are clear on the main point: It is out of the question—plainly and absolutely out of the question—that we should surrender the keystone state of the Middle East to a rotten, murderous alliance between Baathists and bin Ladenists. When they hear the fatuous insinuation that this alliance has only been created by the resistance to it, voters know in their intestines that those who say so are soft on crime and soft on fascism. The more temperate anti-warriors, such as Mark Danner and Harold Meyerson, like to employ the term "a war of choice." One should have no problem in accepting this concept. As they cannot and do not deny, there was going to be another round with Saddam Hussein no matter what. To whom, then, should the "choice" of time and place have fallen? The clear implication of the antichoice faction—if I may so dub them—is that this decision should have been left up to Saddam Hussein. As so often before . . .

Does the president deserve the benefit of the reserve of fortitude that I just mentioned? Only just, if at all. We need not argue about the failures and the mistakes and even the crimes, because these in some ways argue themselves. But a positive accounting could be offered without braggartry, and would include:

(1) The overthrow of Talibanism and Baathism, and the exposure of many highly suggestive links between the two elements of this Hitler-Stalin pact. Abu Musab al Zarqawi, who moved from Afghanistan to Iraq before the coalition intervention, has even gone to the trouble of naming his organization al Qaeda in Mesopotamia.

(2) The subsequent capitulation of Qaddafi's Libya in point of weapons of mass destruction—a capitulation that was offered not to Kofi Annan or the E.U. but to Blair and Bush.

(3) The consequent unmasking of the A.Q. Khan network for the illicit transfer of nuclear technology to Libya, Iran, and North Korea.

(4) The agreement by the United Nations that its own reform is necessary and overdue, and the unmasking of a quasi-criminal network within its elite.

(5) The craven admission by President Chirac and Chancellor Schröder, when confronted with irrefutable evidence of cheating and concealment, respecting solemn treaties, on the part of Iran, that not even this will alter their commitment to neutralism. (One had already suspected as much in the Iraqi case.)

(6) The ability to certify Iraq as actually disarmed, rather than accept the word of a psychopathic autocrat.

(7) The immense gains made by the largest stateless minority in the region—the Kurds—and the spread of this example to other states.

(8) The related encouragement of democratic and civil society movements in Egypt, Syria, and most notably Lebanon, which has regained a version of its autonomy.

(9) The violent and ignominious death of thousands of bin Ladenist infiltrators into Iraq and Afghanistan, and the real prospect of greatly enlarging this number.

(10) The training and hardening of many thousands of American servicemen and women in a battle against the forces of nihilism and absolutism, which training and hardening will surely be of great use in future combat.

It would be admirable if the president could manage to make such a presentation. It would also be welcome if he and his deputies adopted a clear attitude toward the war within the war: in other words, stated plainly, that the secular and pluralist forces within Afghan and Iraqi society, while they are not our clients, can in no circumstance be allowed to wonder which outcome we favor.

The great point about Blair's 1999 speech was that it asserted the obvious. Coexistence with aggressive regimes or expansionist, theocratic, and totalitarian ideologies is not in fact possible. One should welcome this conclusion for the additional reason that such coexistence is not desirable, either. If the great effort to remake Iraq as a demilitarized federal and secular democracy should fail or be defeated, I shall lose sleep for the rest of my life in reproaching myself for doing too little. But at least I shall have the comfort of not having offered, so far as I can recall, any word or deed that contributed to a defeat. ♦

See No Evil, Hear No Evil

What the 9/11 Commission narrative left out: Iraqis

By Stephen F. Hayes

Ahmed Hikmat Shakir is a shadowy figure who provided logistical assistance to one, maybe two, of the 9/11 hijackers. Years before, he had received a phone call from the Jersey City, New Jersey, safehouse of the plotters who would soon, in February 1993, park a truck bomb in the basement of the World Trade Center. The safehouse was the apartment of Musab Yasin, brother of Abdul Rahman Yasin, who scorched his own leg while mixing the chemicals for the 1993 bomb.

When Shakir was arrested shortly after the 9/11 attacks, his "pocket litter," in the parlance of the investigators, included contact information for Musab Yasin and another 1993 plotter, a Kuwaiti native named Ibrahim Suleiman.

These facts alone, linking the 1993 and 2001 attacks on the World Trade Center, would seem to cry out for additional scrutiny, no?

The Yasin brothers and Shakir have more in common. They are all Iraqis. And two of them—Abdul Rahman Yasin and Shakir—went free, despite their participation in attacks on the World Trade Center, at least partly because of efforts made on their behalf by the regime of Saddam Hussein. Both men returned to Iraq—Yasin fled there in 1993 with the active assistance of the Iraqi government. For ten years in Iraq, Abdul Rahman Yasin was provided safe haven and financing by the regime, support that ended only with the coalition intervention in March 2003.

Readers of The Weekly Standard may be familiar with the stories of Abdul Rahman Yasin, Musab Yasin, and Ahmed Hikmat Shakir. Readers of the 9/11 Commission's final report are not. Those three individuals are nowhere mentioned in the 428 pages that comprise the body of the 9/11 Commission report. Their names do not appear among the 172 listed in Appendix B, a sort of cast of characters. Shakir pops up only in two footnotes.

Why? Why would the 9/11 Commission fail to mention Abdul Rahman Yasin, who admitted his role in the first World Trade Center attack, which killed 6 people, injured more than 1,000, and blew a hole seven stories deep in the North Tower? It's an odd omission, especially since the commission named no fewer than five of his accomplices.

Why would the 9/11 Commission neglect Ahmed Hikmat Shakir, a man who was photographed assisting a 9/11 hijacker and attended perhaps the most important 9/11 planning meeting?

And why would the 9/11 Commission fail to mention the overlap between the two successful plots to attack the World Trade Center?

The answer is simple: The Iraqi link didn't fit the commission's narrative.

As the two sides in the current flap over Able Danger, a Pentagon intelligence unit tracking al Qaeda before 9/11, exchange claims and counterclaims in the news media, the work of the 9/11 Commission is receiving long overdue scrutiny. It may be the case, as three individuals associated with the Pentagon unit claim, that Able Danger had identified Mohammed Atta in January or February 2000 and that the 9/11 Commission simply ignored this information because it clashed with the commission's predetermined storyline. We should soon know more. Whatever the outcome of that debate, the 9/11 Commission's deliberate exclusion of the Iraqis from its analysis is indefensible.

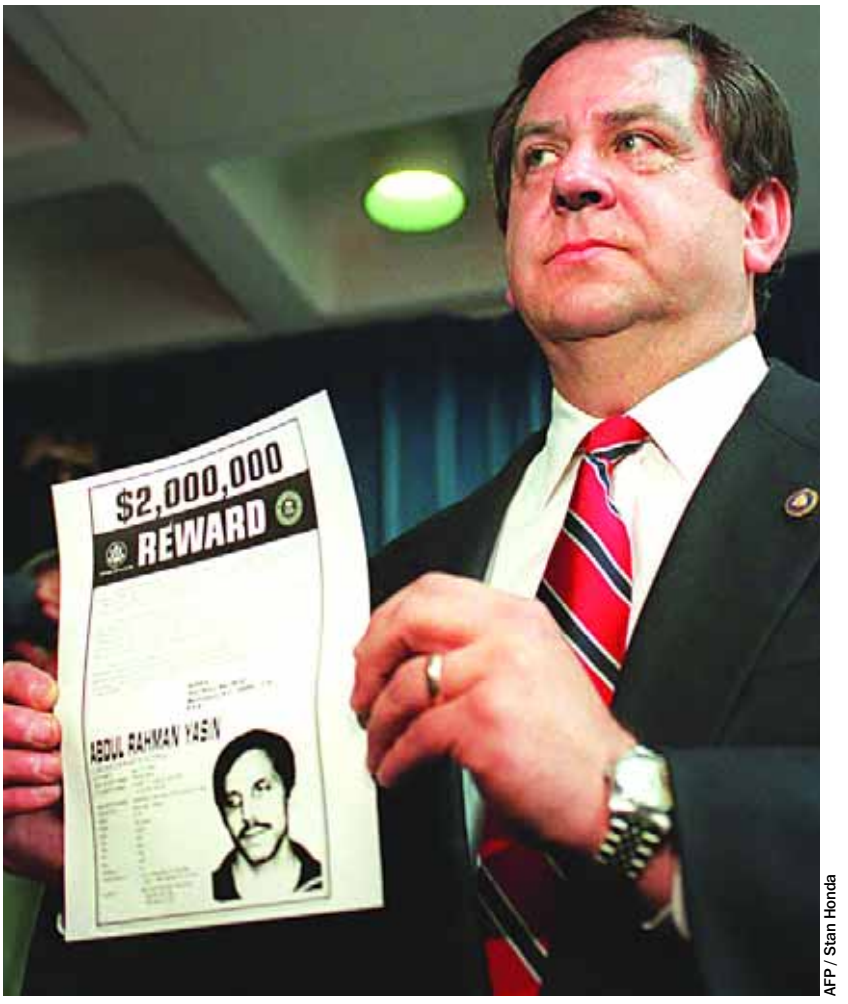
The investigation into the 9/11 attacks began with an article of faith among those who had conducted U.S. counterterrorism efforts throughout the 1990s: Saddam Hussein's Iraq was not—could not have been—involved in any way. On September 12, 2001, the day after the

Stephen F. Hayes is a senior writer at The Weekly Standard.

attacks, George W. Bush asked Richard Clarke to investigate the attacks and possible Iraqi involvement in them. Clarke, as he relates in his bestselling book, was offended even to be asked. *He knew better.*

Philip Zelikow, executive director of the 9/11 Commission, started from the same assumption. So did Douglas MacEachin, a former deputy director of the CIA for intelligence who led the commission's study of al Qaeda and was responsible for the commission's conclusion that there was "no collaborative operational relationship" between Iraq and al Qaeda. (Over the course of the commission's life, MacEachin refused several interviews with THE WEEKLY STANDARD because, we were told, he disagreed with our understanding of the relationship between Iraq and al Qaeda.)

From the evidence now available, it seems clear that Saddam Hussein did not direct the 9/11 attacks. Few people have ever claimed he did. But some four years after the attacks of September 11, 2001, and one year after the 9/11 Commission released its final report, there is much we do not know. The determination of these officials to write out of the history any Iraqi involvement in terrorism against America has contributed mightily to public misperceptions about the former Iraqi regime and the war on terror.



AFP / Stan Honda

A wanted poster for Abdul Rahman Yasin, the Iraqi who made the 1993 WTC bomb.

Here is what we know today about Ahmed Hikmat Shakir. In August 1999, Shakir, a 37-year-old Iraqi, accepted a position as a "facilitator" at the airport in Kuala Lumpur, Malaysia. A "facilitator" works for an airline and assists VIP travelers with paperwork required for entry and other logistical issues. Shakir got the job because someone in the Iraqi embassy in Malaysia wanted him to have it. He started that fall.

Although Shakir officially worked for Malaysian Airlines, his contact in the Iraqi embassy controlled his schedule. On January 5, 2000, Shakir apparently received an assignment from his embassy contact. He was to escort a recent arrival through immigration at the airport. Khalid al Mihdhar, a well-connected al Qaeda member who would later help hijack American Airlines Flight 77, had come to Malaysia for an important al Qaeda meeting that would last at least three days. (Shakir may have also assisted Nawaf al Hazmi, another hijacker, thought to have arrived on January 4, 2000.)

Malaysian intelligence photographed Shakir greeting al Mihdhar at the airport and walking him to a waiting car. But rather than see the new arrival off, he hopped in the car with al Mihdhar and accompanied him to the meeting. Malaysian intelligence has provided its photographs to the CIA. While U.S. officials can place Shakir at the meeting with the hijackers and several high-ranking al Qaeda operatives, they do not know whether Shakir participated actively. (Also present at the meeting were Hambali, al Qaeda's top man in South Asia, and Khallad, later identified as the mastermind of the attack on the USS *Cole*.)

The meeting concluded on January 8, 2000. Shakir reported to work at the airport on January 9 and January 10, and then never again. Khalid al Mihdhar and Nawaz al Hazmi also disappeared briefly, then flew from Bangkok, Thailand, to Los Angeles on January 15, 2000.

Shakir, the Iraqi-born facilitator, would be arrested six days after the September 11 attacks by authorities in Doha, Qatar. According to an October 7, 2002, article by *Newsweek*'s Michael Isikoff and Daniel Klaidman, "A search of Shakir's apartment in Doha, the country's capital, yielded a treasure trove, including telephone records linking him to suspects in the 1993 World Trade Center bombing and Project Bojinka, a 1994 Manila plot to blow up civilian airliners over the Pacific Ocean." (Isikoff, it should be noted, has been a prominent skeptic of an Iraq-al Qaeda connection.)

Shakir had contact information for a lot of bad people. As noted, one was a Kuwaiti, Ibrahim Suleiman, whose fingerprints were found on the bombmaking manuals U.S. authorities allege were used in preparation for the 1993 World Trade Center bombing. Suleiman was convicted of perjury and deported to Jordan. Another was Musab Yasin, the brother of 1993 Trade Center bomber Abdul Rahman Yasin. Yet another was Zahid Sheikh Mohammed, brother of Khalid Sheikh Mohammed, the mastermind of the September 11 attacks, now in U.S. custody. Shakir also had an old number for Taba Investments, an al Qaeda front group. It was the number long used by Mahmdouh Mahmud Salim, the highest-ranking Iraqi member of al Qaeda. According to testimony from al Qaeda informants, Salim maintained a good relationship with Saddam's intelligence service.

Despite all of this, the Qatari authorities released Shakir shortly after they arrested him.

On October 21, 2001, Shakir flew to Amman, Jordan, where he hoped to board a plane to Baghdad. But authorities in Jordan arrested him for questioning. Shakir was held in a Jordanian prison for three months without being charged, prompting Amnesty International to write the Jordanian government seeking an explanation. The CIA questioned Shakir and concluded that he had received training in counter-interrogation techniques. Shortly after Shakir was detained, Saddam's government began to pressure Jordanian intelligence—with a mixture of diplomatic overtures and threats—to release Shakir. They got their wish on January 28, 2002. He is believed to have returned promptly to Baghdad.

I have discussed Shakir with nine U.S. government officials—policymakers and intelligence officials alike. The timeline above represents the consensus view.

Two weeks before the 9/11 Commission's final report was released to the public, the Senate Select Intelligence Committee released its own evaluation of the intelligence on Iraq. The Senate report added to the Shakir story.

> The first connection to the [9/11] attack involved Ahmed Hikmat Shakir, an Iraqi national, who facilitated the travel of one of the September 11 hijackers to Malaysia in January 2000. [Redacted.] A foreign government service reported that Shakir worked for four months as an airport facilitator in Kuala Lumpur at the end of 1999 and beginning of 2000. Shakir claimed he got this job through Ra'ad al-Mudaris, an Iraqi Embassy employee. [Redacted.] Another source claimed that al-Mudaris was a former IIS [Iraqi Intelligence Service] officer. The CIA judged in "Iraqi Support for Terrorism," however, that al-Mudaris' [redacted] that the circumstances surrounding the hiring of Shakir for this position did not suggest it was done on behalf of the IIS.

A note about that last sentence: The Senate committee report is a devastating indictment of the CIA's woefully inadequate collection of intelligence on Iraq and its equally flawed analysis. It is of course possible that the CIA's judgment about al Mudaris is correct, but the bulk of the report inspires no confidence that it is.

It is of course possible that the CIA's judgment about al Mudaris is correct, but the bulk of the report inspires no confidence that it is.

Consider the three new facts in this brief summary. One, Shakir himself told interrogators that an Iraqi embassy employee got him the job that allowed him to help the hijacker(s). Two, that Iraqi embassy employee was Ra'ad al Mudaris. Three, another source identified al Mudaris as former Iraqi Intelligence.

All of this information was known to the U.S. intelligence community months before the 9/11 Commission completed its investigation. And yet none of it appeared in the final report.

Two footnotes are the sum total of what the 9/11 Commission had to say about Ahmed Hikmat Shakir. Here is the more substantive, footnote 49 to Chapter 6, on page 502 of the 567-page report: "Mihdhar was met at the Kuala Lumpur airport by Ahmed Hikmat Shakir, an Iraqi national. Reports that he was a lieutenant colonel in the Iraqi Fedayeen turned out to be incorrect. They were based on a confusion of Shakir's identity with that of an Iraqi Fedayeen colonel with a similar name, who was later (in September 2001) in Iraq at the same time Shakir was in police custody in Qatar." The report is sourced to a briefing from the CIA's counterterrorism center and a story in the *Washington Post.* And that's it.

Readers of the 9/11 Commission report who bothered to study the footnotes might wonder who Shakir was,

what he was doing with a 9/11 hijacker in Malaysia, and why he was ever "in police custody in Qatar." They might also wonder why the report, while not addressing those questions, went out of its way to provide information about who he was not. Such readers are still wondering.

There is no doubt the 9/11 Commission had this information at its disposal. On the very day it released its final report, commissioner John Lehman told me that Shakir's many connections to al Qaeda and Saddam's regime suggested something more than random chance.

So how is it that the Senate Select Intelligence Committee report contains a substantive account of Shakir's mysterious contribution to the 9/11 plot, while the 9/11 Commission report—again, released two weeks later—simply ignores it?

We now know even more about Shakir's Iraqi embassy contact, Ra'ad al Mudaris. The post-Saddam Iraqi government launched its own, secret investigation of al Mudaris and his activities. Al Mudaris was a "local employee" of the Iraqi embassy in Kuala Lumpur. That is, he was an Iraqi already living in Malaysia when he began working officially for the embassy. Although Shakir named him as his Iraqi embassy contact and another source noted his affiliation with the Iraqi Intelligence Service, the U.S. government never arrested al Mudaris. He continued his nominal employment at the Iraqi embassy in Kuala Lumpur even after the Iraq war, outliving the regime that had employed him. He left that position early last fall, shortly after he was named publicly in the Senate Select Intelligence Committee report. A senior Iraqi government official tells THE WEEKLY STANDARD that al Mudaris still lives in Malaysia, a free man.

The administration should move quickly to declassify all of the intelligence the U.S. possesses on Shakir and the Yasin brothers.

By the end of last week, the demands for more information on Able Danger had reached fever pitch. The Pentagon claimed to have launched an aggressive investigation into the project. 9/11 Commission co-chairman Thomas Kean was demanding more information on Able Danger from the National Security Council. And Senator Arlen Specter, a Pennsylvania Republican who is chairman of the Senate Judiciary Committee, fired off a hard-hitting letter to FBI director Robert Mueller demanding answers to a series of questions about the Pentagon unit and its interactions with the FBI.

Answers about Able Danger would be nice, but it is surely long past time for answers on Ahmed Hikmat Shakir, Abdul Rahman Yasin, and Musab Yasin. The 9/11 Commission itself and other relevant bodies should reexamine Shakir's role in the 9/11 plot and his connections to the 1993 World Trade Center plotters. The Bush administration should move quickly to declassify all of the intelligence the U.S. government possesses on Shakir and the Yasin brothers. The Senate and House intelligence committee should demand answers on the three Iraqis from the CIA, the DIA, and the FBI.

Here are some of the questions they might ask:

• Ahmed Hikmat Shakir was arrested in Doha, Qatar, just six days after the 9/11 attacks. How was he apprehended so quickly? Was the CIA monitoring his activities? What did the 9/11 Commission know about this arrest? And why wasn't it included in the 9/11 Commission's final report?

• Who identified Shakir's Iraqi embassy contact, Ra'ad al Mudaris, as former Iraqi Intelligence? Is the source credible? If not, why not?

• Have other detainees been asked about Ahmed Hikmat Shakir? If so, what have they said?

• What do the former employees of the Iraqi embassy in Malaysia tell us about Ahmed Hikmat Shakir and Ra'ad al Mudaris?

• Has anyone from the U.S. government interviewed Ra'ad al Mudaris? If so, how does he explain his activities?

• Have the names Ahmed Hikmat Shakir and Ra'ad al Mudaris surfaced in any of the documents captured in postwar Iraq from the Iraqi Intelligence headquarters in Baghdad?

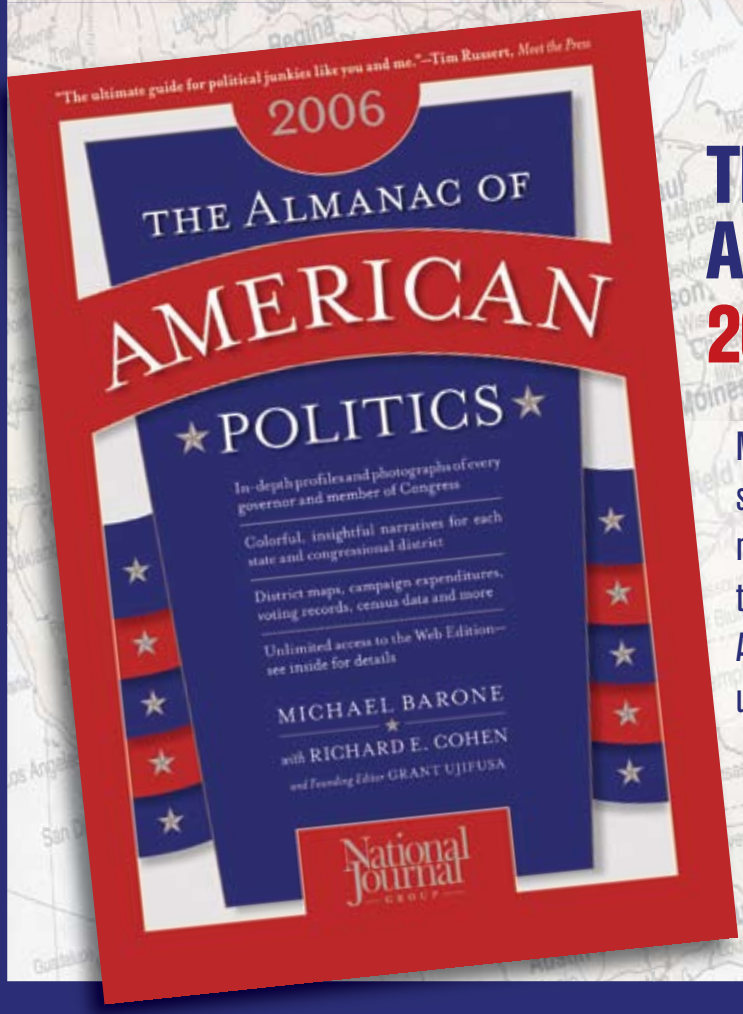
• How long was the phone call between Ahmed Hikmat Shakir and the safehouse shortly before the 1993 World Trade Center attack?

• Does the U.S. government have other indications that Ahmed Hikmat Shakir and the 1993 World Trade Center bombers were in contact, either before or after that attack?

• Vice President Dick Cheney has spoken publicly about documents that indicate Abdul Rahman Yasin was provided safe haven and financing upon his return to Iraq in 1993. The FBI is blocking declassification of those documents, despite the fact that Yasin is on the FBI Most Wanted Terrorist list. Why?

• Before Operation Iraqi Freedom, Abdul Rahman Yasin, Musab Yasin, and Ahmed Hikmat Shakir were all believed to be in Iraq. Where are they today? ♦

The Wait is Over...



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CORBIS / Richard Hamilton Smith

Red lily on Nature Conservancy land, Minnesota

In Land We Trust

The conservative approach to preservation

BY G. TRACY MEHAN III

Alexis de Tocqueville would not be surprised. It took a bit of time to happen, but happen it did. Today, Americans support more than 1,300 land trusts, nonprofit organizations that conserve land—open space, habitat, scenic vistas—primarily through purchase and gift of land and conservation easements. These nongovernmental, voluntary associations of like-minded citizens have protected more than 6.2 million acres, an area twice the size of Connecticut, according to the Land Trust Alliance, which tracks these things. This is a 226 percent increase over the 1.9 million acres protected in 1990.

Tocqueville, one Frenchman who will never be out of favor in this country, recognized that

> Americans of all ages, all conditions, and all dispositions constantly form associations. They have not only commercial and manufacturing companies, in which all take part, but associations of a thousand kinds, religious, moral, serious, futile, general or restricted, enormous or diminutive. The Americans make associations to give entertainments, to found seminaries, to build inns, to construct churches, to diffuse books, to send missionaries to the antipodes; in this manner they found hospitals, prisons, and schools. If it is proposed to inculcate some truth or to foster some feeling by the encouragement of a great example, they form a society.

Nature's Keepers
The Remarkable Story of How the Nature Conservancy Became the Largest Environmental Organization in the World
by Bill Birchard
Jossey-Bass, 252 pp., $24.95

He noted how this was a uniquely American predisposition: "Whenever at the head of some new undertaking," he wrote, "you see the government in France, or a man of rank in England, in the United States you will be sure to find an association." The first land trust was established in 1891 in Massachusetts, by landscape architect Charles Eliot, to preserve 20 acres of woodland. By 1950 there were still only 53 land trusts operating in 26 states. Today, similar grass-roots organizations protect land in all 50 states, the District of Columbia, and Puerto Rico.

The growth in the number of these private institutions is due, in part, to the nation's increasing prosperity and the rise of the original conservation movement and modern environmen-

G. Tracy Mehan III, a principal in the Cadmus Group, an environmental consulting firm, served at the Environmental Protection Agency under President George W. Bush.

talism. It is also a reaction to the accelerated pace of development that inevitably accompanies a growing population and a thriving economy. The Department of Agriculture's Natural Resources Conservation Service reports that, between 1997 and 2001, 2.2 million acres were developed. Yet the Land Trust Alliance's most recent census of land trusts reports that, from 1990 to 2000, local and regional trusts conserved open space at a rate of about 500,000 acres per year.

The Little Traverse Conservancy, in northwest Michigan, is an example of this brand of local stewardship. It focuses on the area surrounding the bay of the same name on Lake Michigan. Since 1972, it has protected 22,400 acres and 67 miles of lake and stream frontage for public use and enjoyment, natural beauty, and resources protection. Recently, the Conservancy acquired a 200-acre parcel with a mile and a quarter of river front on both sides of the Pigeon River, a "blue ribbon" trout habitat with deep pools.

Conservationists have extended the trust concept to water in the drought-prone West, where maintaining minimum stream flows for fish, wildlife, and plants is a daunting task. In 1993, the Oregon Water Trust began buying and transferring valuable rights to water for the purpose of maintaining streamflows. Donors such as the Orvis Company support its work. Other states have emulated this example as a cooperative, voluntary means of reconciling traditional Western water law ("First in time, first in right") with conservation objectives.

The Nature Conservancy, incorporated in 1951 as a nonprofit entity and successor to the Ecologists Union, is the Ohio-class boomer of land trusts and conservancies. Starting out as a shoestring outfit on a corner along K Street in Washington, with modest offices over a prosthetics shop, it has become a gigantic organization with a commanding presence in worldwide conservation. It is now the largest environmental group in the world, bringing in over $800 million each year. It employs 3,450 people operating from 400 offices in 50 states and 28 countries. It protects more than a million acres of land a year, for a total of 120 million acres to date. And it has 1,500 trustees of boards in each of the states, and one million members and supporters.

The story of this singular American institution is the subject of Bill Birchard's account. Relying on 225 interviews and thousands of documents, Birchard offers a compelling narrative, covering more than half a century, revolving around the stories of individuals who either shaped or epitomized the Conservancy's mission and institutional culture. As a journalist who has covered both management and the environment, he provides an extended case study of managerial challenges, successes, failures, and adaptation to change in the context of an institution whose mission is "to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive."

Each chapter illustrates a lesson in terms of the success of the Conservancy, such as developing strong and effective leaders, avoiding mission drift, and establishing a high-performance culture. Richard Jenkins was a scientist who joined the Conservancy in 1970, and posed two fundamental questions: What should it be doing, and what is it able to do? Certainly, the organization was interested in land preservation, but preservation for what, exactly? As related by Birchard, Jenkins's answer was that "it should be protecting the diversity of life on earth, in particular lands rich with rare species and habitats." As to what it was able to do: "It can zero in on the unique; it can assemble a select collection of the diverse. In short, the Conservancy can preserve a 'Noah's Ark' of biological components."

To institutionalize this approach, Jenkins classified Conservancy properties with the top class being "ecosystem preserves," the mostly pristine, undisturbed lands big enough to save many components of a diverse system. The next class was "species and special features preserves," which were populated with endangered or rare species. The remaining classes were scientific preserves, open space preserves, and "trade lands," which lacked ecological significance but were tradable for better property or cash. Ideally, the organization would devote time and resources mainly to the top class.

With hindsight, this seems like Management 101. But in 1971, half of all the Conservancy's land projects fell under 25 acres in size, 30 percent under 10 acres—too small to protect ecological integrity. "Jenkins maintained that buying the wrong lands could be worse than buying none at all. Because development was inevitable, protecting land in one spot actually drove developers to other spots," writes Birchard. "If the Conservancy locked up low-grade lands, it could deflect the bulldozers to high-grade ones, thereby intensifying rather than alleviating environmental harm."

One of the distinguishing features of the Conservancy, in contrast with many national environmental organizations, is its devotion to the principle of nonconfrontation with donors, sellers of land, governments, and a wide range of stakeholders, including farmers, hunters, tribes, and environmentalists. This is the legacy of Patrick F. Noonan, president of the Conservancy in the 1970s and, subsequently, founder of The Conservation Fund, which has protected over 4 million acres of land in the United States in the last 20 years.

Noonan was a master dealmaker whose enthusiasm was infectious. His biggest inland deal involved the Great Dismal Swamp in Virginia, a 250,000-acre tract of evergreen shrub bogs, loblolly pine barrens, cypress swamps, and mixed forest of maple, pine, and white cedar. Prices were likely to soar, given plans to run Interstate 64 across the northwest edge of the swamp. As Birchard tells the story, Noonan approached Union Camp, the owner, to talk about conserving a core tract of 49,097 acres. Given the need to protect the stockholders, Noonan knew the Conservancy could not afford to pay the appraised value of nearly $14 million.

"Taking into account the company's cost basis, tax bracket, net income, and so on, Noonan convinced Union Camp chief executive Alexander 'Sox' Calder that a donation for conservation was the highest and best use of the land," notes Birchard. "The deal earned Noonan a towering reputation . . . it became Exhibit One in the case for the power of the Conservancy's culture at the time—business-friendly, nonconfrontational, results-oriented, fast-acting, and aggressive."

In courting the business sector, Noonan was often criticized for taking tainted money, to which he replied: "The problem with tainted money is there taint enough."

Of course, not everything the Nature Conservancy did was pleasing to all parties. As noted, some thought it too accommodating to business. Local officials objected to some past practices, like using straw parties to buy up properties contemplated for development. Property-rights advocates objected to it serving as a surrogate for government land acquisitions. Birchard quotes Peter Drucker, the dean of management consultants: "Whom the gods would destroy, they first give 40 years of success." He vividly illustrates this in a final chapter focusing on the recent crises engulfing the Conservancy after a series of stories in the *Washington Post* ("Nonprofit Land Bank Amasses Billions"), a Senate Finance Committee investigation, and an IRS audit involving alleged self-dealing, overvaluation of in-kind donations, and other (infrequent) abuses, all of which rocked the house in 2003. Even a green, not-for-profit organization must learn the hard lessons of corporate America in terms of governance, accountability, and transparency.

Ira Millstein, a prominent New York attorney and expert on corporate governance who was recruited for an outside panel to advise the Conservancy on its troubles, claimed that the organization suffered from "a debilitating attitude of hubris." Nevertheless, under the leadership of its current president, Steven McCormick, and with the support of its board, the Conservancy bit the bullet on governance and oversight reforms with a newfound appreciation of the virtue of humility. Ironically, this crisis of confidence—in this most successful of nonprofit organizations—required that its board, in the words of Millstein, "operate more like a for-profit board," which views its donors and other constituencies as functional equivalents to stockholders.

Given its size, wealth, and reach, not to mention its mission, it is encouraging to learn that the Nature Conservancy, in Birchard's words, "retains the ability to renew itself—whether forced to do so from a sudden crisis or spurred to do so by the challenge of constantly working smarter or faster—and can survive to fulfill the growing needs of its constituencies, decade after decade." ♦

BCA

Sakharov Watch

Fearful police state meets brave dissident.

BY HARVEY KLEHR

From 1968 until his death in 1989, the KGB sent hundreds of reports to the Soviet leadership about the activities of Andrei Sakharov, once one of the USSR's most decorated and senior atomic scientists until his conversion into one of its most prominent dissidents. Along with Aleksandr Solzhenitsyn, Sakharov became a worldwide symbol of resistance to Communist repression. Unlike the famous writer, whose brooding Slavic mysticism sometimes discomfited Western audiences, Sakharov couched his arguments in the language of the Western enlightenment and liberalism. Possessing important state secrets from his days as one of the chief designers of the Soviet hydrogen bomb, and enjoying perquisites from his many state awards and positions, he could not simply be stripped of his citizenship and dumped in the West like Solzhenitsyn.

The KGB File of Andrei Sakharov
edited by Joshua Rubenstein and Alexander Gribanov
Yale, 448 pp., $45

Joshua Rubenstein and Alexander Gribanov have collected and published most of the 200-odd KGB reports given to Sakharov's widow, Elena Bonner, after his death. The picture they provide is a catalogue of horrors, the story of a regime willing and able to resort to all manner of dirty tricks to defame and destroy one man and his family. At the same time, however, it is also a tale of epic courage and consistency, a reminder of the bravery and moral fortitude exhibited by a small group of dissidents who helped to bring down one of the most repressive regimes in human history.

The Soviet dissident movement began to coalesce in 1967-1968, following growing disappointment at the failure of de-Stalinization, increasing repression occasioned by the crushing of the Prague Spring, and the growing willingness of dissidents to use the Western press to publicize their activities. Sakharov was unlike many of the other dissidents. A senior scientist, born in 1921 into a distinguished family, he had, like his father, become a physicist. He did graduate work after World War II, and in 1949 was drafted into nuclear weapons research. Reluctantly, he became the principal designer of the Soviet Union's first hydrogen bomb. He was rewarded for his scientific prowess with three Heroes of Socialist Labor awards, the Stalin

Harvey Klehr is author of In Denial: Historians, Communism, and Espionage.

Ronald Reagan and Andrei Sakharov, 1988

Time & Life Pictures / Getty Images / Diana Walker

prize, the Lenin prize, a large salary and privileges, and election as one of the youngest members of the Soviet Academy of Sciences.

One of the spurs to his activism was concern about the political distortions of science. In 1952, after a public attack on Albert Einstein's theory of relativity and quantum theory for violating Marxism, Sakharov and other physicists warned Lavrenti Beria that the party needed to leave physics alone or risk the same kind of disaster as had befallen Soviet biology after Trofim Lysenko had imposed political controls on scientific research. Within a year, Sakharov was writing private letters to party leaders defending cultural freedom and particular individuals who had run afoul of the authorities. Meanwhile, he was also becoming troubled about nuclear fallout and unhappy about Soviet resumption of above-ground nuclear tests in 1961. He signed his first public petition in 1966, and that same year took part in a public protest on behalf of political prisoners.

The first document reprinted in the book is the report written by Yuri Andropov, head of the KGB, to the Central Committee in May 1968 about "Progress, Coexistence, and Intellectual Freedom," the manuscript whose publication in the West would vault Sakharov into prominence. Andropov explained that it approached questions "mainly from an anti-Marxist position," such as the belief that capitalism and socialism could converge, and that it called for democratization, demilitarization, and intellectual freedom. Concerned that Sakharov would be "exploited" by the dissident movement, Andropov recommended that someone in the party leadership sit him down for a stern talk.

Once he began his public defiance of the regime, Sakharov quickly became a major embarrassment and irritant to the Kremlin. He became a founder of the Moscow Human Rights Committee in 1970, stood vigil at trials of dissidents, wrote appeals on their behalf, and met constantly with Western correspondents. As he lost faith in the willingness of the regime to change its policies, Sakharov also sharpened his political sense, appealing to the United States Congress in 1973 to pass the Jackson-Vanik amendment, linking Soviet most-favored-nation trade status to freer emigration of Soviet Jews. To the enraged Andropov, he had become, by 1976, "Domestic Enemy Number One."

During the Stalin years, domestic enemies did not long survive. Numerous dissidents were arrested or confined to psychiatric hospitals throughout the 1960s and '70s, but Sakharov presented special problems for the regime. Andropov frequently discussed arresting him, but in the 1970s, the Soviet desire to extend détente and gain economic assistance from the West limited the leadership's options. American pressure, from both the government and public opinion, was one constraint. Even some European Communist parties, long supinely supportive of every twist and turn in Soviet policy, expressed dismay about repression and warned that their own reputations were at risk. While the KGB threatened Sakharov with arrest, defamed him, and tried occasional acts of intimidation—after he urged a peaceful settlement of the Middle East conflict and criticized Soviet support for the Arab world during the Yom Kippur war, two men claiming to be from Black September showed up at his apartment and threatened his children and grandchildren—the government grew increasingly frustrated at its inability to stifle this one man. In July 1975, after Sakharov warned that he would appeal to Western governments preparing to finish negotiations on the Helsinki Final Act, the Soviet Union finally allowed Elena Bonner, Sakharov's Jewish wife, to go to Italy for medical treatment. That October, Sakharov received the Nobel Peace Prize, triggering a spate of nasty "operational measures" designed to discredit him, but indicating just how obsessed the Soviet leadership was with one individual.

The Helsinki Act proved another thorn in the Soviet side. In return for Western recognition of the post-World War II borders in Eastern Europe, the Soviet Union had agreed to a series of humanitarian guarantees, including respect for "freedom of thought, conscience, religion," promotion of civil and political rights, and equality before the law for ethnic minorities. Because the Act also invoked the principle of nonintervention in any country's internal affairs, the Soviets were confident they could ignore the guarantees. The regime's crackdown on dissidents accelerated in 1974, just as the final negotiations were taking place, with arrests and expulsions, including Solzhenitsyn's. But one provision required publication of the accords in *Pravda* and *Izvestia*. It inspired the dissidents to set up a Watch Committee to

monitor Soviet compliance with Helsinki. As the committee reported on violations and abuses, Western pressure, in turn, increased.

By 1980, Andropov and his aging cohort had had enough. Sakharov had forcefully condemned the Soviet invasion of Afghanistan the year before, and called for a boycott of the Moscow Olympics in an interview with the *New York Times*. No longer worried about offending Western public opinion, the government shut off Jewish emigration and exiled Sakharov to Gorky. Until her conviction in 1984 of anti-Soviet slander, his wife was still able to travel to Moscow and pass along his writings and views to correspondents, including his opposition to a nuclear freeze and support for Ronald Reagan's decision to build MX missiles.

The Soviet leadership never understood what motivated Sakharov or how ineffectual their methods were. In 1971, Andropov told Leonid Brezhnev that the scientist was consumed by guilt because of his role in building the hydrogen bomb—although there is far more evidence that it was his commitment to intellectual freedom and democracy that drove him. At a Politburo meeting in 1985, Mikhail Gorbachev blamed Bonner for manipulating him, and linked her to a more sinister enemy: "That's what Zionism really is." But in one important sense the Communists understood just how much of a threat he posed: In 1975, after Sakharov received the Nobel Prize, Andropov wrote to the Central Committee to explain that tolerating dissidents was "fraught with the most negative consequences."

In Gorky, Sakharov faced psychological intimidation, dirty tricks, vandalism, radio jamming of his apartment, and theft of his manuscripts. KGB harassment drove Bonner's son's fiancée to attempt suicide. In one particularly egregious attack, in 1982, a thug smashed Sakharov's car window, stunned him with a drug, and stole his memoirs from the back seat. He undertook periodic hunger strikes in protest and was force-fed. His health deteriorated.

Only after the deaths of Brezhnev, Andropov, and Konstantin Chernenko; the Chernobyl disaster, exposing the ossification of the regime; and Gorbachev's realization that the tried and true ways of the past were dead ends, did Sakharov's situation improve. Throughout 1986 there were signs of relaxation—a few political prisoners released, Anatoly Sharansky exchanged for a Soviet spy—and in December that year Gorbachev telephoned Sakharov and informed him he was free to return to Moscow. Typically, the scientist used the occasion to press for the release of all political prisoners.

As *perestroika* and *glasnost* gained steam, Sakharov became their most visible symbol. While he incurred the anger of some dissidents for his qualified support of Gorbachev, he remained an implacable opponent of the Communist monopoly on power. Elected to the Congress of People's Deputies in 1989, he spoke more than anyone else at the televised proceedings, standing up to the party leader in defense of democracy. The Soviet public got its first glimpse of the man so reviled for decades by the state-controlled media. One poll showed that he was more respected than Gorbachev, a result that led Gorbachev to threaten to fire the pollsters. Gorbachev cut off Sakharov's microphone at one session, angered by his criticisms and irritated by his work to create a formal opposition to the Communist party. Sakharov died of a heart attack two days later, on December 14, two years before the entire rotten edifice collapsed.

Andrei Sakharov's legacy is by no means assured. This year, for the first time since his death, the annual memorial concert in his memory was not held in Moscow. Governed by KGB veterans like Vladimir Putin, Russia is teetering on the edge of authoritarianism. This book is a welcome reminder of a very different part of the Russian tradition. ♦

BCA

As I Lay Reading

Oprah makes the pilgrimage to Yoknapatawpha.

BY DAVID SKINNER

I am a member of the Oprah Book Club, though perhaps not in good standing, having once complained in print that while Oprah Winfrey was certainly a great lover of books, she was no lover of great books.

A couple of years and one major showdown with Jonathan Franzen later, the big O chucked her monthly routine of showcasing mediocre new fiction for a reading commitment that is both looser and more respectable: one classic author about once a year. The result has been a run of books to warm the heart of high school English teachers everywhere: *One Hundred Years of Solitude*, *The Good Earth*, *East of Eden*, *Anna Karenina*.

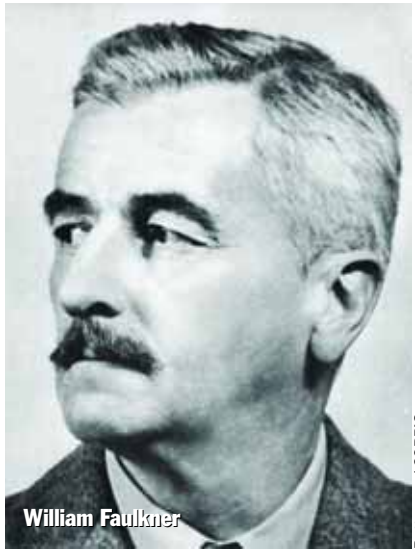
As if those weren't respectable enough, this summer Oprah chose a three-pack of William Faulkner novels: *As I Lay Dying*, *The Sound and the Fury*, and *Light in August*. The public response was largely appreciative. Writing in the *Nation*, J.M. Tyree called the selection "nothing less than a sneak attack on the whole idea of beach reading—and of the intelligentsia's perception of [Oprah] as the Queen of Midcult." Indeed, Oprah's choice of Faulkner, America's most celebrated modernist, seemed well calculated to contradict the idea of her book club as little more than an unwelcome reminder that Anna Quindlen also writes novels.

But before the reformed Oprah

David Skinner is an assistant managing editor at THE WEEKLY STANDARD.


Oprah Winfrey

CORBIS / Steve Azzara


William Faulkner

Bettmann / CORBIS

Book Club is toasted as the best thing since the Penguin Classic paperback, let's consider Oprah's "Summer of Faulkner" as a reading experience.

I'll use *As I Lay Dying* as the example because I've read the other two and could not approach them with the same freshness of perspective my fellow club members bring to the task.

By page two, I am already struggling with the dense imagery as a character walking along a row of crops comes to a cottonhouse. He steps through a window and crosses the floor in four strides "with the rigid gravity of a cigar store Indian dressed in patched overalls and endued with life from the hips down, and steps in a single stride through the opposite window." Ah yes: This guy enters a cottonhouse through the window, like a cigar-store Indian, but one in overalls who can also walk (and/or possibly have children because he is "*endued* with life from the hips down"), then he exits through another window.

Small house. Big legs. Open windows. Got it. Going over Faulkner's sentences only takes about 10 minutes each.

Fortunately, help is available on the book club website, where Faulkner scholars give brief, very general, lectures, and write answers (sometimes helpful) to readers' questions. The *As I Lay Dying* expert Robert Hamblin, director of the Center for Faulkner Studies at Southeast Missouri State University, says that I, the reader, should be patient. He suggests I think of the book as a mystery with me as the detective. Or as a jury trial with me as the jury. "Or, better, think of Faulkner's novels as symphonic in structure," writes Hamblin.

Whichever it is, it's a lot of work. One hundred and fifty pages in, I suddenly know what's going on. You have this family of crazy hillbillies who are carrying their dead mother in a homemade coffin to bury her in the town where she was born—her parting wish having been, Get me the hell out of here. Along the way, hijinks ensue. Rain comes and washes out a bridge. The caravan tries to go straight across the stream and the wagon capsizes. One of the brothers breaks his leg in the process, so to carry him, he is strapped atop the coffin so they can continue the journey. Meanwhile, buzzards are following the pungent scent of carrion and the sight of wounded flesh, which incidentally is quickly growing gangrenous because the one with the broken leg doesn't want to delay the caravan by seeking medical treatment. The videobox version might read: A bunch of retards who can't do anything right come near to destroying themselves and others to satisfy the only noble impulse they've had in years.

"Symphonic!" raves Robert Hamblin.

The website and the message boards allow readers to air their private theories and ask what in the world is going on. Literary discussion is often delayed by conversations about travel and family and what to do in the event of a terrorist attack. Readers can make use of a glossary for Faulkner's funny spellings ("chillen"=children, "rutting: to have a strong sexual impulse at the reproductive period") and learn from Professor Hamblin how to say Yoknapatawpha, the name of the (fictional) county where Faulkner sets most of his novels. (I just call it Youcantpronouncethe County.) The pedagogical method is to assume that the reader knows nothing.

What's most striking about Oprah's choice of Faulkner is rarely mentioned: how radically Faulkner diverges from the self-congratulatory spirit at the heart of the Oprah philosophy. The family in *As I Lay Dying*, the Bundrens, are low beings, barely civilized, suffocating burdens to themselves and others, eking out a hard life from the land. They are victims of circumstance—but predators, too. Chained to their awful fates by family and history, they lack the sweet and divine spark of self-creation that's at the fingertips of every human being, according to Oprah's many statements on the subject.

"The reason for living," according to Addie Bundren, whose corpse is the one being transported, is "to get ready to stay dead for a long time." For Oprah, life's great aim is to be your most amazing, beautiful, and beloved self.

Yet what brings Oprah to Faulkner is clearly related to this very divide. Her critics say she's not literary? That she's not deep? Well, she'll show them. She'll read the hardest, greatest, novels around, ones fraught with Major Issues like Race and Tragedy and Violence. They'll never call her a lightweight again. Of course, this is classic A-student behavior, in which all intellectual work becomes a project in search of extra credit, while the true lover of literature quietly works at the feet of masters, never imagining that if he just sets his mind to Faulkner for a summer, he'll have been there and done that. ♦

Rules For Nations

'International Law' is a matter of convenience, not principle. **BY THOMAS MEANEY**

International Criminal Tribunal for Rwanda, 2000

CORBIS / Sygma / Jacques Langevin

Two years ago, when Jacques Chirac condemned the American war in Iraq as "illegal," he was conforming to a tendency, in vogue among European elites, of invoking international law as a rallying cry against American power. American conservatives were content to ridicule a president citing international law to save his own skin, but few dared to question the legitimacy of international law itself.

More recently, however, international law has come under fire by John Bolton, among others, in an attempt to explore options for United Nations reform. In a refreshing and timely new study, Jack Goldsmith and Eric Posner argue that the current underlying assumptions of international law fundamentally misunderstand the way the world works, and thus provide an unstable legal bedrock for many international institutions.

The dominant academic theory of international law posits that states comply with international law because it is legally binding and the morally right thing to do. Even if it is not in their interest, states will still operate under international law out of respect for its universal legitimacy. International legal norms, so the theory goes, will eventually trickle down and shape a state's domestic behavior with regard to the environment, human rights, and so forth.

The Limits of International Law
by Jack L. Goldsmith & Eric A. Posner
Oxford, 262 pp., $29.95

Goldsmith and Posner take issue with this elaborate fantasy. Armed with rational-choice theory, they systematically demonstrate that states comply with international law only when it serves their interests—interests that are rarely governed by international legal considerations.

Ambassadorial immunity, for instance, is commonly taken as a textbook example of the international community committing itself to a binding legal principle. States agree not to interfere with each other's diplomatic personnel out of deference to international law, and as a way of providing peaceful means for settling international disputes. But that is not the real motive for compliance, according to Goldsmith and Posner. The United States and the Soviet Union maintained diplomatic relations during the Cold War because they both had an interest at stake in those relations (each also had an embassy in jeopardy). The Soviet-U.S. coincidence of interest existed regardless of, rather than because of, any international legal norms.

Back in 1914, when the State Department discovered that a German attaché was conspiring against the neutrality of the United States in World War I, diplomatic immunity did not protect him from the American justice system. When the balance tips in favor of self-interest, a state—whether it be the United States, France, or Pakistan—will make an exception to international law in a heartbeat.

Why, then, do countries make use of international law if it holds so little weight? Precisely because international talk is cheap, say Goldsmith and Posner. In the case of human rights treaties such as the International Covenant on Civil and Political Rights, states like Rwanda, Iraq, and Afghanistan were happy to ratify it because appeasing the international community could only bring them economic benefits, especially since they knew the treaty would not be enforced.

Historically, states have cloaked their intentions in the rhetoric of international law to avoid immediate reprisals for their actions. In its early years of conquest, Hitler's Germany was remarkably diligent about paying lip service to international law and treaties as a way of obscuring its strategic motives. Paying tribute to international law is, in fact, one of the best ways a government can conceal self-interest and rationalize its policies in moral terms.

The real problem with international law is not so much that it is weak—it could, after all, be more rigorously enforced—but that its philosophical foundations are faulty. Conservatives commonly draw attention to the fact that international law is inimical to

Thomas Meaney is a writer living in New York.

democracy in that it imposes a nebulous international will on locally elected governments. That much may be clear, but the authors point out that much of the problem owes to an endemic conflation of international law and moral obligation. Moral obligations, they argue, have no place in international law. Governments in states change hands too often for moral obligations to be expected of any state; and, at the international level, moral obligations make international law vulnerable to political exploitation.

Moreover, the ultimate purpose of a state is to secure rights for its own citizens, not to perform charitable acts that are better carried out by institutions designated for that purpose. In the view of Goldsmith and Posner, treaties modeled on trade agreements are among the most effective ways for states to come together.

When Jacques Chirac called the war in Iraq "illegal," he was hoping to cash in on the confusion about international law. But to properly deem any international action "illegal" in terms of international law, one would have to argue that the *status quo* for the international rules of war was good and should not be violated. In the case of Iraq, that would mean arguing that a slow-in-coming U.N. mandate should have trumped military necessity.

To understand the limits of international law, the authors argue, one must understand international law as a record of traditional international behavior that can only be regulated by states' current actions. Understood as such, international law can only be altered and improved by violations, in much the same way the Constitution violated and improved upon the Articles of Confederation. Though they may sound at times like old-fashioned champions of the nation-state, Goldsmith and Posner believe that only by appreciating these limitations of international law can the institution be made more effective.

In this pragmatic spirit, *The Limits of International Law* makes for a valuable contribution to international relations and a useful book for lawmakers and laymen alike. ♦

Venice the Menace

Or, what I saw at the banal Biennale.

BY P.J. O'ROURKE

Venice

How bad does modern art stink? Every two years since 1895 (war and such allowing) the Venice Biennale has gathered new masterpieces from around the world in a place and at a season where the reek of genius can be accurately compared to the warm weather aroma of the Grand Canal. Dr. Johnson defined art as "the power of doing something which is not taught by nature." What's in the canal is something nature teaches us to do from our first hours of infancy. It is as nothing to the power of art.

Like most sensible people, you probably lost interest in modern art about the time that Julian Schnabel was painting broken pieces of the crockery that his wife had thrown at him for painting broken pieces of crockery instead of painting the bathroom and hall. Or maybe you lost interest back when Andy Warhol silkscreened canned lunch for the kiddies and oddments from under the kitchen sink. There's been so much to be so uninterested in. And yet, astonishingly, modern art has gotten less interesting.

I didn't know this. I was more prepared to be irked than bored. The Biennale consists of national pavilions, mostly from Europe or Europe-aping countries. One or more brilliant creative types are selected to fly the flag. Given how Europeans feel about America, I doubted many of the flags flown would be the stars and stripes. There are also two curated shows, the largest in the Arsenale, the former Pentagon of Venice. The city-state projected its great military and commercial might from the Arsenale, which now sits empty between art shows nicely symbolizing progress of the arts, other than the arty ones, in Europe today: arts of manufacture, diplomacy, and war.

But I wander from the irksome subject at hand. The curators of the shows are, for the first time in 51 Biennales, women. Thus I expected to be Hectored, or I should say, Hecuba'd. Rosa Martinez and Maria de Corral are also from Spain, a nation that reacted to terrorism by promptly reverting to socialism at home and poltroonery abroad. Aren't those the preferred artistic policies? I assumed modern artists were all members of the great bohemian turkey flock of ardent individualists, looking up with beaks uniformly agape at identical high ideals of world peace, economic justice, ecological harmony, and government funding for the arts. Before my visit to the Biennale I supposed that all artists thought alike. It never occurred to me that they didn't think at all.

For example, German artist Gregor Schneider wanted to reproduce the Ka'bah of Mecca full scale in the Piazza San Marco. Imagine the delight of Islamic fundamentalists at slews of American cruise ship day trippers and half a million pigeons on *hajj.* Authorities in Venice demurred, and Schneider was reduced to playing with Photoshop on his Macintosh. (Although computer-generated artificial intelligence eludes us, artificial stupidity has been perfected.)

But most of the Biennale's thoughtlessness did not produce thoughts of potential consequence or (I've checked my notes) any thoughts at all. Mona

P.J. O'Rourke is a contributing editor to THE WEEKLY STANDARD *and author, most recently, of* Peace Kills.

Hatoum from Lebanon built a 10-foot wide circular sandbox with a pair of motorized blades mounted in the center. One blade raked ridges in the sand while the other smoothed them out—an automatic Zen garden, the lazy way to a perfectly empty mind. And Italy's Bruna Esposito scattered onion skins on marble floor tiles and, remarkably, did not title it "Get the Broom."

Dimbulb was more than a metaphor at the Biennale. It was often too dark in the galleries to read the names of the works and artists. As if I cared. Somebody put a bunch of portable typewriters missing most of their keys on school desks so that the thoughts of art-lovers could be thumb-tacked to the wall. I quote one verbatim: ".....8888889999993333." Someone else tied a blindfolded teddy bear to a stick in a room full of upholstery with the stuffing yanked out. It's not your-kid-can-do-this art. Your kid does this and you're on the phone to the child psychiatrist emergency help line.

Didacticism was to be found, of course. Argentinean Sergio Vega urged Biennale patrons to have their photograph taken next to a handcuffed mannequin with a burlap bag over its head. Alas for poor Pfc. Lynndie England, if only she'd been an aesthetic type. And the first thing I saw entering the Arsenale was manifestos from some U.S. art collective calling itself Guerrilla Girls. Among these was a parody of a coming-attractions poster: *The Birth of Feminism* starring Pamela Anderson as Gloria Steinem, Halle Berry as Flo Kennedy, etc. The tag line: "They made women's rights look good. Really good." As the Devil whispered to Rudyard Kipling (but recused himself from whispering to the Guerrilla Girls), "It's clever, but is it art?" Actually it's not clever. The Guerrilla Girls are too young to remember what a babe Gloria Steinem was. She made Pamela Anderson look like, well, Flo Kennedy. And the Guerrilla Girls are too old to realize how beside the point their point is.

Here's Indy driver Danica Patrick interviewed in *Newsweek*: "Are you the Gloria Steinem of racing?" "The what? I don't even know who that is."

Hanging beside the blather was a chandelier fashioned by Joana Vasconcelos from 14,000 tampons. Maybe this was an indignant statement about drudgery enforced by gender constructs—darn hard to light for dinner parties. Maybe this was an ironic commentary on a visit to Venice where everybody's wife wants to buy a great big incredibly expensive Murano glass chandelier. Or maybe this was just a waste of time.

The modern art of 2005 wastes more time than the modern art of yore did. You could walk right by a Jackson Pollock drip canvas in half a second. Not so with the dominant creative medium of the Biennale, video art, the finger paint of the 21st century. I experienced, as quickly as I could, 36 examples of the form and doubtless missed many others because I would stumble into pitch-black exhibition spaces that smelled strongly of face-pierced video art aficionados and would bolt before anything video transpired. Also there were a number of national pavilions, such as Albania's, that I wasn't able to find.

Reuters Photo Archive / Chris Helgren

Joana Vasconcelos's tampon chandelier

Herewith, a sampling of Boring Video Downloads, or BVDs: lonely-looking people talking to the camera; lonely-looking people not talking to the camera; people looking lonely; people with light bulbs over their heads, which would indicate ideas if this were a comic strip but since this is video art it doesn't; the Rosetta Stone being dusted; pictures of an empty movie theater; pictures from an empty movie projector; someone's sweaty, hairy back; a city skyline with trash piling up in the foreground in the shape of the skyscrapers (get it?); a fellow who has turned a kitchen table upside-down, attached an outboard motor to it, and is cruising across a bay; a man in a bear suit living in the Berlin Zoo; cardboard cartons rigged with overhead projectors so that viewers look into boxes full of little naked people engaged in mildly prurient activities; a man in a waterfall with real water falling in front of the video screen (get it?); and an imaginary trailer for an imaginary remake of Bob Guccione's all-too-real 1979 smut-flop *Caligula* featuring—in a successful attempt to capture the alpha of boring and the omega of thoughtlessness—guest appearances by Gore Vidal and Courtney Love.

John Stuart Mill said that the purpose of art is "the employment of the powers of nature for an end." Specifically, the huge, flabby hind end of a transvestite named Leigh Bowery in a video showing spring-loaded clothespins being attached to tender parts of his body. He deserved it. Nearby was Regina José Galindo's video of herself having her hymen surgically restored in extreme close-up. I will forgo description of the luncheon fare available at the Biennale. Fabulous Italian

food may be of interest to readers, but not on the way back up. (Memo to video auteurs: There already is a method of turning moving pictures into art. It's been in use since *The Birth of a Nation*.)

Among the many uninteresting things about the Biennale was the dearth of artworks that you'd like to have or to hold or to look at again as long as you live even if they were done by a beloved (if psychiatrically disturbed) son or daughter. The aptly named Louise Bourgeois had some aluminum sculptures that were blobby and intestinal in a nice kind of way and would look great on my mantle if my mantel were three feet wide. And I was enthralled by Subhoda Gupta's rows and rows of stainless steel shelving carefully stacked with pristine cooking utensils. Gupta, who is Indian, went straight to the point with his title: "Curry." My guess is that he's not an artist at all but is bucking for a green card as a kitchen designer.

In the entire Biennale there was exactly one good new artist, Ricky Swallow, lone exhibitor at the unprepossessing, not to say prefab, Australian pavilion. Swallow created a full-sized tableau of a seafood catch spread ready for the cook with the tablecloth pushed to one side of the table and including lobster, mullet, a bucket of oysters, and a half-peeled lemon all seemingly carved from a single block of maple. Among Swallow's other brilliant whittlings was a medallion of hanging game in the manner of the 18th-century master British woodworker, Grinling Gibbons, but with a couple of wild card Aussie lizards thrown in. And there was a perfectly rendered bike helmet with serpents entwined among the straps and ventilation slots. That's my opinion of the Tour de France, too. The docent at the pavilion, instead of busily looking aloof like his counterparts, said, "G'day, Mate."

The Czech pavilion had a lot of ball bearings on the floor. In the German pavilion people had been hired to yell at you. The Icelandic pavilion was made from twigs and branches. Icelanders respect nature so much they've given their beavers MFAs. The Hungarian pavilion was full of deep sea diving suits dressed in pajamas and wellie boots. The Swiss pavilion had an enormous digital clock ticking off the "5 Billion Year Countdown Until the Explosion of the Sun." Cuckoo. The Austrian pavilion was entirely built over in a shapeless jumble that looked like someone had taken Frank Gehry's titanium away and made him work in two-by-fours and tarpaper. It was an improvement on Gehry Partners' Walt Disney Concert Hall in Los Angeles.

The U.S. pavilion featured talentless airbrush artist Ed Ruscha's airbrush renderings of industrial buildings of no note. But the air conditioning was excellent. An Argentinean artist built a room from sheetrock and punched a lot of holes through the walls. Who can blame him? The air conditioning wasn't functioning at all in there. I saw an impressive constructivist work of bolted steel and wire mesh, but it turned out to be the Arsenale's freight elevator. Phone kiosks in the shape of giant fiberglass parrots with receivers and dial pads between their wings seemed better than art until I discovered they *were* art. Title: "Global Warming."

Jennifer Allora and Guillermo Calzadilla created a beautiful hippopotamus in heroic scale, but they sculpted it from that noble material, that enduring element, mud. Crumpled newspaper was scattered around, I guess so you could wipe the hippo off your feet before going on to the next exhibit. Pascale Marthine Tayou tangled hundreds of plastic shopping bags into a net to create a scene identical to roadside fences all over the Third World. In fairness, Tayou is from Cameroon. And the sophomoric smart ass mouth-breathing medal goes to Daniel Knorr of Romania, who left the Romanian pavilion empty and called it "European Influenza."

Still, I departed the Venice Biennale with joy in my heart. Partly because I was glad to leave, but more so from learning that all the awful people whose *oeuvres* I had just endured have something to keep them busy. In another era such crackpots would have been excluded by sheer lack of skill and knowledge from any involvement with the fine arts, the way Hitler was. He retreated to grubby beer halls to vent his thwarted ambitions concocting an insane demagoguery. It wouldn't happen today. Hitler painted plenty badly enough to get into the Biennale.

It could be that all awful dictators are frustrated artists—Mao with his poetry and Mussolini with his monuments. Stalin was once a journalistic hack, and I can personally testify to how frustrated they are. Pol Pot left a very edgy photo collection behind. And Osama seems quite interested in video.

Stupid art saps stupid ideology. You could see it in the Chinese pavilion. One installation was a scrap metal and tin foil contraption that a Chinese farmer built believing it could fly him to the moon. The farmer was included in the installation. Then there was a BVD of a crowded city street. Every now and then somebody the crowd couldn't see shouted loudly. Members of the crowd would look around like a crazy person was loose, then go about their business. And China's supposedly most talented young architect, Yung Ho Chang, made a big, long tangle of bamboo poles. This was in no way as impressive, or for that matter as intimidating, as the bamboo scaffolding surrounding each construction site for the topless towers of Shanghai. If national pavilions are anything to go by, the fearsome Communist juggernaut of Asia is headed toward being an Iceland of ideological power.

And what of the *demos* who fall for demagoguery? Venice is certainly full of these this time of year. Hosts and swarms of them come in a state of idiocy evident in their dress and bodily form—so much so that a certain well-known span to the ducal palace should be renamed the Bridge of Thighs. But the masses were giving the Biennale a good leaving-alone. The few visitors to the pavilions and exhibition halls were people who looked like they make what it looked like they liked, or will make some when the drugs wear off. It is a hopeful sign for worldwide democracy that even the dull, vapid summer tourists of Venice are too smart for art. ♦

Books in Brief

***Henry R. Luce,* Time, *and the American Crusade in Asia* by Robert E. Herzstein (Cambridge University Press, 368 pp., $32)** Robert Herzstein has written a powerful attack on the "Luce network," as he refers to the handful of publications (most notably *Time*) that Henry Luce owned and edited for having practiced "a flawed journalism [for which] . . . Luce was primarily responsible." Herzstein offers no definition of "flawed." Does it apply to misuse of facts, or publishing, say, fanatical opinions, or both? Or does it merely apply to a publication whose editorial policies you abhor?

At the risk of being accused of reductionism, I would counterpose that the author is practicing flawed history.

Here's a Herzstein passage: "In 1945-1948 the wartime Grand Alliance dissolved into the Cold War, first at Time Inc., and then in the broader society. Luce needed a culprit, and he decided that Soviet communism was to blame."

This is flawed history—indeed, left propaganda masquerading as history. Stalin, now a culprit, had taken over Eastern Europe, the purge trials had opened, the Soviet Gulag horrors were just beginning to be exposed. Mao was leading his Communist multitudes from the Long March to power in Beijing. Was "Soviet communism" some irreproachable doctrine thought up by the Central Committee of the Shakers International? What does Herzstein mean that the Grand Alliance "dissolved" into the Cold War? How did it get "dissolved"? Who and what dissolved the Grand Alliance? Was there no human intervention? Herzstein knows how the Grand Alliance got "dissolved," but to say so aloud would mean questioning what George Orwell called the "dominant orthodoxy," and thereby disqualify a professor, even one with tenure, from any status in the profession.

On the other hand, it is always possible that Herzstein doesn't know how and when the Grand Alliance was dissolved. I will refresh his recollection.

Not long after World War II, a Soviet leader, Andrei Zhdanov, one of Stalin's closest associates, expounded the "two camp" theory of international relations and thereby "dissolved" the Grand Alliance—if it ever had really existed.

At the first organizational meeting of the Cominform (Communist Information Bureau) held in Poland in September 1947, Zhdanov told the assembled Communist party leaders from Bulgaria, Czechoslovakia, France, Hungary, Italy, Poland, Romania, and Yugoslavia: "The more the war recedes into the past, the more distinct become two major trends in postwar international policy, corresponding to the division of the political forces operating in the international arena into two major camps: the imperialist and anti-democratic camps, on the one hand, and the anti-imperialist and democratic camp, on the other. The principal driving force of the imperialist camp is the USA. . . . The anti-imperialist and anti-fascist forces comprise the second camp. This camp is based on the USSR and the new democracies."

How can one take an academic seriously when he targets Luce as needing a "culprit"? When the AFL's George Meany and the CIO's Walter Reuther decided, in 1949, to oppose Soviet subversion of the international labor movement, were they looking for a "culprit"? When Americans for Democratic Action organized intellectuals to fight communism, were they, too, looking for a "culprit" and airily deciding that Soviet communism was to blame? Looking back at Nikita Khrushchev's anti-Stalin speech in 1956, and Mikhail Gorbachev's revelations some three decades later, wasn't Luce right in indicting communism when he did?

There is no doubt that Luce was an eccentric. Herzstein reveals something few knew about Luce until he himself announced it: that Luce and his wife had experimented with LSD under a physician's supervision. There are more interesting chapters, especially about Luce's relationship with Theodore H. White when the young, not-yet-famous correspondent and chronicler of presidential campaigns was disagreeing with Luce, his own boss, about China and Mao Zedong, the genocidist-to-be. Interesting reading, as much of this book is, but to be read with care.

—Arnold Beichman

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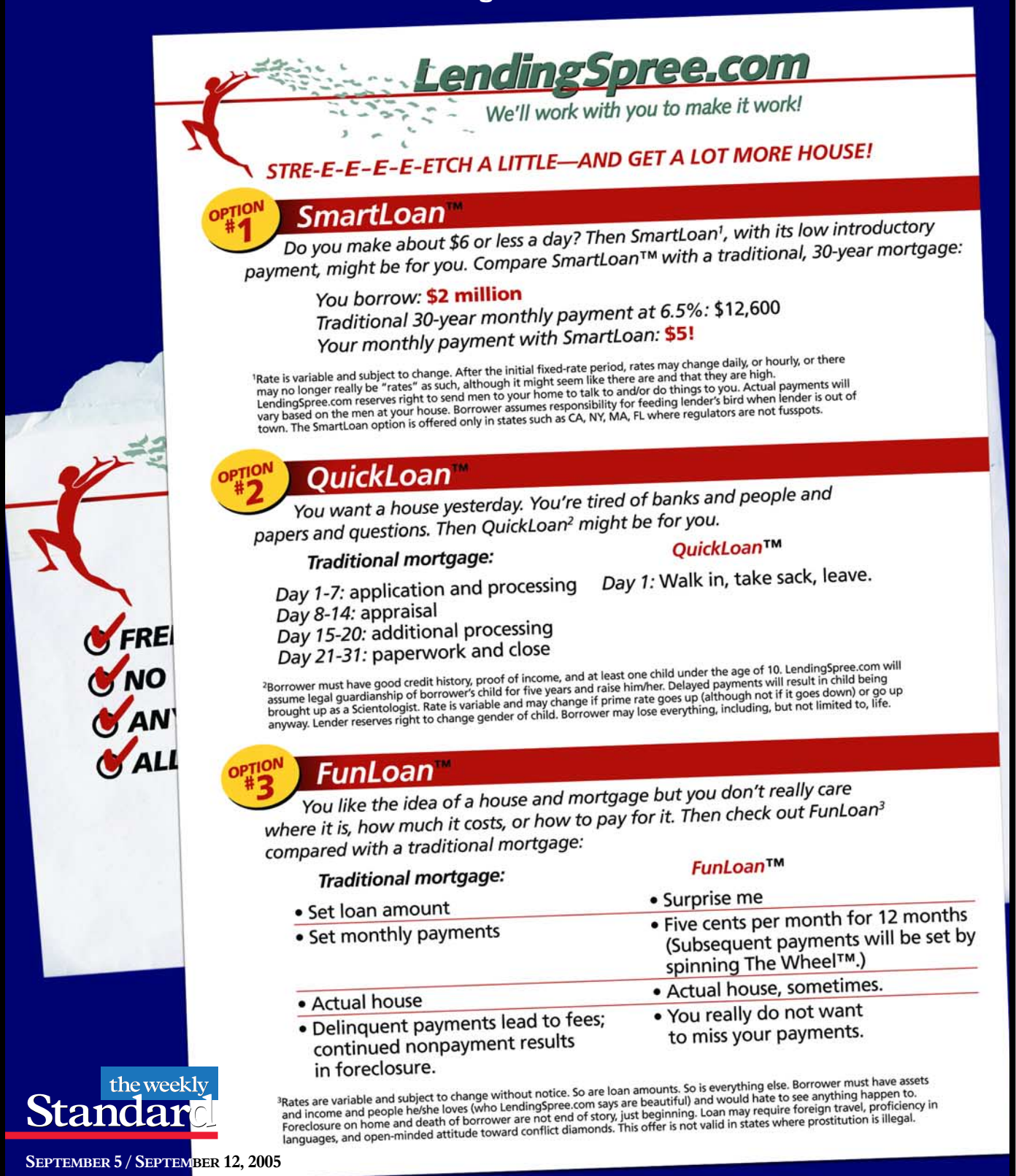

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