

## MEMORANDUM

**TO:** TOM FREEDMAN, MARY L. SMITH  
**FROM:** DREW HANSEN  
**RE:** ISSUES FROM WEEKLY AND MONTHLY MAGAZINES  
**DATE:** AUGUST 12, 1997

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**MAGAZINES CONSULTED:** *Business Week* (August 11), *The Economist* (August 9), *Fortune* (August 18), *The New Republic* (August 25), *Newsweek* (August 18), *Time* (August 18), *U.S. News & World Report* (August 18/25).

**ATTACHMENTS:** tables of contents for all of the above; "Hostility in America," James Q. Wilson, *The New Republic*, August 25, pp. 38-41 (review of *Crime is Not the Problem: Lethal Violence in America*, Franklin E. Zimring and Gordon Hawkins); "Off the Dole and On the Job," *Time*, August 18, pp. 42-44; "Fast Food and Welfare Reform," *U.S. News & World Report*, August 18/25, pp. 16-19 (with companion article, "Few On Welfare Will Be Forced to Work," p. 18).

### CHILD CARE

"Minding the Kids--On the Net," *Business Week*, August 11, p. 97.

- WorldWide Access in Chicago is testing a system called KidCam that lets parents with Internet access observe their child's day-care room on their PCS, and (if they have a video camera) have a teleconference with their children.

### CITIES

"City Boosters," *Time*, August 18, pp. 20-24.

- "New pragmatist" city mayors are pioneering innovative programs and following a "flexible, post-ideological approach to politics," (p. 21). (A companion article called "Disaster on the Potomac: How Not to Run a City" blasts Washington, D.C. city management.)
- Mayors have been forced to innovate by declines in federal aid and the loss of their tax base to the suburbs.
- In Indianapolis, "competing out" (privatizing formerly public services) is saving the city money.
- In Cleveland, a 60-page "People's Budget" has set priorities for the city, such as

improved removal of dead trees and increased lead poisoning screening for children. Cleveland also has a \$72 million light rail line and a new sports arena. The city now has a balanced budget and has accumulated a \$25 million contingency fund.

- In Philadelphia, Edward Rendell is widely credited with “saving” Philadelphia by facing down a strike by the public-employee unions.
- Yet critics charge that privatization is only a new form of patronage, as some mayors accept campaign contributions from companies who reaped the benefits of privatization. Also, few mayors are focusing on anti-poverty programs.

## CRIME

“Kinder Cut,” *The New Republic*, August 25, pp. 12-13.

- Last year’s California law mandating chemical castration for several classes of convicted sexual predators will most likely be struck down by a California court next year.
- But chemical castration can be effective in circumstances more limited than those in which it is used in California; states should consider tailoring their laws to specific categories of offenders who are likely to be helped by chemical castration.

“Hostility in America,” James Q. Wilson, *The New Republic*, August 25, pp. 38-41 (review of *Crime is not the Problem: Lethal Violence in America*, by Franklin E. Zimring and Gordon Hawkins). **\*article attached.**

- Zimring and Hawkins use World Health Organization data to argue that people kill each other more often in America than in other countries largely because Americans are more heavily armed than residents of other countries.
- Zimring and Hawkins also point to the frequency and violence of personal conflicts as an explanation for crime in America. They reject explanations based on the media and on drugs.
- Wilson contends that homicide rates in the African-American community are largely driving the high rates of crime in America, and explains high homicide rates in the African-American community by the “legacy of slavery, lynching, and past failure to enforce the law when blacks harmed other blacks,” (p. 39).
- Possible solutions for gun-driven violence: identifying and questioning carriers of concealed weapons, making homicide sentences longer, early intervention in the lives of at-risk children and their mothers and fathers.

## EDUCATION

“The Class of Boxcutter High,” *Business Week*, August 11, p. 24.

- A new research paper by economist Jeffrey Grogger of UCLA finds that minor levels of school violence (faced by about two-thirds of public school students) reduce students’ chances of graduation by 1% and chances of going to a four-year college by 4%. Moderate levels of violence (faced by about 9% of students) reduce students’ chances of graduation by 5% and college attendance by 7%.

“Defining Disability Down,” Ruth Shalit, *The New Republic*, August 25, pp. 16-22 (cover story).

- An investigative piece arguing that current legal protection of some kinds of learning disabilities (LD) is a “subversive challenge to basic notions of fair play, professionalism, and equal protection under the law,” (p. 17).
- Learning disabilities are vaguely defined in statutes such as the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA).
- Even though the ADA is not supposed to lower educational or vocational standards, the Department of Education’s Office of Civil Rights regularly rebukes school districts who do not exempt LD children from educational requirements.
- The author of the article argues that under current law “The fact that one displays a marked lack of aptitude for a particular intellectual discipline or profession establishes one’s legal right to ensure at least a degree of success in that discipline or profession.” Example: in 1993, a would-be attorney filed a lawsuit after failing the bar three times, charging that she was reading disabled and had not been provided with adequate accommodation for her disability. On July 3, 1997, the court ruled in the plaintiff’s favor, arguing that the plaintiff’s skills were impaired not when compared to an “average person in the general population” but when compared to her fellow would-be lawyers, setting up a legal protection for a plaintiff who apparently lacked some of the requisite skills of lawyering.
- There are few adequate tests to determine whether an individual has a certain learning disability or not. The Boston University Office of Learning Disabilities Support Services had, until a recent audit, never turned down a student’s request for special dispensation on the grounds that he or she had not presented enough evidence.
- The number of learning disabled cases is significant and increasing: only 14% of ADA lawsuits are filed by persons with physical disabilities (being in a wheelchair, being deaf or blind). The Department of Education estimates that about half of the 5.3 million disabled children in Individual Education Programs are learning disabled. About 300,000 LD students are currently enrolled in college.

- Protections for LD students on SAT tests has led to scores that considerably overpredict their college grades.
- The lack of standards for determining LD cases and the special protections granted to LD individuals under the law has led to an explosion in so-called “boutique” diagnoses, such as “dyscalculia” (inability to learn math) and “Oppositional Defiant Disorder” (a disability signaled by a child’s “recurrent pattern of negativistic, defiant, disobedient, and hostile behavior”). “Boutique” therapies have been keeping pace: in Orange County, parents are demanding that school districts pay for horseback riding to help their children who have “executive function disorder” (difficulty initiating, organizing, and planning behavior).

## FCC

“Memo to the FCC: Make Deregulation Work,” *Business Week*, August 11, p. 33.

- Deregulation efforts have been generally unsuccessful in opening up all phone markets to competition.
- The FCC should do the following: codify anti-monopoly standards currently in effect, pre-empt anti-competitive rules at the state and local levels, and publicly name companies that stymie competition.

## HEALTH CARE

“Guess Who’s in the Waiting Room?,” *Business Week*, August 11, p. 32.

- Investigations into health care fraud are increasing: the FBI initiated 2,300 health care probes in the first half of 1997, up from 591 in 1992.
- Big fraud cases besides Columbia/HCA: SmithKline Beecham Clinical Laboratories reached a \$325 million settlement with the Department of Justice earlier this year because of false billing for lab tests; the University of Pennsylvania agreed to pay \$30 million last year after being accused of billing Medicare for services of teaching doctors when residents performed the work.
- Significant fraud probes are currently underway in the hospital industry, and managed care probes are expected.

“Should the FDA Lower the Threshold?,” *Business Week*, August 11, pp. 94-95.

- Controversy over approval of Myotrophin, a drug for Lou Gehrig’s disease. The drug’s manufacturer (Cephalon) argues that the drug has worked and that further research is too expensive, while the FDA argues that there is not enough evidence to justify approval (FDA advisers voted 6-3 not to approve the drug, with only

non-physicians voting for approval).

- Cephalon argued that the FDA should suspend its rules, as it did with some AIDS and Alzheimer's drugs, to allow interim treatment with the drug while Cephalon continued research into the drug's effectiveness

"Little Baby Steps," *U.S. News & World Report*, August 18/25, p. 22.

- The recent expansion of child health insurance will probably only cover under 20% of the nation's 10 million uninsured children because some currently insured children will be dropped from private coverage and switched into the government system.
- But safeguards in the plan similar to those adopted by Florida and Minnesota could minimize this "switching" effect.

"Peppermint Prozac," Arianna Huffington, *U.S. News & World Report*, August 18/25, p. 28.

- 580,000 children nationwide are being prescribed anti-depressants such as Prozac.
- Yet diagnoses for depression among children are often vague, leading to overprescription as a quick remedy for common childhood problems such as being "unusually sad or irritable" or finding it "hard to concentrate."

## **MARRIAGE/DIVORCE**

"Do You Mean It?," *The Economist*, August 9, pp. 20-21.

- On August 15, a Louisiana law creating "covenant marriages" (an optional form of marriage that requires pre-marital counseling and allows divorce only under certain strict conditions) goes into effect.
- Critics worry that the law might encourage the types of destructive behavior that are grounds for a divorce (i.e. abuse or infidelity as a quick way to get a divorce from a covenant marriage), that the law does not cover all destructive behaviors (certain kinds of emotional domestic violence), and that the law might encourage long, loveless marriages.

"The Ties that Bind," *Time*, August 18, pp. 48-50.

- Current backlash against the anti-divorce movement of the early 1990s. Critics charge that a national crusade against divorce is a "think-tank inspired pseudoissue."
- Some debates: whether divorce helps or hurts children, whether the anti-divorce

movement is a backlash against feminism or not, whether divorce is a praiseworthy expression of personal growth or a narcissistic movement of the middle class, whether divorce is a movement of self-indulgent individuals or whether it is driven by social forces such as the economic independence of women.

- Divorce might be self-correcting: trend in cohabitation combined with rising divorce rate encourages couples to marry less hastily and take marriage more seriously, hence the divorce rate might decrease in time.

## **WELFARE**

“Off the Dole and On the Job,” *Time*, August 18, pp. 42-44. **\*article attached.**

- Marriott’s Pathways to Independence program boasts a 71% retention rate after two years for its 500 graduates, compared to a 60% retention rate for regular hires. But half of a special class of homeless participants failed earlier this year, and.
- Packard Bell NEC relied on a city job program in Sacramento to screen and refer applicants. Of the 4,000 workers the company hired, nearly 1,200 had been on federal aid or were unemployed or underemployed.
- Since 1995, Smith Barney has hired 27 single parents in entry positions at salaries of up to \$28,000. Participants get 16 weeks of preparation at Wildcat Services, a New York nonprofit, and then spend 16 weeks as interns.
- A partnership between Cablevision and the South Bronx Overall development Corporation has led to placement of 130 cable installers, 82% of whom are still working.
- The Chicago Manufacturing Institute, a federally financed training program, has a 90% success rate in initial placement.
- The Center for Employment Training, a training program financed by government and private agencies, placed 3,141 graduates last year.
- United Airlines plans to hire 400 welfare recipients this year.

“Fast Food and Welfare Reform,” *U.S. News & World Report*, August 18/25, pp. 16-19. **\*article attached.**

- The restaurant industry is a crucial provider for jobs for welfare recipients -- 15.5% of Burger King’s new hires in the past ten months were welfare recipients.
- Restaurant jobs stress skills such as punctuality and attitude, as opposed to the

specific job skills often developed by government-sponsored training programs.

- Critics worry that there are not enough fast-food jobs to go around, that fast-food jobs may only help younger people to go off welfare, and that the stigma attached to such jobs might limit their usefulness as welfare-to-work routes.

“Few on Welfare Will be Forced to Work,” *U.S. News & World Report*, August 18/25, p. 18.

**\*article attached.**

- A new Urban Institute study argues that fewer than 200,000 of the 3.3 million adults on welfare will be forced into work by the new welfare law.
- The reasons: many exemptions for states, Labor Department ruling that welfare recipients who work for their benefits must be subject to labor laws.
- State spending per welfare recipient is increasing, allowing more money for transportation and child care services, because state block grant levels were based on larger caseloads of earlier years.

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become even more empty and self-contradictory than usual. García Márquez's most recent stunt was to depart for self-imposed exile from Colombia once again, proclaiming that he could no longer abide the corrupt rule of President Ernesto Samper, a man whom he had previously defended from *gringo* charges of narco-democracy. His refuge? That great drug-free zone, Mexico. (It is just a matter of time before we hear about his intense friendship with, and the Herculean work habits of, Cuauhtémoc Cárdenas.)

**G**arcía Márquez's advice to young journalists is very, very strange. At his seminar in Cartagena last year, a dozen of Latin America's most promising reporters heard him declare that "journalism is not a job, it's a gland." Picking up the morning Cartagena paper, he turned to the classified ads. A woman was selling her brand-new stove, still in pieces. "Why is the stove unassembled?" García Márquez wondered. "This could be a story. Should we call?" No one at the table knew quite what to say.

But if that non-story qualifies for García Márquez's front page, his own partnership with Castro is not necessarily the news. "This is not an interview," he barked when a member of the seminar broached the subject. "If I want to express my opinion on Fidel, I'll write it myself, and believe me, I'll do a better job." (Besides, this professor of journalistic ethics charges up to \$10,000 for an interview, using the proceeds to finance his film institute in Havana.) "Fidel is one of the people I love most in the world," he explained. "A dictator," someone muttered. The writer shot back: "To have elections is not the only way to be democratic." But a Venezuelan member of the seminar persisted: "No one has elected you to office. You don't have a public office, why do you act as Fidel Castro's honorary chancellor?" "I will not respond to a question asked in bad faith," García Márquez huffed. "I do it because he is my friend, and I believe one must do everything for one's friends. I am always running errands for my friends."

Only a few months after this remarkable exchange, the author of *News of a Kidnapping* stood before the Inter-American Press Association and denounced "bad journalists [who] cherish their source as their own life, especially if it is an official source, and endow it with a mythical quality, protect it, nurture it, and ultimately develop a dangerous complicity with it..." The errand-runner lacks a sense of irony. He also lacks a sense of decency. •

## Hostility In America

BY JAMES Q. WILSON

### Crime Is Not the Problem: Lethal Violence in America by Franklin E. Zimring and Gordon Hawkins

(Oxford University Press, 259 pp., \$35)

**O**ne of the more frustrating difficulties facing students of crime is our inability to compare crime rates across countries. Interpol gathers crime data from national police agencies, but it does so in a way that make its reports next to worthless. The agency fails to assess the quality of the accounts that it receives, and it presents them in a way bound to cause confusion. Thus, not long ago, someone published an op-ed essay in which the author claimed that the Netherlands had a higher murder rate than did the United States. That is, to put it mildly, an implausible idea. In his defense, however, he displayed the Interpol report. At first glance, the document seemed to confirm his view, until one noticed that every homicide reported for the United States was completed—that is, there was a dead body—but the homicides reported for the Netherlands included both completed and attempted (no dead body) homicides. The attempts, of course, far outnumbered the actual murders, and there was no explanation of how the Netherlands decided which actions were attempted murders and which were just everyday assaults. We do not know very much, in short, about how the characteristics of nations or their various criminal justice policies affect crime rates.

Franklin Zimring and Gordon Hawkins, two members of the Earl Warren Legal Institute at the University of California at Berkeley, have plunged into this thicket, fully aware of the snags that it contains, to sort out how American crime rates differ from those of comparably industrialized nations. No one will be surprised to learn that the United States has a far higher rate of violent crime, especially homicide, than Western Europe or Australia. But some may be astonished to learn that the rate of property crime here is similar to the rate of property crime elsewhere, and in many cases it is much lower. Zimring and Hawkins conclude that what is often described as the American "crime problem" is in reality a lethal violence prob-

lem, and that the main goal of public policy ought to be to reduce violence.

To do that, we must first understand why our rate of violence is so much higher than in England, Australia, France or Germany. The answer given by Zimring and Hawkins is that we kill each other more often (and engage in property crimes, such as robbery, that often have fatal outcomes) in large part because Americans are more heavily armed than are other societies. Opponents of gun control will reflexively object to this conclusion, but, if they are to prevail, they will have tough going against the arguments made here. Using data from the World Health Organization, a group that counts dead bodies instead of merely repeating police reports, and gathering facts from big-city police departments abroad, Zimring and Hawkins show that American cities are not very different from foreign ones of similar size with respect to theft or burglary, but they are vastly higher with respect to robbery and homicide. New York City has less theft and burglary than London but vastly more robberies and homicides. The same difference exists between Sydney, Australia, and Los Angeles.

Robbery involves the threat of violence; burglary need not involve violence, though violence may occur if the dwelling is occupied when the burglar enters. In neither crime is death likely. But thefts in American cities are more likely to lead to death than are thefts in other nations. In 1992, there were seven deaths in London resulting from a burglary or robbery; in New York City, there were 378, even though New York has fewer such crimes than does London. American property crimes are much more deadly than English ones, in large measure because our thieves are armed. And much the same story can be told about assault. When one Londoner attacks another, death occurs in less than one-half of 1 percent of the cases, but when one New Yorker attacks another, death is the result in over 3 percent of the cases. The reason in part is that firearms are used in 26 percent of all

New York assaults but in only 1 percent of assaults in London.

Still, the use of guns is not the whole story. If one looks only at robberies in which no gun was involved, the death rate in New York City is still three times as high as it is in London. Even in murder cases, guns are not essential: 30 percent of all American homicides did not involve a gun. This means that New Yorkers without a gun kill one another more often than do Londoners however armed. Obviously something more than weaponry makes New York a more lethal environment than London.

Since guns are not the whole story, we have extraordinary differences among our states in how frequently people are killed. Maine and North Dakota have the lowest homicide rates in the country, less than one-tenth of the rates in Louisiana and Mississippi, but the reason cannot be that no one in Maine or North Dakota owns a gun. Rural states are probably armed to the teeth, as anyone knows who has visited them during deer hunting season. The answer must be that personal encounters in rural states are more law-abiding and less productive of personal violence. North Dakota not only has the second-lowest murder rate, it has the second-lowest property crime rate.

Zimring and Hawkins suggest that many American communities are more dangerous not only because guns are more available, but also because personal conflicts are more frequent and more violent. In their words, firearms are "neither a necessary nor a sufficient cause of violent death," but they are a contributing factor. If two men meet in a bar or on a street corner and have an argument, the result of that quarrel will depend heavily on what weapons might be available with which to manage any escalating violence. If there are only fists, only a fist fight can ensue; if there are guns, there may be a fatal shootout. Many years ago Zimring published articles suggesting that murder was often the consequence of an ambiguously motivated assault: at the outset, nobody intended the death of the other, but, as the fight progressed and a gun was at hand, death was the result. To reduce deaths one must either reduce the likelihood of fights or disarm the fighters.

In their new book, Zimring and Hawkins largely reject other popular explanations for violence. They have little use for studies of the impact of the media, and I think that their rebuttals are essentially correct. Violence in the media is everywhere, in London as much as in New York, in Sydney as much

as in Los Angeles, and yet those places differ dramatically in lethal behavior. When all cities are exposed to the same media, it is hard to see how the media can explain differences in violence. No doubt there are copy-cat killers, but their numbers are too small to explain why people in Tokyo almost never kill and those in Atlanta often do.

Violence also accompanies drug dealing, but the proportion of murders that are connected to the drug trade is too small to make much of a difference. The best estimates are that no more than 10 percent of all killings are connected to the drug trade, though from time to time the percentage is much higher in a few cities. Moreover, the laws on drug-dealing are about as tough in Australia as they are here, but drug-connected deaths are about sixty times more common in Los Angeles than in Sydney. In the United States, drug dealing on a large scale has probably created an array of armed gangs that make violent encounters, and thus lethal ones, more likely. But why? That is like asking why the vast majority of drug users are in this country even though almost every country has similar laws.

There is another contributing factor that the authors confront, but not, I think, quite adequately. They ask whether the very high rate of violence among African Americans explains the American homicide rate. There is no denying the core facts. Blacks are five times as likely to kill as are whites; black males are six times as likely to kill as are white males. Homicide is the leading cause of death among young black males, but it is the tenth cause for Americans as a whole. Zimring and Hawkins do not have much to say about why this is true, except to argue that it is probably because African Americans live disproportionately in urban "slum neighborhoods" and because less violent middle-class blacks live in "racial zones" that put them in close proximity to poor blacks.

This is not much of an explanation. Just limiting ourselves to big-city residents reduces the black-white difference in homicide from eight times nationally to only (only!) four times at the big-city level. Moreover, other equally poor and geographically isolated urban groups have much lower crime rates. Koreans, Vietnamese and Chinese are often poor, and recent arrivals, and many of them live in similar "racial zones," but they kill at a far lower rate than do African Americans.

Now, explaining these differences is not easy. I am not certain what it is, but I expect that it has much to do with the legacy of slavery, lynching and past fail-

ure to enforce the law when blacks harmed other blacks. Oddly, Zimring and Hawkins write as if the explanation is either unimportant or obvious. It is, in fact, neither. If African American murder rates were the same as white murder rates, the national murder rate would drop substantially. The effect of lowering the black murder rate to equal the white one would not make America as safe as other industrialized nations, but it probably would have at least as big an effect as banning the existence of all handguns. Non-gun homicides in New York

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The ancient realists were Epicureans, and they were regarded as dangerous to civilization by Roman leaders, who favored the idealistic philosophies of Platonism, Aristotelianism, and Stoicism. Epicureans denied Providence, viewed man as an evolved animal, saw virtues and laws as manmade, avoided involvement with government, spurned communism, and welcomed women and slaves as fellows. Jews abhorred Epicureans. Nevertheless, evidence exists that Jesus based his teaching on Epicureanism, only changing its theory of how immortal gods are made into a theory of how immortal human beings are made. This evidence is in the recently discovered *Gospel of Thomas*, a collection of 113 sayings of Jesus which radically differ from the Bible's. They are demonstrably notes taken while Jesus taught, for they match chronologically the vestiges of history that underly the Markan myth. They reveal the historical Jesus and his recurring use of Epicurean tenets.

#### You Will Not Taste Death JESUS AND EPICUREANISM

by Jack Hannah, 321pp.pbk. \$12 postpaid.  
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Mansfield, OH 44903-8907

## Four Corners, Vermont

October sun, blue sky  
burning the fields sienna,  
even the governor upstate  
raking a lawn, his kingdom  
of this world. That afternoon  
on Main Street, at the four  
corners, the cop was trying  
to push a small bat with  
the butt of his pistol from  
the window-box by the door  
of the Putnam Hotel, an  
unused window-box  
where the bat, mistaken, caught  
by daylight, had fluttered down  
like a fallen leaf. Three  
townsmen, not doing much  
but holding their own, keeping  
up on the news, kept watch.  
The policeman laughed, tucking  
his pistol back in its  
holster. The teenage bellhop  
so far with nothing to do  
has pitched the bat out now.  
It quavers to the walk  
by the rail of the hotel stairs.  
The bellhop and a man  
wearing a jack shirt, worn  
and too small for his arms,  
stomp at it, grinding their heels  
between the palings. The boy  
runs back inside. It is  
Norman Rockwell-ish, this  
tableau the passers-by  
are watching. Soon the boy  
is back and kneeling with  
a fork. The leaves have fallen  
but the day is warm; even  
the governor tidies his lawn.  
The boy will jab at the black  
remnant, the tines will ring  
out, hitting the pavement  
again; again. Everyone  
in the land must know his place,  
any beast  
of the field his lair, his own.

STEPHEN SANDY

City are three times as common as all homicides in London, a number that is only a bit smaller than the difference in white-only homicide rates between the two countries.

In fact, Arnold Barnett of MIT has made some calculations that suggest that the homicide rate of adult black males has in fact been coming down much faster than the white homicide rate. No one is quite certain why this has occurred, though certain possible explanations—social progress, residential relocation—are obvious enough. We tend to forget these trends and to dwell instead

But that is not the end of the story. It is impossible to deny that very high rates of violence among African Americans (rates that may have been coming down of late among black adults) not only contribute mightily to the problem of life in our cities, they also disfigure and polarize any effort to deal with our most serious domestic problem. The authors at least acknowledge this effect. As long as black violence is at so high a level, they observe, it will reinforce "white fear in ways that palpably contribute to the exclusion of blacks from the social mainstream."

on the great increase in juvenile homicide rates that took place between 1985 and 1992. Young people, white and black, were becoming much more lethal in the late 1980s, probably owing to the spread of gangs, their involvement in drug trafficking, and easier access to guns. The increase was greater for blacks. In the last few years, that rate has declined a bit, and this probably helps to explain why the homicide rate generally in the country has experienced so sharp a dip.

But this dip may prove to be short-lived. Census figures show that there will be an increase in the proportion of young people on the streets in the next few years, and there is no reason yet to suppose that those who now lead a life of no fathers, gangs for friends and easy dollars in the drug trade have decided to abandon that life. Rescuing young people from those conditions, a frightfully difficult and expensive proposition, may be as effective as figuring out a way (none now exists) to deny them access to the knives and guns with which they can kill others.

Zimring and Hawkins neglect almost all of these issues in their desire to reassure us that there is no "black problem" in crime. I'm sorry, but there is. It is certainly not the whole problem, and solving it would certainly not solve America's violence problem; Zimring and Hawkins are right to point out that equalizing racial differences in murder, desirable as that may be, would still leave America's homicide rate at least twice as high as the rate in other major industrialized nations. An all-white America would be much more lethal than Italy, Canada, France, Germany and England, and vastly more lethal than Japan.

By this point the reader expects that Zimring and Hawkins will offer some remedies for murder. Given their analysis, there are only two such remedies: reduce the availability of guns or lower the frequency of hostile encounters. But they suggest neither. Though they devote two long chapters to "Prevention," reading them reminds me of watching Mike Hargrove getting ready to bat. He comes to the plate. He stretches his shirt, tugs at his glove, pulls at his pants, shifts his cap, adjusts his grip. He gets in place. Then he backs out and does this all over again. To watch Hargrove at bat was like killing time during a rain delay. Will this ever end?

In this book, no. Zimring and Hawkins write that a "book of this kind would be a terrible place to posit a detailed and comprehensive program of loss prevention from violence...." A terrible place? Franklin Zimring has devoted much of the last thirty years of his professional career to studying the impact of guns on violence, and he still has nothing to say about what we should do? If not now, when?

Of course, he does have a few things to say, but mostly by way of criticizing other people's ideas. Zimring and Hawkins dislike many of our prison policies because they think that, under the impact of those policies, we send too many nonviolent offenders to prison. They argue that, in California, the "three strikes" law has had no connection to the recent reduction in the rate of violent crime, but they leave the explanation of this controversial judgment to a document that they do not bother to summarize. (You will have to look it up. But I warn you, it will be a waste of your time.) They attack people who support various popular anti-crime programs for making absurd predictions and failing to evaluate the results.

They are probably right about this. But what programs do they favor, and how should we evaluate them? They speculate about regulating handguns, but they offer no idea as to how it might be done better. They ruminate about violent encounters, but they suggest no way to reduce their frequency except to suggest that victims be "as cooperative as possible" if they are threatened by a robber. They note that some people are trying to teach violence avoidance in the schools, but they conclude that there are "insufficient data to form a judgment" as to whether these plans work.

Perhaps Zimring and Hawkins are vague because they do not have any good ideas. That is not an embarrassing predicament. Very few people have good ideas about this subject, and for good

reason. Eric Monkkonen, after years of careful digging in historical records, has been able to show that the homicide rate in New York City has exceeded that of London by a factor of at least five for the last two hundred years. Similarly, Roger Lane has shown that in the early nineteenth-century Philadelphia had a high homicide rate. Big-city Americans were killing each other at a far higher rate than were Londoners long before the invention of radio and television, and long before the introduction of semi-automatic weapons (and automatic ones) or the sale of any drugs (other than alcohol). It is very hard, I think, to devise an easy way to reduce a homicide rate that has been so high for so long. The hostility of American encounters is at least as important as the presence of American guns. If New York City can have a non-gun homicide rate that is three times larger than the total homicide rate in London, then removing all guns from the United States (which is impossible) would still leave us in a troubling condition.

Suppose we take Zimring's and Hawkins's analysis of the problem as correct, and then try to imagine what might be done. We must begin with the fact that the private ownership of guns cannot be substantially reduced. There are no point-of-sale restrictions that will reduce this huge stock by very much. Moreover, point-of-sale restrictions overlook the fact that most guns used in crimes are stolen or borrowed. And no government can do very much when people believe, with some empirical support, that having a gun makes you safer.

Using the data compiled by the National Crime Victimization Survey (NCVS) of 56,000 families, scholars have estimated that there are, at a minimum, between 65,000 and 80,000 defensive gun uses per year. Some estimates based on private polls suggest much higher defensive uses, ranging up to 1.5 or even 2.5 million. The data supplied by private polls are controversial, since so much depends on inferring society-wide effects from the answers of a tiny number of respondents. (If, to take a recent study, only 54 people out of 2,500 surveyed said they used a gun to defend themselves, then each of the 54 represents 68,000 Americans. Reporting errors—lies, exaggerations, poor memory—on the part of just a few people can have huge effects on the total number of defensive gun uses.) So consider instead the much larger and more reliable NCVS, conducted by the Census Bureau, according to which defensive gun uses in America are not trivial: 65,000 to 80,000 uses each year. No democratic government can

afford to say that, while it is having its own trouble protecting people against crime, it wants to deprive these 65,000 people of the means to protect themselves. Under such conditions, you don't need the National Rifle Association to defeat a government effort to disarm Americans.

There are more desirable and less controversial forms of gun control. The most important is to reduce the chances that a person will carry concealed on his person an unlicensed weapon while he walks about town. With a bit of new technology that is now being developed, it may become much easier for the police to spot and to question such gun carriers. Doing this may reduce the rate at which guns will cause angry encounters to escalate into lethal violence.

We also might wonder a bit about the magnitude of our penalties for homicide. They are about the same here as in Europe—that is to say, they are short in both places. Nationally, the median homicide inmate is released from prison after only about six years, while in California the release comes after about three-and-a-half years. Even many offenders sentenced to prison "for life" spend much less time there. Some inmates, of course, spend a lot of time in prison. But the small number of years the median (and the average) offender serves suggests the low price that we generally place on the average victim's life. These sentences should be made longer.

And much remains to be done, finally, to lead children away from a life on the street. We are still trying to learn how best to do this, but a growing body of evidence suggests that early intervention in the lives of very young, at-risk children and their mothers (often there is no father) can make a lasting difference. It will take another generation to learn whether these plausible guesses will bear lasting results for large number of children, but the nation's perpetually high homicide rate suggests that it might be time well spent.

Above all, we will have to learn to think about our crime problem historically. It took England several centuries of tough rule, brutal punishment and the inculcation of class-based values to achieve a low homicide rate. America has spent less time at the task, and it has sought to inculcate different values. As someone once said, the low murder rate in England is produced the same way you produce good lawns: plant good seed and then roll it for three hundred years. Zimring and Hawkins offer some sensible data on violent crime rates, but they plant no seeds and they roll no lawns.

JAMES Q. WILSON is the author most recently of *Moral Judgment* (Basic Books).

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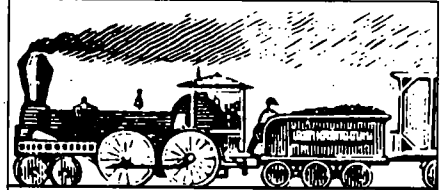
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# OFF THE DOLE AND

Trailblazing companies like Marriott and Smith Barney show how to turn welfare recipients into valued employees

By JOHN GREENWALD

**I** WANT TO MOVE UP THE CORPORATE ladder." That's not a remarkable statement for a career-oriented person—until you consider the speaker. Michael Bradford, 38, battled drugs and alcoholism throughout his adult life and eight months ago was homeless on Washington's streets. His résumé includes a six-month jail term for burglary. Born into a welfare family, Bradford fully expected to die in one.

No longer. Today Bradford is a poster boy for the barely begun—and some would say doomed—effort to move most welfare clients off the dole and into decent jobs. As a graduate of a six-week welfare-to-work program sponsored by Marriott Corp., Bradford has a foot on the ladder at the company's Crystal Gateway Hotel in Arlington, Va., where he cleans and sets up conference rooms for \$7.60 an hour (vs. the current minimum wage of \$4.75). He gets health insurance and profit sharing and will be eligible for stock options next year. "In the beginning I was doubtful," Bradford recalls. "I had started other training programs but never finished them. I wasn't sure this would end any differently."

Bradford isn't the only one with misgivings. "The history of job training is dismal," says Mark Wilson, labor expert at the conservative Heritage Foundation. Yet the Welfare Reform Act will make training more necessary than ever: at least 1.5 million adults now receiving aid will have to find work by 2002. The vibrant economy has already scooped up the top prospects, leaving many who may be burdened by drug addiction, physical abuse, too many children or too little education. Lots of these folks would prefer to be working. But the more cynical think they never will. "The scale of the challenges is so much grander than the scale of the remedies that one can't be euphoric," says former Labor Secretary Robert Reich, who is less than thrilled with the reform legislation.



## MICHAEL BRADFORD, HOTEL HOUSEMAN

AGE 38, ON WELFARE "off and on since I was born." NOW WORKING FOR Marriott's Crystal Gateway Hotel: After years of aimless drifting and a six-month stint in prison, he completed the Marriott Pathways training program and currently earns \$7.60 an hour with full health-insurance benefits

The magnitude of the task has come home to President Clinton, who has been pleading with corporate America to hire welfare recipients. This week he takes his case to St Louis to meet with leaders of many of the more than 500 companies—from Boeing to Anheuser-Busch—that belong to the Welfare to Work Partnership, organized by the White House in May to employ people on public assistance. "There are jobs open in every city and community in this nation," says Eli Segal, who heads the corporate partnership. "Our task is to

prepare welfare recipients to fill them."

That's precisely what trailblazing companies like Marriott and nonprofit outfits like the California-based Center for Employment Training have been demonstrating—albeit to a still relatively tiny degree. Under their tutelage, tens of thousands of former welfare recipients now hold down positions ranging from executive secretary to shop-floor inspector to assistant hotel manager. Importantly, the programs are market driven, providing truly qualified workers for companies with real needs.

# ND ON THE JOB



**CHRISTINE CRABTREE, ADMINISTRATIVE ASSISTANT**

**AGE 28; ON WELFARE on and off since 1991. NOW WORKING FOR Packard Bell NEC. A single mother who was referred to the company by a training program called START, she parlayed a one-day assignment as a file clerk into a position that pays between \$25,000 and \$30,000 a year. "I've had to fight hard, but I'm here to make a better life for my daughter and myself"**

**MARISELA CASTRO (RIGHT), STUDENT MEDICAL ASSISTANT**

**AGE 22, ON WELFARE 10 months. TRAINING AT CET. A high school dropout, she receives \$595 a month in welfare and food-stamp benefits for herself and her 10-month-old daughter. After completing an eight-month course of training in everything from drawing blood to growing cultures in a Petri dish, she hopes to land a job at a starting pay rate of at least \$10 an hour**



washed out earlier this year. The company says it will no longer try to work with the homeless in separate groups.

► **FROM MEAN STREETS TO MEGABYTES.** Laptop-computer maker Packard Bell NEC took full advantage of the usual lush incentives to set up its headquarters in Sacramento, Calif., in 1994 in an abandoned Army depot. But of the 4,000 workers the company hired, nearly 1,200 had been on federal aid or were unemployed or underemployed. Packard Bell NEC relied on a city job program that screened and referred applicants. Then it trained the new arrivals in everything from team building to English as a second language.

The new facility has meant a new life for workers like Christine Crabtree, 28, a former welfare recipient and the single mother of a five-year-old daughter. Crabtree parlayed a one-day assignment as a file clerk into a series of promotions that led to her current position as administrative assistant to two senior vice presidents at a salary of between \$25,000 and \$30,000 a year. Her secret, she says, was to help people around the company with whatever they needed, "so I could learn everything" about the business. But before that, Crabtree had found it hard simply "to go out and find a job when you haven't been working for months. It really does something to your self-esteem."

► **SEND HELP IMMEDIATELY!** Some welfare-to-work programs have proved so successful that the demand for workers has begun to outstrip the supply. At stockbroker Smith Barney, which since 1995 has hired 27 single parents in entry positions at salaries of up to \$28,000, executives have been screaming for another 10 trainees to start right away. Such newcomers get 16 weeks of preparation at Wildcat Services, a nonprofit group in New York City, and then spend 16 weeks as interns under the watchful eye of mentors at Smith Barney. If the brokerage firm doesn't hire them, the interns can use their training to help land other jobs. "This started out as a search for new employees," says Barbara Silvan, a Smith Barney director of human resources who runs the jobs program. "It had nothing to do with charity."

Executives of Cablevision were likewise searching for good workers when they hooked up with a community group called the South Bronx Overall Development Corporation. "Our biggest problem is turnover," says Brian Douglas, a spokesman for Cablevision. "We bring someone in and train them, and two months later, they're gone." But of the 130 cable installers that street-savvy SOBRO has placed at starting wages of \$8 to \$10 an hour over the past four years, 82% are still on the job. As part

Here is a look at some of the leading efforts: **TIES THAT BIND.** "We are doing a good thing, but if the grand gesture doesn't make economic sense, it won't last," says Janet Tulley, the developer of Marriott's Pathways to Independence program. For Marriott, the price has definitely been right. Not only do federal programs and private charities pick up \$3,000 of the \$5,000 cost of training each welfare recipient, but graduates have also been a loyal lot in a relatively low-paying industry plagued by turnover. Fully 71% of the 500 graduates

are still on the payroll after two years with the company, compared with a 60% retention rate for regular hires.

The six-week program combines vocational skills, such as housekeeping and front-desk management, with life-style lessons in everything from grooming to getting to work on time. Welfare recipients "accept failure as part of their lives," Tulley says. "So, if the bus doesn't show up, they just walk away." Marriott discovered that the program has its limitations when half of a special class of homeless participants

of its training, SOBRO teaches its charges to change their "street" attitudes—the survival posture in the tough neighborhoods they live in—to more consumer-friendly faces when they make service calls.

Elsewhere, machine shops in the Midwest are chronically short of skilled labor. Enter the Chicago Manufacturing Institute, a largely federally financed training center that each year graduates up to 300 machine operators and industrial inspectors, many of them former welfare recipients. More than 90% of the graduates swiftly land jobs at \$8 to \$11 an hour.

► **MASTER OF THE GAME.** Perhaps no program has moved more students into skilled jobs than the Center for Employment Training. Run on a \$40 million annual budget provided by government and private grants, CET last year placed 3,141 graduates in jobs ranging from graphic artists to medical assistants. Among the recent hires was Pauline Flores, 29, a single mother of five who began work for a Silicon Valley pediatrician in May after seven months of medical training (cost: nearly \$6,500). Today Flores earns \$8.75 an hour answering phones, drawing blood, doing labwork and assisting physician Katherine Wong. "God, it feels good," Flores says of her job. "I wake up in the morning and want to come to work."

► **WINGING IT.** United Airlines plans to hire 400 welfare recipients in slots from reservation clerks to cabin cleaners this year. The carrier has been using a nonprofit agency called GAIN (Greater Avenues to Independence) to recruit and train the newcomers, who earn from \$5 to \$10 an hour to start. To help smooth any turbulence, United assigns mentors to welfare hires for their first 60 days on the job. "Mentoring is the key to the whole welfare-to-work program," says Talani Wilson, 23, a new personnel clerk and single mother who had been spending six hours a day commuting from her Chicago apartment to O'Hare International Airport before a co-worker found a car pool that cut the time to two hours. "She's really showed me the ropes," a grateful Wilson says.

Experts are worried that the easy part of welfare to work is already over. "We'll see what happens when we get to some of the harder groups in the case loads," says David Ellwood, a professor of public policy at Harvard's Kennedy School of Government and a former adviser to Bill Clinton on welfare matters. "The jury is still very much out." True enough. But companies like Marriott are showing that the welfare rolls can be a source of valued workers who know how to use a fighting chance.

—Reported by William Dowell/  
New York, Chandrani Ghosh and Bruce van Voorst/Washington, Rachele Kanigel/San Jose and Jeanne McDowell/Los Angeles

MONEY IN MOTION

Daniel Kadlec

# Capital Gain=Market Pain?

The rate's lower, but Wall Street hasn't noticed

**H**OOORAY, THE LONG-TERM CAPITAL-GAINS TAX RATE HAS BEEN CUT. THAT'S good news—if you know how to use it. The last two times the rate fell, in 1978 and 1981, some distinct patterns emerged: the stock market sank but ultimately staged a powerful recovery. There was also a noticeable flow into the stocks of small companies. The problem is that in this so-called new-era economy, historical benchmarks have been about as useful as an abacus in Silicon Valley. To borrow a phrase from the new-era crowd, it's different this time.

The tax bill that President Clinton signed into law last week lowers the rate on long-term capital gains from 28% to 20%. The gains-rate cut in 1978 was from 35% to 28%, and in 1981, from 28% to 20%. The '81 cut was rolled back in '86. After the '78 tax act, the Standard & Poor's 500 dropped 11% in six weeks as investors sold stocks in order to record gains that would be taxed at the new low rate. In '81, the S&P 500

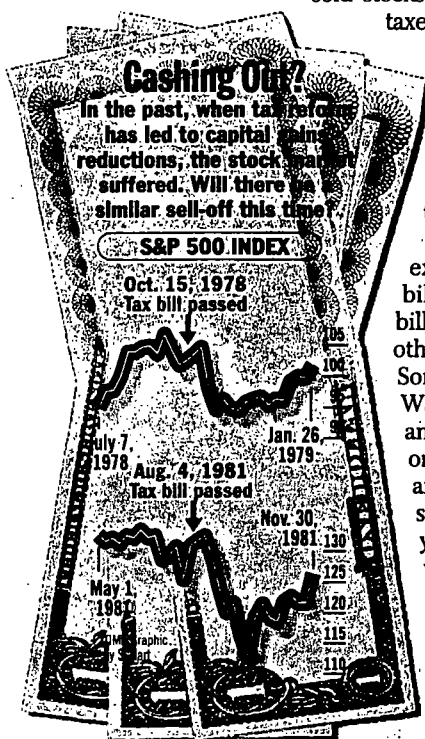
plunged 15% in six weeks. Later the markets took off as investors sought low-tax opportunities. The '78 sell-off paved the way for a two-year runup that enabled the S&P 500 to snap out of a 14-year funk. The '81 sell-off set the stage for the mother of all bull markets in 1982.

Clearly, the Clinton Administration expects a repeat of sorts. It projects \$1.2 billion of tax revenue this year and \$6.3 billion next year from the sale of stock and other assets triggered by the lower rate. Somebody should explain the new era to Washington: nobody is a net seller of stocks anymore. Since the tax act cleared Congress on July 28, the market has held up fine. We aren't interested in some piddling tax consideration while stocks are rising 30% a year. Some selling may materialize this week as the deadline passes for a line-item veto. But so far the response to this tax cut has been nothing like the previous two.

O.K. So there's no immediate pattern of selling. Shouldn't the lower rate pave the way for another bull stampede by encouraging more investment? Not necessarily.

Unlike the previous two reductions, this one comes amid a sizzling love affair with the market. There is no need to rekindle our passion for stocks; we're hopelessly obsessed. "This market needed a stimulus like Einstein needed a higher education," notes Tom McManus, strategist at NatWest Securities.

Another departure from the past has to do with the stocks of small companies. They typically do not pay a dividend—the payoff is in price appreciation. That makes them more desirable when the cap-gains rate falls because dividends get taxed as ordinary income—a higher rate for most investors. Yet big stocks have been rising fastest all year, and that could persist. Why? Big stocks, as defined by the S&P 500, now have a measly 1.6% dividend yield, vs. 6% in the early '80s. In short, they're also being managed for growth instead of income. Of course, the market reacts to many things in the economy, not just tax changes. So nothing is certain, except that the old tools just don't work the way they used to. ■



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# Fast food and welfare reform

Success of the effort may hinge on 'dead-end' burger-flipping jobs

BY JOSEPH SHAPIRO AND BARBRA MURRAY

**A**t the welfare office in Jackson, Miss., caseworkers regularly hear aid recipients say they would be happy to get a job—as long as it's not "flipping burgers" at some fast-food joint. It's a sentiment echoed by many liberal policy makers. Some argue it's better to get low-income mothers into job-training programs than into menial jobs. Former Secretary of Labor Robert Reich often complained that such "dead-end" jobs don't lead to upward mobility.

Across town in Jackson, though, McDonald's owner LeRoy Walker argues that there are few better places for a welfare mom to be working. He says even the lowliest tasks—cooking fries or ringing the cash register—teach attention to detail, communication skills, and other work habits that can build success at any job. It all starts, Walker says, with "greeting a

customer when he comes in and looking him straight in the eye." He can tell from the sprightliness of the greeting, Walker says, whether someone is going to make it.

August 22 marks the one-year anniversary of when welfare reform became law, so the nature of burger flipping—and other low-wage jobs—has become an issue of some importance. The law requires that hundreds of thousands of welfare recipients, most with little education and few skills, move into jobs. Their entry into the work force has already led to a number of controversies. In launching its nationwide strike against the United Parcel Service this month, the Teamsters Union cited the prevalence of part-time workers as the reason. But many employees had come to believe that UPS's effort to bring on welfare recipients—now about 15 percent of their work force—was keeping wages down. "If you want to help people on welfare, stop giving them welfare," says David



Taylor, who makes \$15 an hour driving a UPS truck in Jacksonville, Fla. "Don't let it affect my job." Meanwhile, some other corporations that President Clinton had touted as models, such as Sprint, have brought on far fewer welfare recipients than anticipated.

But the success of welfare reform will more likely be determined by individual restaurant franchises than by large corporations. The restaurant industry employs 10 million workers, 3 million in fast food alone. And many of the jobs require minimal education. Burger King says that in the past 10 months, 15.5 percent of its new hires have been welfare recipients. The question is whether these fast-food restaurants provide real opportunity or dead-end jobs.

There is some evidence that such work has a positive effect on those with little education or work experience. Harvard public policy professor Katherine New-

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**CAREER LADDER.** Chris Russell mops the floor in Jackson, Miss. Welfare reform may hinge on low-wage, low-skill jobs like these. Above left, owner LeRoy Walker demonstrates how to greet the public.

man, for example, studied 200 fast-food workers in New York's central Harlem and found that these jobs were among the most important and positive experiences shaping the workers' adolescent and early adult lives. She found that teenagers who worked at fast-food restaurants were more likely to hang out with others in the work force than with the unemployed, and more likely to manage their own finances conscientiously. "Older managers help kids understand they have crossed over a dignity line that separates them from ones not working," she says.

Comprehensive studies on welfare have shown that the likelihood of making it off welfare depends as much on punctuality and attitude as on education levels or technical skills. Only 4 percent of those on welfare have four or more years of experience in the work world, according to one study. Ethel Dent, 30, a former welfare recipient in Jackson, never held a job

before she applied to work at the McDonald's near her house. Before starting there last year, Dent says, she did not get out of bed until 9 or 10 in the morning; now she's up at 4 a.m. to open the restaurant an hour later. Dent's mother, who receives welfare, looks after her daughters, ages 5 and 2. Tara Ervin, another single mother who had spent five months on welfare, says working at McDonald's inspired her to train for a job as a deputy sheriff. Ervin, who has some college education, says dealing with rowdy teenage customers taught her how to be "authoritative but still nice," a skill she suspects will be "helpful around the jailhouse."

By contrast, few government-spon-

sored job training programs are effective because they stress job-specific skills—only to find out that those jobs have vanished or that trainees lack basic work habits. According to Herbert Northrup, professor emeritus at the Wharton School of Business, low-paying jobs are often better than training programs at teaching employees "how to conduct themselves in business and [behave] like an adult."

Part of the reason may be that such jobs allow for the progressive mastery of skills that may be useful in themselves but, more important, show the employees that advancement is possible. Workers at McDonald's are expected to climb a hierarchy of jobs, starting from one of the four grill slots and moving toward one of six managerial positions. Reviews and promotions can come as often as once a month.

Even when fast-food workers don't see the prospect for direct advancement, they

## COVER STORY

### WANTED: A FEW GOOD CEOs

Why picking the next occupant of the corner office is so tough, and what companies ought to do about it

page 64



# BusinessWeek

AUGUST 11, 1997

## Cover Story

### 64 WANTED: A FEW GOOD CEOs

The vital issue of who will lead a company in the future gets too little attention in Corporate America's executive suites and boardrooms. If the messy melodramas recently played out at Apple and AT&T are to be avoided, a succession plan, developed by the board, should be in place at all companies, and insiders should be groomed for the top job. That's how to avoid ugly surprises

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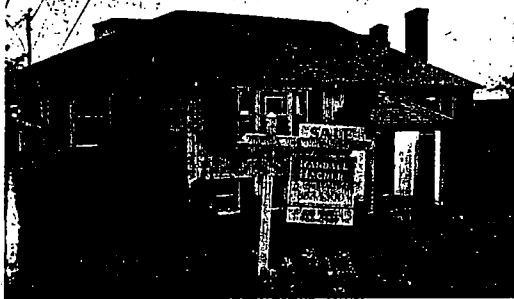
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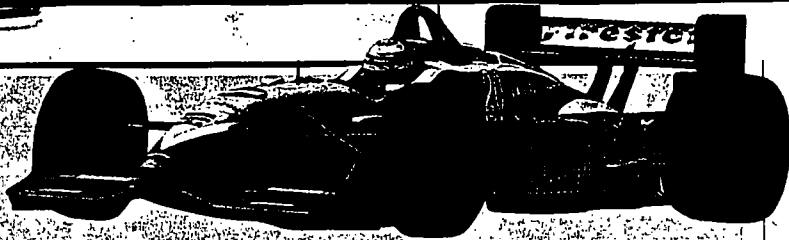
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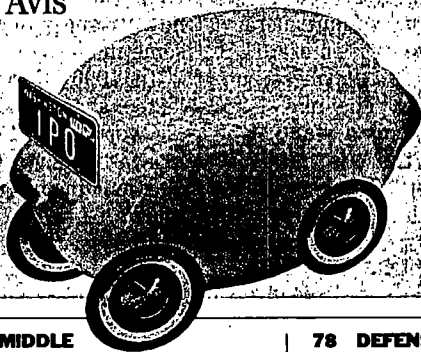


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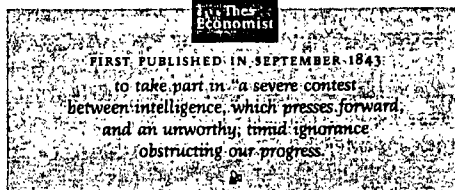
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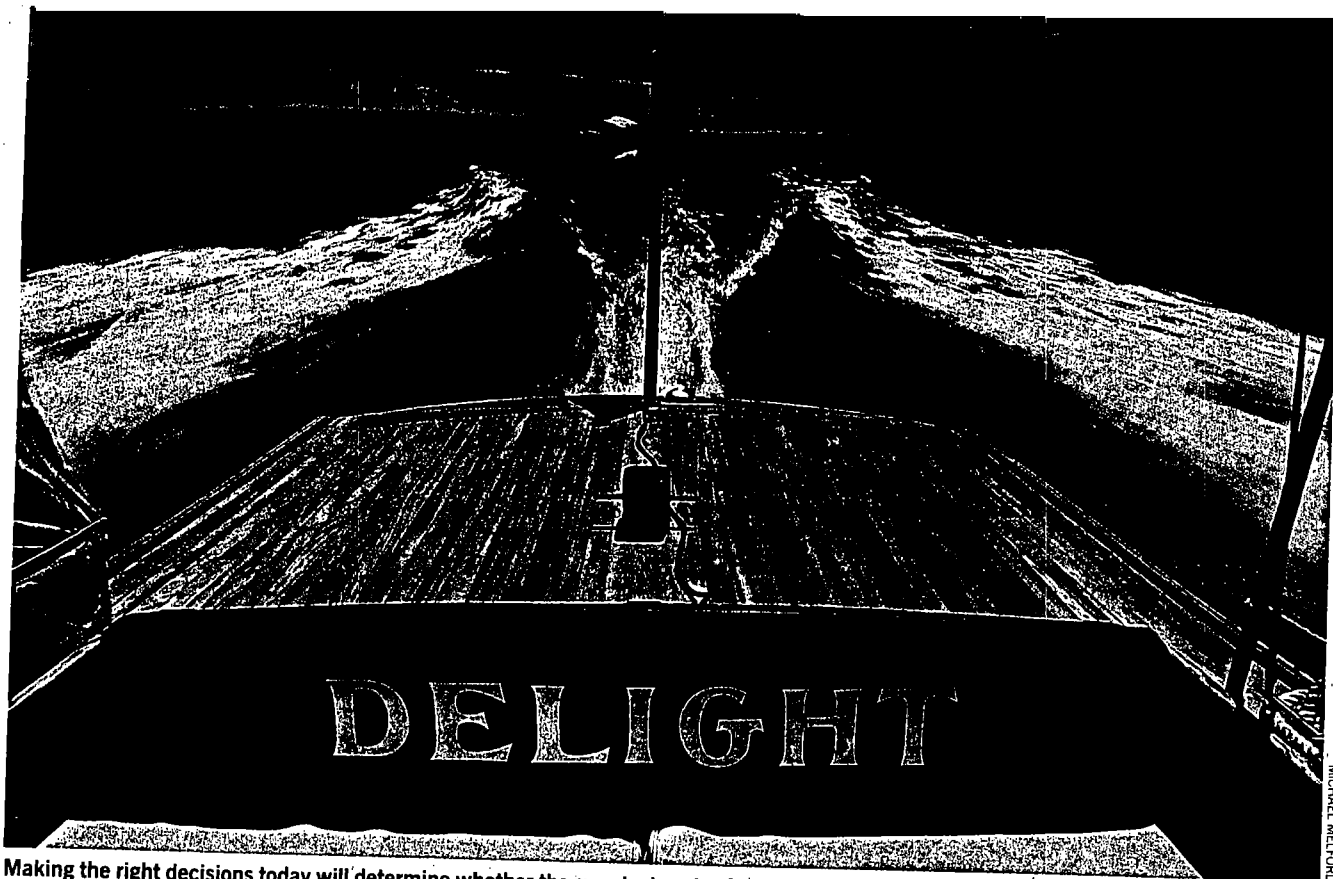
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Making the right decisions today will determine whether the sweetest parts of your retirement dream can become reality.

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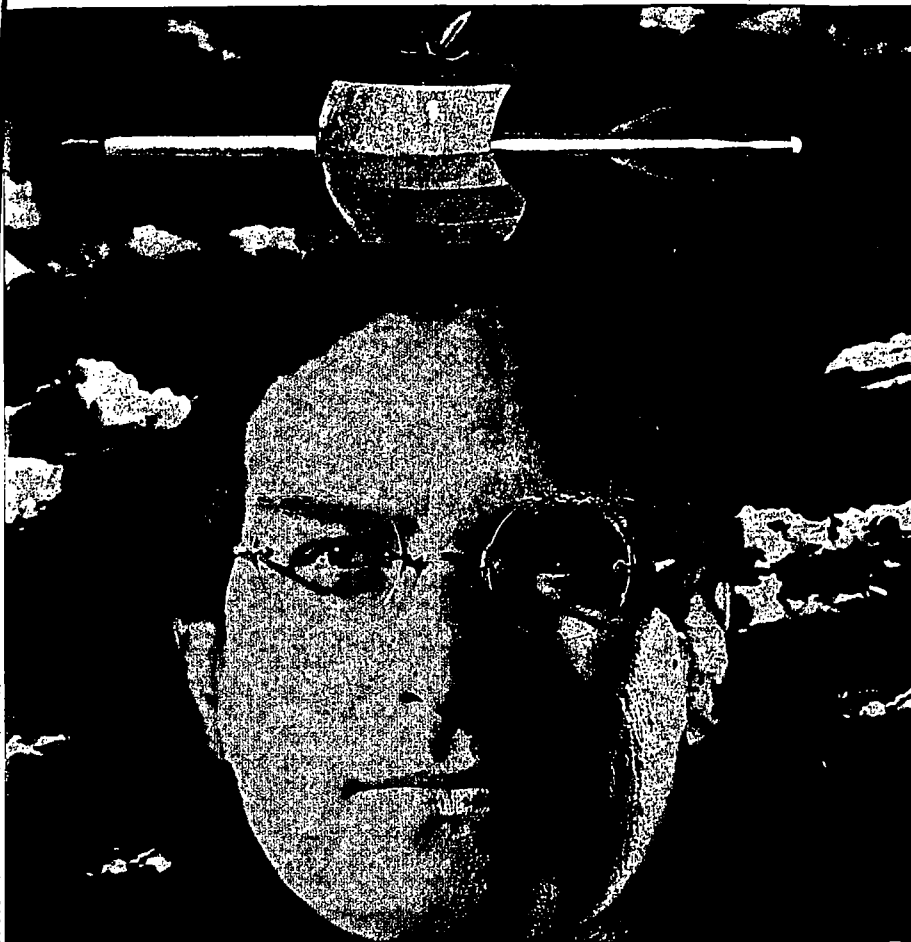


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COVER: Photograph for TIME by Diana Walker

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often benefit from the relationships with managers and co-workers. "The fast-food industry is one of the few employers that stay in urban areas," says Bryna Shore Fraser, deputy director of the National Institute for Work and Learning. Newman agrees fast-food managers often make good role models. "In some neighborhoods, kids don't know a lawyer or a doctor," says Newman, "but they could know a manager at McDonald's."

Walker, 47, refers to his 573 employees as "my children." Most of them, even those in their 30s and 40s, call him "Daddy." Many have little contact with their own fathers. An imposing, broad-shouldered man, Walker visits his 10 stores daily and often probes the lives of the employees, asking questions like: "How are your grades? What kind of friends are you hanging out with? Why are you wearing shoes like that?"

At one of Walker's franchises, Lawanda Ghoston, the manager, talks of the time she blew her savings at a riverboat casino. Walker gave her an advance to turn her electricity back on—but not before getting her to design a savings plan.

**Stripping off uniforms.** It's important not to overromanticize fast-food jobs, though. The wages are often at or near the \$4.75 minimum wage, which may not be enough to support children. Newman

REFORM PARADOXES

Few on welfare will be forced to work

MALAH FEANNY—SABA FOR USNEWS



Saul Mercado sweeps a street in the Bronx as part of New York City's welfare-to-work program.

In the popular view, last year's controversial welfare reform had three big aims: Get people to work, save the government money, and transform the culture of poverty. With caseloads down 10 percent on the bill's first anniversary this month (23 percent since their 1994 peak), there appears to be a good start. But in reality, experts say, relatively few welfare recipients will be required to work, the government is spending more per recipient than ever before, and most of the drop in the welfare rolls is just a re-

sult of the booming economy. According to a new study by the Urban Institute, the bill's "tough" work mandates will compel fewer than 200,000 of the 3.3 million adults on welfare to go to work each year. Why? In theory, the states are supposed to get a quarter of their caseloads working now, and half by 2002. But there are a host of exemptions. States whose rolls had been shrinking already don't have to push as many current recipients into the work force. Teenage mothers who stay in school don't have to work. Neither

do pregnant women nor those in "job readiness" activities (like resume writing). These loopholes were pushed especially by Republican governors, who know that moving welfare recipients into jobs is expensive. Pressure from unions. New regulations, meanwhile, may make it hard for states to run real work programs. Bowing to pressure from unions, which fear competition for members' jobs, the Clinton Labor Department ruled in May that welfare recipients who are forced to work for their benefits must be subject

to various labor laws. Conservative analysts say that companies could be forced to pay payroll taxes, making them less likely to offer such "workfare" slots.

But the news isn't all bad. Many experts had predicted that politicians wouldn't be willing to spend more in the short term to fund the child care and transportation needed to keep welfare moms on the job. But states have managed to increase spending per family because the law based federal block grants to states on the larger caseloads of earlier years. The result: more money for fewer families. Federal spending per family is up 27 percent since 1995; a windfall states are using partly to fund new welfare-related services.

Even if published work requirements are often toothless, experts add, caseworkers and welfare recipients are treating them as if they were real. In that sense, the law may be prodding welfare recipients to seek jobs.

The real test, though, will come when the next recession hits. While the number of people seeking help will increase, the money provided by the federal government won't. Eventually, too, limits on the number of years that people can receive welfare will take effect. Finally, it's unclear whether low-wage jobs will pay enough for welfare mothers to support their families. If they don't, welfare reform will likely fail. *Matthew Miller*

found full-time workers earning about \$8,840, far below the \$16,050-per-year poverty line for a family of four. Many fast-food operations do not offer health insurance (Walker does for full-time employees but not part-timers, who account for two thirds of his workers).

Newman found that those who came from households on welfare had less luck getting fast-food jobs than those who didn't. There were generally 14 people applying for each job opening in Harlem's restaurants, showing that there's a limit to how many welfare mothers fast-food restaurants can absorb. And while there is some upward mobility for McDonald's workers, there are far fewer management jobs than there are applicants. Gordon Berlin of the Manpower Demonstration Research Corp., which evaluates social programs, says while there is evidence that fast-food or other restaurant jobs help younger people get off welfare, he doubts it will work for "someone who's already 30 years old and is being forced into the work force by welfare reform."

And there is still a stigma. Newman found that some other businesses refuse to hire former fast-food workers, disparaging their work experience. Embarrassed workers in Harlem often stripped off their telltale uniforms the minute work was over. Others took jobs outside their neighborhoods so they wouldn't be spotted by friends. "People like to down me like [this job] wasn't anything, like it was a low job," one 20-year-old McDonald's employee told Newman.

**"Horrible and demeaning."** Indeed, some argue that it is unfair to force people into menial jobs. At a town hall meeting in Harlem this year, one woman on welfare drew applause when she described to President Clinton a friend who had been hired as a receptionist and was then given janitorial duties. "I've seen the woman clean the toilets, and it's horrible and demeaning," said the woman, Nilda Roman.

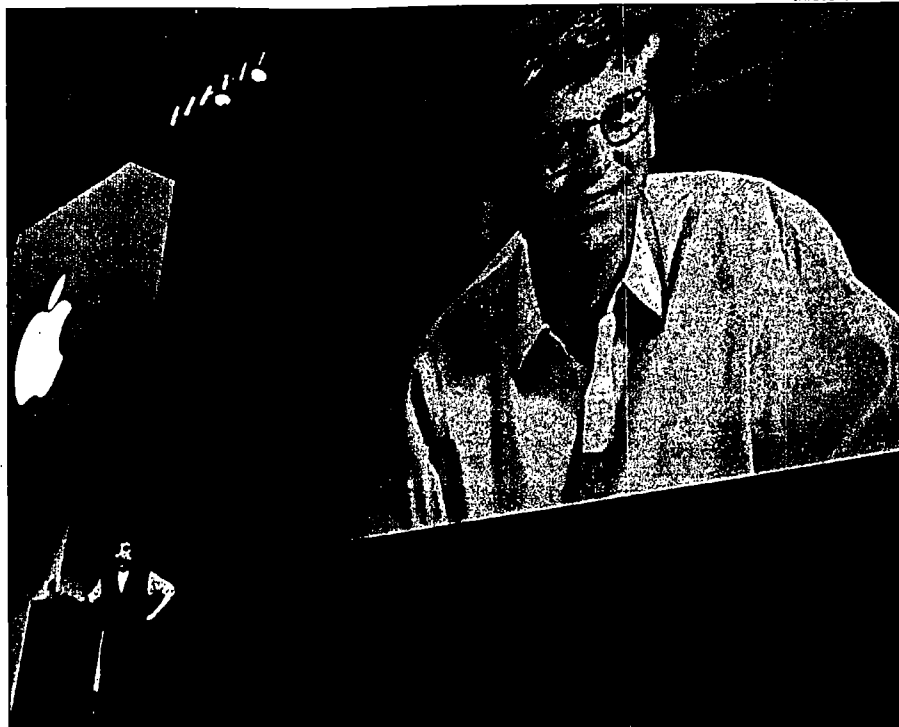
But Ethel Dent told her friends in Jackson something different. She went back to her inner-city neighborhood and told her two closest friends, both welfare mothers, that they should try jobs at McDonald's. So far she hasn't convinced them. "They say they don't want to flip burgers and stuff. I say, well, it's your choice." Dent, however, is satisfied. "I'm making a little bit more than on welfare. But I'm doing it myself." And this spring, Dent did have success recruiting another welfare mother who had never worked before. Working alongside her at the breakfast grill now is Dent's sister, Cathy. ■

*With William J. Holstein*

# Why Bill Gates and Steve Jobs made up

## Both Apple and Microsoft stand to gain, big

JIM BOURG—REUTERS



Macworld was the setting, Apple chief Steve Jobs the deal maker, Bill Gates the savior.

By SUSAN GREGORY THOMAS

For Macintosh loyalists, it was at once a dream come true and a nightmare. There was old friend Steve Jobs, again at the helm of the company he cofounded, giving a tough but optimistic speech about Apple's future at the Macworld trade show in Boston. But looming above on a gigantic screen was Bill Gates, offering cash and industry support to help secure that future. Was the longtime foe turning savior?

As the details emerged, benevolent despot seemed more like it. Gates's announcement last Wednesday that Microsoft will pay \$150 million for a minority nonvoting stake in Apple this quarter clearly was in the best interests of his own company. The deal will permit Microsoft to maintain its dominance as the No. 1 supplier of business software to Apple customers and to continue to advance its Web strategy of pushing its browser onto every

desktop. Quite possibly, Microsoft also gains an ally in its campaign against Sun's and Oracle's efforts to convert corporate users (and ultimately consumers) to networked computers based on the programming language Java rather than on Microsoft Windows. Apple earned renewed industry confidence, Microsoft software support, and a new board—one of whose members, Oracle CEO Larry Ellison, is sure to resist Microsoft's pressure.

**Common good.** But the markets saw the deal as good for Apple, too. After the announcement, Apple's stock rocketed more than 47 percent to a yearly high of \$29.19 last Thursday. The company needed good news. After losing \$816 million last year, Apple lost \$884 million more in the first nine months of this fiscal year. Total sales fell 20 percent in the latest quarter over the year-ago quarter and 27 percent for the latest nine months.

Besides a cash infusion, Apple received an undisclosed sum—which some sources

Fed IRS

prizeng

Texas

ratings

filtering software

US - n & Fed  
and  
RU

## MARKETING

# Enough Talk

Focus groups are old news. Today's marketers prefer Crayolas, collages and surveillance.

BY LESLIE KAUFMAN

**A**SKED TO REVAMP UNITED Airlines' ad campaign, the Minneapolis agency Fallon McElligott turned to its secret weapon for probing the consumer psyche: crayons. Frequent fliers got eight colors and a map showing the different stages in a long-distance airline trip and were told to let their emotions do the drawing—hot colors for stress and anger, cool ones for satisfaction and calm. When the travelers had completed their artwork, ticket counters burned orange, airport waiting rooms radiated fire-engine red and—to the surprise of those conducting the exercise—jet cabins at 35,000 feet were awash in a serene aqua. For Fallon exec John Gerzema, it was an epiphany. "Clearly United's slogan 'Something Special in the Air' didn't fully address the concerns of consumers," he says. The research led Gerzema and the airline to a tag line they felt would play to the weary travelers' desire for an overall improvement in operations: "United Rising."

The gurus of marketing have never exactly been scientific in trying to divine our innermost desires—but Crayolas? Yep, and while you're at it add collages, home surveillance and "ambushing" to the list of unconventional tools being used these days to extract precious insights into the habits of the American consumer. Focus groups—where half a dozen ordinary folks are assembled to discuss Brand X while observers busily scribble notes behind a one-way mirror—may still dominate research into selling everything from dish soap to politicians, but they are slowly losing cachet. Explains Jim Spaeth, president of the Advertising Research Council, the race is on to find methods that dig beyond what consumers can articulate to what's "deeper in their mind."



### You for a day:

Marketers actually live in your home, do what you do, go where you go, to gain insights into how you talk about and use categories of products

Focus groups were avant-garde in the 1980s, but years of experience with them have now taught ad execs their drawbacks. Consumers have been so bombarded with ads that they unconsciously (or, perhaps, cynically) parrot back what they've heard in commercials instead of reacting to products spontaneously. Even more troublesome is the "loudmouth" prob-

lem—when one highly opinionated person drowns out the rest of the group. Tom Hollerbach, executive vice president for the ad firm BBDO West, complains that some of these voluble bullies have even become focus-group regulars, signing up repeatedly because they like the idea of dictating ad campaigns. For them, he says, "it's like being boss of the boss for a day."

To dodge such problems, marketers are finding ways to make people shut up and

Fallon's use of crayons is just one variation on the theme. Jeff DeJoseph of the Walter Thompson ad agency asks subjects to collect small personal items from their homes that remind them of the brand they're testing. Catherine De Thorne of Chicago-based Leo Burnett encourages subjects to describe their feelings about products like sunglasses by cutting pictures from magazines and pasting them into a collage. "People are just

with Scope, the company hired House Calls. The Manhattan-based firm paid 37 families to let it set up cameras in their bathrooms and film their routines around the sink. Users of both brands said they rinsed with mouthwash to make their breath smell good, but they treated the products very differently. Scopies gave the green stuff a swish and spit it out. Devotees of the new Listerine felt obliged to keep the wash in their mouth for a lot longer. One subject went so far as to hold on to the Listerine after he left home and got into the car. Only when he

seat room to the 1998 Accord. BBDO West sent Tom Donovan, its account executive in charge of Pioneer Stereo, to Austin, Texas, to drive around with the kind of guys Pioneer hopes will buy its car stereos. He incorporated their lingo—"My car is my holy temple, my love shack, my donut maker, my drag racer of doom"—into an ad campaign that has helped catapult Pioneer ahead of rival Sony. Political consultants have also picked up on such "natural environment" research. When President Clinton's adviser Mark Penn wanted to test a new message during the 1996 campaign, for example, he often skipped the usual focus groups and instead went straight to shopping malls, where he quizzed voters in a more relaxing setting.

Andy Greenfield, president of Greenfield Consulting, takes such methods one step further in something he calls "ambush research." It works like this: a beer company, for instance, wants to test a new product it's launching to compete with upscale microbrews. Greenfield goes to a bar frequented by the target group, male Yuppies 21 to 26, pays the bartender and waitress to play along, selects his man (hopefully on a date) and approaches. Telling the guy that he's researching something totally unrelated to beer—ocean pollution or animal rights—he offers to buy the couple a drink in return for a few minutes of their time. As arranged beforehand, the waitress brings the brand Greenfield is researching instead of the chic beer Mr. Yuppie ordered. Mr. Yuppie gets angry, so the waitress apologizes and says the beer is on the house. If the subject won't take the freebie, Greenfield starts gathering heat-of-the-moment information on why he won't even try the new beer. Pretty clever tactics, but it's enough to make you think twice the next time a stranger serves up a bit of hospitality.

With DANIEL MCGINN in Detroit and JENNIFER TANAKA in Chicago



### Collaging:

Instead of talking about a product, research subjects are asked to cut pictures from magazines and paste them into a collage that represents their feelings

better visually than verbally," she explains.

Another favored method for ferreting out the true tastes of consumers comes straight from cultural anthropology: observing the natives in their natural setting. When Warner-Lambert wanted to find out what customers thought of Fresh Burst Listerine, a new mint-flavored product designed to compete

reached a sewer a block away did he expel it. The message to Warner-Lambert was clear: though Listerine needs to seem user-friendly to take on Scope, it hasn't yet shaken its mediciney image.

If marketers can't film you at home, sometimes they'll just move in with you. Both Honda and Toyota have sent staff to live with families and observe how they use their vehicles—a tactic that Honda says confirmed its decision to add back-

### Home surveillance:

For a fee, participants agree to allow marketers to film them in their homes engaging in personal activities, like their morning bathroom routine

gathering heat-of-the-moment information on why he won't even try the new beer. Pretty clever tactics, but it's enough to make you think twice the next time a stranger serves up a bit of hospitality.

BY GENE KORETZ

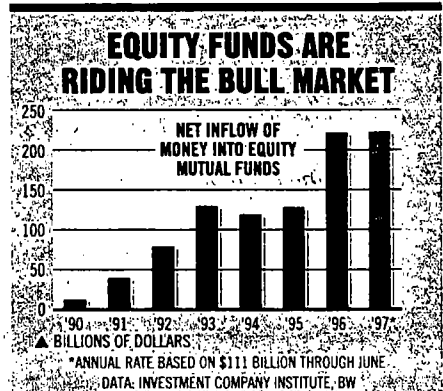
## DEBUNKING A CRASH SCENARIO

Could fund outflows sink stocks?

The stock market vaults ever higher, and cash continues to pour into equity mutual funds. It doesn't take a genius to figure out that these trends may be connected. And therein, notes a study in the Federal Reserve Bank of New York's current *Economic Policy Review*, lies the basis of a recurrent nightmare haunting Wall Street.

For, as authors Eli M. Remolona, Paul Kleiman, and Debbie Gruenstein point out, if surging stock prices are sparking strong mutual-fund inflows that tend to push up prices even more, then it's possible that a sharp drop in prices could reverse the process, setting off a cascade of redemptions by fund investors that could escalate into a market crash. To assess the likelihood of such a scenario, the researchers review the historical record—and particularly the influence of short-term shifts in stock prices on fund flows.

The study comes up with several reassuring omens. One is that directly owned stock funds represent only 5.5% or so of household financial assets (an ad-



ditional 2.4% is held in pension plans, which tend to take a long view of stock market performance). Moreover, over half of equity-fund assets are held in funds charging an up-front sales fee, and such "loads" inhibit short-run selling. And since mutual funds still account for only 14.9% of equity market capitalization, outflows alone seem unlikely to cause a sharp market decline.

But the key question is whether sudden shifts in market returns significantly affect fund flows. And here the economists' statistical analysis of data from

1986 through early 1996 indicates that the impact is extremely weak. Further, they find that funds investing in growth stocks, which usually lead the pack in market swings, are less sensitive to price shifts than income funds, suggesting that growth fund investors aren't spooked by price volatility.

What of the big market declines in October, 1987, and October, 1989? In the first, as growth stock prices plunged by an average 37.7%, net outflows from growth funds hit 4.6% of assets, compared with average fund liquidity levels of 9.4%. In the second, growth stocks fell by 6.2% and growth funds suffered outflows of just 1.3% of assets.

"At least up to now," says Remolona, "the evidence suggests that the impact of stock-price movements on equity-fund flows is not strong enough to sustain a downward market spiral."

## THE CLASS OF BOXCUTTER HIGH

Violent schools mean fewer grads

Studies of the effect of school characteristics on students' educational progress have traditionally focused on such things as class size, per-pupil expenditures, and teacher education. In a new research paper, economist Jeffrey Grogger of the University of California at Los Angeles looks at a factor that has received relatively little attention: school violence.

Using nationwide public high school survey data from the 1980s, Grogger finds that minor levels of violence—a problem faced by nearly two-thirds of public school students—lowered the chances of students' graduating from high school by about a percentage point to 78% and their chance of going to a four-year college by four percentage points to 27%. And moderate levels of violence (faced by 9% of students in the sample) reduced the likelihood of high school graduation by about 5 percentage points and of college attendance by 7 percentage points. The effects of serious violence were even greater.

It's no secret that school violence can impede education in a variety of ways—by disrupting classrooms, for example, or causing students who fear attack at school to stay at home and risk falling behind, or interfering with student concentration. Grogger's findings underscore the negative impact on students' future educational attainment and thus on their lifetime earnings potential.

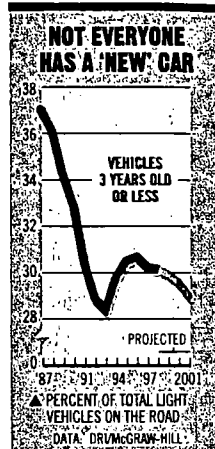
## STILL NO GLUT OF NEW WHEELS

U. S. auto sales should stay strong

With sales of new cars and other light vehicles averaging close to 15 million units a year in recent years, some experts think the U.S. new car market is finally approaching saturation and an inevitable downturn lies ahead.

Not analysts at DRI/McGraw Hill, who predict sales will escalate from 15.2 million units this year to a 15.5 million-unit clip from 1998 through 2001. For one thing, DRI economist Ezra Greenberg points out that relatively new cars (three years old or less) currently account for only about 30.3% of vehicles on the road. That's significantly below the 37% peak reached a decade ago (chart).

Moreover, notes Greenberg, even in the wake of strong sales since 1994, the share of such nearly new vehicles has started slipping recently. And despite the 15.5 million-unit sales pace that DRI sees ahead, it expects the percentage of vehicles in the three-years-old-or-less age group to ease down to 29% by 2001.



## DOING TIME IN THE USA

It's in the cards for 5% of Americans

What are the odds of an American born today winding up in jail sometime during his or her lifetime? According to a Justice Dept. study based on 1991 incarceration rates in federal and state prisons, the answer is about one in twenty or 5.1%.

The risks of jail time are greater for men than for women (9% vs. 1.1%) and particularly high for black and Hispanic men: 28.5% and 16% vs. 4.4% for white men. These odds are undoubtedly understated, since the study doesn't include the likelihood of being incarcerated in a local jail or juvenile facility, and the annual rate of admissions to local jails is nearly 30 times the pace of admissions to state and federal prisons.

HEALTH CARE

# GUESS WHO'S IN THE WAITING ROOM

The feds widen their crackdown on Medicare overbilling

The letter from the Justice Dept. shocked President James W. Varnum of Mary Hitchcock Memorial Hospital. Alleging that his Lebanon (N. H.) hospital committed fraud in the way it billed Medicare in the early 1990s, the feds demanded \$1 million in their January letter, mostly in civil fraud penalties. Varnum says that the overpayments resulted from a mistake-prone billing system. Still, in May, rather than litigate, he settled with Justice by paying \$100,000. "Whenever there is any error, the government says it's fraud and abuse," Varnum fumes. "It's not right."

Health-care providers such as Varnum had better get used to it. In the past 10 months, Justice and the Inspector General of the Health & Human Services Dept. recouped \$1.1 billion from Medicare providers, compared with \$250 million collected over the previous 12 months.

**MORE GUMSHOES.** That's just the beginning. A new report by the HHS inspector general gives investigators a huge new target: an estimated \$23 billion in Medicare overpayments—through fraud or error. On July 28, HHS released another audit in which analysts estimate that 40% of all home health-care payments by Medicare may be unjustified. Two days later, a federal grand jury unsealed indictments against three Columbia/HCA Healthcare Corp. executives as part of a sweeping probe of the chain. They're accused of filing inflated Medicare billings that led to \$1.8 million in overpayments to one hospital.

Expect more of the same. Congress

has increased funding for health-care investigators. And thanks to new and more sophisticated auditing systems, the probers are finding it easier to spot unusual billing patterns. Health-care probes by the Federal Bureau of Investigation, meanwhile, are rising fast—

**GROWING CLAIMS:** The feds face a mountain of paper



## THE MEDICARE MONEY TRAIL

**HOSPITALS** Federal investigators are probing 4,600 hospitals for possible violation of a Medicare rule barring hospitals from submitting bills for outpatient services if the patient is admitted for inpatient care within three days. Feds also investigate 33 teaching hospitals for billing Medicare for attending-physician fees when residents perform services.

**CLINICAL LABS** "Labscam," a multiyear probe, netted \$830 million. Abuses included running specimens through equipment that performs numerous tests simultaneously, then billing Medicare separately for each test. In February, SmithKline Beecham Clinical Laboratories settled with the feds for \$325 million.

**HOME HEALTH CARE** Federal investigators estimate 40% of the \$16.9 billion spent on home health care under Medicare is unnecessary. Medicare places no limits on home health aide visits, and regulators don't check backgrounds of home-care agency operators.

of 1997, up from 591 in all of 1992.

One huge target is home health care. Since 1990, annual Medicare payments to home-care agencies have quintupled, to \$16.9 billion. Regulators don't check the backgrounds of home-care agency operators, and Medicare allows unlimited home health-aide visits. "People are

seeing it as a way to make a fast buck," says Michael F. Mangano, principal deputy inspector general of HHS.

While investigators used to focus on small operators, they're now looking at bigger players in all Medicare programs. In addition to the Columbia/HCA probe, SmithKline Beecham Clinical Laboratories Inc., accused of false billings for laboratory tests in a crackdown called "Labscam," reached a \$325 million settlement with Justice earlier this year. And last year, the University of Pennsylvania agreed to pay \$30 million after being accused of civil fraud by billing Medicare for services of teaching doctors

when residents performed the work.

The hospital industry alone is under three separate HHS and Justice civil-fraud investigations. In the largest, enforcers are accusing 4,600 hospitals of violating a rule banning them from billing Medicare for outpatient services if the patient is admitted for the same condition within three days. So far, 2,000 hospitals, including Varnum's Mary Hitchcock, have paid \$47 million, and the government expects to collect \$55 million more.

Hospitals are irked by the probe. "Our folks are trying to take care of people, not trying to defraud the government," says Richard J. Davidson, president of the American Hospital Assn. But prosecutors counter that hospitals have long ignored warnings about their billing procedures. "They were put on notice, and they did not correct their systems," says Donald K. Stern, the U.S. Attorney for Massachusetts.

The feds' next target is managed care. Inspectors will look at whether managed-care providers, which get a flat per-patient fee, are providing appropriate care. Their advice to health-care providers of all kinds: Take two aspirin, and expect a house call from federal agents in the morning.

By Susan B. Garland in Washington

By Catherine Yang

## MEMO TO THE FCC: MAKE DEREGULATION WORK

This could be the defining moment for the Federal Communications Commission—and for the \$150 billion U.S. phone industry it oversees. The White House must name a chairman and, over the next few months, fill four vacancies on the agency's five-member board, just when the industry's painful lurch toward opening up competition appears to be stalling.

As things stand, the FCC is flirting with irrelevance. The agency was given broad powers to carry out the intent of the Telecommunications Act of 1996, a measure aimed at opening all phone markets to greater competition. Long-distance carriers haven't broken into local calling, and the Baby Bells haven't launched long-distance service. Instead, the two sides snipe in public and battle it out in court. Giants such as Bell Atlantic Corp. and Nynex Corp. have decided to merge rather than compete with one another. And on July 18, a federal appeals court stripped the FCC of one important tool: its authority to regulate the prices charged by local phone companies for "interconnections" to their networks.

**WHOSE RULES?** That's why the next chairman, most likely William Kennard, now the FCC's general counsel, must move very quickly to prevent deregulation from devolving into a balkanization of the U.S. telephone system. Under the appeals court ruling, each state can fashion its own rules to set the speed at which competition comes to local calling. That could create an inefficient patchwork of 50 different rules rather than one federal standard.

The FCC still has ways to pry open markets across the U.S., despite the July 18 ruling. Under the Telecom Act, it has the power to deny the



**WIRELESS:** Changing technology and new products challenge the FCC

Bells entry into the long-distance market until they open up their local monopolies to rivals.

Taking that kind of action is just what the FCC should now do. A useful precedent: holding the Bells to the same conditions imposed on July 19 in the FCC's approval of the Bell Atlantic-Nynex merger. There, the two companies agreed to refrain from some of the games monopolists play to block new entrants. They also agreed to help local-service rivals by granting access to phone-company computers so that the upstarts can easily switch service for new customers.

The FCC could codify these and other standards in across-the-board rules. It should set up federal standards and deadlines by which the Bells would have to provide new rivals with electronic ordering systems

that would make it as easy to change service providers as it is now in long distance. The FCC should also pass regulations to stop the Bells from imposing small inconveniences on customers who decide to switch service, such as not letting customers easily take their old phone numbers to a new carrier.

**BULLY PULPIT.** Meanwhile, the agency must exercise its prerogative under the new reform law to preempt anti-competitive rules at the state and local levels. The FCC should overrule a 1995 Texas law requiring the big three long-distance companies—AT&T, MCI Communications, and Sprint—to build their own local-calling facilities. The 1996 act says long-distance companies needn't lay their own fiber, cable and copper wires—a costly proposition. They can choose to lease these components at a reasonable price from the Bells to get started in local business.

Kennard, if confirmed, should use his bully pulpit, too. Publicly naming companies that stymie competition or threaten to is an effective way of keeping telecom deregulation on the right track. Outgoing FCC Chairman Reed Hundt decried the very idea of AT&T's merging with SBC Communications Inc. instead of trying to compete with the Baby Bell in local service. AT&T and SBC scotched the plan.

While Kennard will stay busy tackling a large agenda—it will span wireless services, digital television, and cable TV—the first order of the day is the phone system. He will be judged on his ability to restore the promise of the Telecom Act. American consumers are counting on just that—and should expect nothing less.

*Yang covers telecommunications policy from Washington.*

## THE FCC'S FULL PLATE

*As chairman, Kennard would face a daunting must-do list.*



KENNARD

**DEREGULATION** The FCC must find creative ways to open up competition in the local exchange market, or face criticism that the 1996 Telecommunications Act is failing.

**WIRELESS** The agency has yet to overhaul the botched results of last year's auction of

the wireless spectrum. Auction winners who are facing default are looking for debt forgiveness.

**TELEVISION** The FCC will have to deal with consumer complaints about high cable bills. And it will have to write rules governing the budding digital-TV industry.

## DRUG TESTING

# SHOULD THE FDA LOWER THE THRESHOLD?

For some drugs, says Cephalon, testing standards are too high

**F**or Dr. Patricia K. Coyle, the testimony was wrenching. Speaker after speaker described how paralyzing Lou Gehrig's disease had relentlessly robbed them or their loved ones of the ability to walk, feed themselves, or even hold a pencil. Tearfully, they pleaded in May with Coyle and five other neurologists on a Food & Drug Administration advisory committee to clear the way for approval of a new drug, Myotrophin—a genetically engineered, insulinlike growth factor that might slow the disease's advance.

But for Coyle and the other panel members, the facts were less persuasive. The drug's manufacturer, biotech startup Cephalon Inc., simply hadn't

proved its case. "There was no way you could review that data and say unequivocally that this agent worked," says Coyle, a professor at the State University of New York at Stony Brook. The vote against the drug was 6-3, with only nonphysicians dissenting. By Aug. 11, the FDA is expected to decide whether to approve the drug—with the panel's thumbs-down weighing heavily.

Whether the panel acted correctly is a matter of heated dispute. Myotrophin is a case study in how well-meaning regulators and companies with little capital can err when dealing with diseases for which there is little or no treatment. Startups such as Cephalon may be aiming too low in designing studies that

fail to provide enough evidence to justify approval for such drugs. However, critics charge that regulators set too high a bar for drugs targeted at poorly understood diseases by applying the same tough standards used for routine medications, such as preferring two studies showing the same results.

Lou Gehrig's sufferers are caught in the middle. "I want the opportunity to see if it would work for me," says Sheldie M. Oppenheimer, a 30-year-old former day-care center director from New Hope, Pa., who was diagnosed with Lou Gehrig's disease in 1996. "I'm not an idiot. If it doesn't work, I'm not going to keep taking it."

Precedent may be on her side. The FDA has broken with tradition to approve some AIDS medicines on the basis of one trial. They've gone on to become life savers. And the agency eventually approved Warner-Lambert's Cognex medicine for Alzheimer's sufferers, even though three studies showed the drug offered only marginal, if any, improvements from some of the fatal disease's symptoms.

Five years ago, Myotrophin's future seemed bright. Researchers at Cephalon,



**NEW HOPE?** Afflicted with Lou Gehrig's disease, Oppenheimer wants to try an unapproved drug

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Cephalon,

based in West Chester, Pa., began re-  
search in 1992 to see if the drug, which  
promotes nerve growth, could stymie a  
disease that afflicts up to 30,000 Amer-  
icans. Scientifically dubbed amyotrophic  
lateral sclerosis (ALS), its cause is most-  
ly unknown—though its consequences  
are clear: irreversible wasting of mus-  
cles, usually leading to death from res-  
piratory failure in less than five years.

After initial tests determined the  
drug was safe, Cephalon had to prove  
that it worked. But that was trickier.  
Soon after researchers launched their  
studies—on 266 patients in North Amer-  
ica in early 1993, and on 183 Europeans  
later that year—they found that any  
improvement was modest. Some had  
better muscle tone or more ease in  
swallowing, for instance, and a measur-  
able slowing of some patients' decline  
was reported. Still, in mid-1995, based  
on the North American results, Ceph-  
alon claimed "highly statistically signifi-  
cant effects" with patients showing 26%  
"less deterioration" than those on a  
placebo. Chief Executive and company  
founder Frank Baldino Jr. heralded  
"good news for a lot of people."

Soon came the bad news. In October,  
1995, Cephalon reported that in the Eu-  
ropean trial, Myotrophin fell  
short of treatment  
goals. More disturbing,  
the European death  
rate was notably higher  
on Myotrophin than on  
the placebo—14.5% vs.  
8.5%. "I wouldn't even  
conclude that it is a mar-  
ginal drug," says Dr. Sid  
Gilman, head of the FDA  
advisory committee. "I sus-  
pect that it is ineffective."  
**LET'S MAKE A DEAL.** Why  
the difference between the  
two studies? Cephalon exec-  
utives say the European pa-  
tients were sicker than Amer-  
ican counterparts. But the FDA  
could not overlook the Euro-  
pean results, particularly since  
the agency generally wants to see two  
studies before it will approve a new  
drug. With one study showing some ef-  
fectiveness, however, the regulators  
wanted to keep the drug available as  
tests continued. So in mid-1996, the ad-  
visory committee ruled that a limited  
number of patients outside the formal  
studies could receive the drug until a fi-  
nal decision is made. However, the com-  
mittee insisted that Cephalon provide  
convincing new data.

By last February, though, Cephalon  
decided it had done enough. The com-

pany and its partner, Chiron  
Corp., filed with the FDA for  
approval to sell Myotrophin.  
Baldino told regulators that  
Cephalon had spent \$180 mil-  
lion on research and would  
have a tough time justifying  
further investment. "It's al-  
most impossible for us to idly  
throw \$20 million or \$30 mil-  
lion at another study," Baldino  
told regulators.

Instead, Cephalon offered a  
deal. If regulators let it start  
selling the drug—some ana-  
lysts say Myotrophin could  
fetch up to \$10,000 a year per  
patient—Cephalon would do  
further research. It proposed  
combining Myotrophin with  
the only approved ALS medi-  
cine, Rilutek, so that doctors  
could see the drug's useful-  
ness in the field. Rilutek, a  
Rhône-Poulenc Rorer drug ap-  
proved in December, 1995, extends life  
for ALS sufferers by an average of three  
months but offers no improvement in  
physical functions. Backers theorized a  
combination of the two drugs could do  
both modestly.

But the advisory



**“[We can't]  
idly throw  
\$20 million  
or \$30 million  
at another  
study.”**

**FRANK BALDINO**  
*Cephalon Inc.*

cient data and says the pa-  
tients testified without com-  
pany encouragement.

Now comes the FDA. The  
agency could overrule its ad-  
visers and approve the drug,  
a rare move. It could grant  
conditional approval, reserv-  
ing the right to order with-  
drawal if future studies prove  
disappointing. Or it could say  
no—a decision likely to meet  
with opposition from congres-  
sional members pressing for  
approval. Senator Orrin G.  
Hatch (R-Utah) wrote to the  
agency: "There is an occasion  
here to provide patients with  
a drug they need at no risk  
to public health, and I hope  
the FDA will be able to seize  
that opportunity."

Doctors who treat ALS also  
urged a speedy O.K. at the  
hearings. Even the slightest  
benefit is better than nothing, they said,  
and the typical two-study demand may  
be too high a hurdle. "We're not talking  
false hope. We're talking modest hope,"  
says California Pacific Medical Center  
neurologist Dr. Deborah F. Gelinas.

**HARD LESSONS.** Whatever the outcome,  
the case offers drugmakers hard lessons.

Lesson one: Large trials,  
though costly, may  
pay off. "I'm quite  
sure it would have  
been statistically sig-  
nificant if they had  
two times as many  
patients," says Johns  
Hopkins University  
neurologist Dr. Ralph  
W. Kuncl. Lesson two:  
Heed advisory commit-  
tee requests for more  
data, even if you believe  
you've done enough.

For regulators, the case  
raises troubling questions.  
Should standards be lower  
for deadly diseases that lack  
treatments? Even now, the  
Senate is weighing a bill that

makes it clear the FDA has the authority  
to approve drugs based on a single trial.  
And when should compassion override  
rules? Says University of Pennsylvania  
bioethicist Arthur Caplan: "It is morally  
relevant not only what the evidence is,  
but what the plight is of the people who  
might be helped." With an admittedly  
weak treatment and a horrific ailment  
before it, the FDA now must decide what  
makes for the smartest medicine.

*By Joseph Weber in Philadelphia*

Rx

## THE CASE FOR MYOTROPHIN...

Myotrophin offers some relief for  
sufferers of Lou Gehrig's disease.  
Some patients report better mus-  
cle tone and an improved ability to  
swallow. Physicians have reported  
a measurable slowing in the rate  
of deterioration. The medicine  
might be even more effective if  
combined with another recently  
approved drug that extends life for  
the disease's sufferers.

## ...AND AGAINST

Contradictory studies—one  
showing effectiveness, the other  
not—means the case for FDA  
approval has not been made. The  
drug's sponsor should resolve the  
uncertainty once and for all with  
a third study. Otherwise, the  
FDA would be clearing a  
drug—and a pricey one at  
that—whose modest success  
in an early test could well  
have been a fluke.

panel had a narrow  
charge—to determine whether the  
drug showed "substantial" effectiveness.  
Without two convincing trials, it had-  
n't. What's more, Cephalon's approach  
irked committee members. "I thought  
their presentation was a bit on the slop-  
py side," says Coyle. One committee  
member charges that "Rather than do-  
ing the science... the company wanted  
to call in the most pitiful cases and use  
the emotional pressure of people with a  
very bad disease." Baldino insists the  
company already had presented suffi-

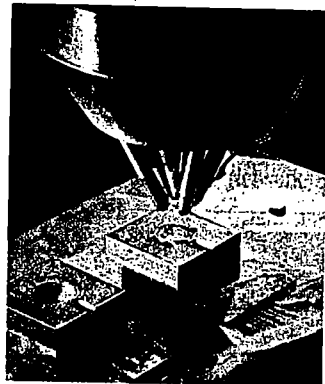
# Developments to Watch

EDITED BY NEIL GROSS

## IGH-TECH DESIGNS: BEYOND PLASTIC MODELS

IN THE MID-1980S, WHIZZES in manufacturing melded computer-aided design (CAD) software with plastic modeling equipment. The result, called stereolithography, lets product designers create finished physical models from their computer screens. Now, engineers at Sandia National Laboratories have gone a step further, actually manufacturing metal parts directly from CAD.

Following specifications from off-the-shelf design software, a laser burns a pit in a metal substrate to create a



**LASER BURN:** Metal magic

molten pool measuring about thirty-thousandths of an inch in diameter (photo). Metallic powder is then sprayed at the focus of the beam while a stage moves the substrate back and forth. As the material melts and cools, "the

finished object materializes before your eyes, layer by layer," says Clinton L. Atwood, Sandia's team leader for rapid prototyping. The process eliminates several manufacturing steps, he says, and the result is "a dense metal part with excellent metallurgical properties."

Initially, industry may use the technology to create metal tools or templates for plastic injection molding. But ultimately, factories could employ the same process to produce auto parts or to repair worn tips on turbine blades in aircraft engines. Sandia is completing a technology-transfer agreement with manufacturing giants Eastman Kodak Co., 3M, and others. □

## SILENCING SNORERS WITH RADIO WAVES

TIRED OF LISTENING TO YOUR PARTNER snore? Somnus Medical Technologies in Sunnyvale, Calif., has received Food & Drug Administration clearance for a technique that remodels the palates of snorers, removing the excess tissue that obstructs breathing and causes all the clatter.

The technique, called "somnoplasty," is an alternative to surgery. After applying a local anesthetic, a doctor wires the patient's

body with electrodes, inserts a needle into the palate's soft tissue, and pipes in radio waves. These agitate ions in the tissue, resulting in heat that kills the excess cells.

During the half-hour outpatient procedure, the patient feels a slight warmth and, for a few days afterward, a scratchy throat. But in a few weeks time, the body flushes out dead cells and the palate retracts to permit easy breathing. Somnus says the treatment will cost about \$2,500 in the U.S. It has enlisted Medtronic Inc. of Minneapolis to help export the procedure to Europe and Asia. *Stephen Baker*

## AN ENZYME CAN KNOCK OUT NERVE GAS

DEACTIVATING THE 200,000 tons of chemical weapons currently stored at munitions sites worldwide is a daunting task. But researchers at the University of Pittsburgh have a promising technique that uses a long-lasting, easily storable enzyme stabilized in polyurethane foam.

The method was developed by Alan Russell, director of

the University of Pittsburgh's chemical and petroleum engineering department. It makes use of an enzyme called phosphotriesterase that was discovered by scientists at Texas A&M University. Described by Russell as "one of the most efficient enzyme catalysts ever discovered for any reaction," the enzyme breaks oxygen-to-phosphorous bonds in dangerous chemicals, leaving harmless byproducts that can be safely burned. A drop of the enzyme will cause one ton of nerve gas to biodegrade within a year, he says. Unfortunately, though, it's ac-

tive only in a liquid environment, while most chemical weapons are not soluble in water.

To solve this problem, Russell stabilizes the enzyme in foam, which is then suffused with the noxious chemicals. In its sponge form, the enzyme can be stored for months at room temperature, he says. The German Defense Ministry is considering testing the enzyme in the decontamination of real chemical weapons. And the U.S. Army may use the technology in protective suits. *Johanna Knapschaefer*

## MINDING THE KIDS—ON THE NET

PARENTS WHO WORRY about their kids in day care may soon find reassurance at the click of a mouse. WorldWide Access in Chicago is testing a system called KidCam that lets parents with Internet access observe their child's day-care room on their PCs—and even enjoy a scheduled teleconference.

For security reasons, parents at participating day-care centers are asked to register and use membership numbers and words. Once that's set up, they log on to the center's Web site remotely and navigate to their child's room. If the parent's PC has a video camera, a feature called Kid Chat permits videoconferencing.

Kathleen Vrona, vice-president for marketing and sales and a co-founder of WorldWide Access, says the system has received good reviews in trial centers such as Rainbow Child Care & Learning Center in Naperville, Ill. In addition, as many companies that offer on-site day care have discovered, parents who are resting easy about their children's well-being tend to be more productive at work. Vrona says. *Elizabeth Veomett*



**ON VIDEO:** KidCam kids

**FOR FURTHER INFORMATION:** Go to Business Week Online at America Online or E-mail [dtwaug@businessweek.com](mailto:dtwaug@businessweek.com)

become even more empty and self-contradictory than usual. García Márquez's most recent stunt was to depart for self-imposed exile from Colombia once again, proclaiming that he could no longer abide the corrupt rule of President Ernesto Samper, a man whom he had previously defended from *gringo* charges of narco-democracy. His refuge? That great drug-free zone, Mexico. (It is just a matter of time before we hear about his intense friendship with, and the Herculean work habits of, Cuauh-témoc Cárdenas.)

**G**arcía Márquez's advice to young journalists is very, very strange. At his seminar in Cartagena last year, a dozen of Latin America's most promising reporters heard him declare that "journalism is not a job, it's a gland." Picking up the morning Cartagena paper, he turned to the classified ads. A woman was selling her brand-new stove, still in pieces. "Why is the stove unassembled?" García Márquez wondered. "This could be a story. Should we call?" No one at the table knew quite what to say.

But if that non-story qualifies for García Márquez's front page, his own partnership with Castro is not necessarily the news. "This is not an interview," he barked when a member of the seminar broached the subject. "If I want to express my opinion on Fidel, I'll write it myself, and believe me, I'll do a better job." (Besides, this professor of journalistic ethics charges up to \$10,000 for an interview, using the proceeds to finance his film institute in Havana.) "Fidel is one of the people I love most in the world," he explained. "A dictator," someone muttered. The writer shot back: "To have elections is not the only way to be democratic." But a Venezuelan member of the seminar persisted: "No one has elected you to office. You don't have a public office, why do you act as Fidel Castro's honorary chancellor?" "I will not respond to a question asked in bad faith," García Márquez huffed. "I do it because he is my friend, and I believe one must do everything for one's friends. I am always running errands for my friends."

Only a few months after this remarkable exchange, the author of *News of a Kidnapping* stood before the Inter-American Press Association and denounced "bad journalists [who] cherish their source as their own life, especially if it is an official source, and endow it with a mythical quality, protect it, nurture it, and ultimately develop a dangerous complicity with it..." The errand-runner lacks a sense of irony. He also lacks a sense of decency. •

## Hostility In America

By JAMES Q. WILSON

### Crime Is Not the Problem: Lethal Violence in America by Franklin E. Zimring and Gordon Hawkins

(Oxford University Press, 259 pp., \$35)

**O**ne of the more frustrating difficulties facing students of crime is our inability to compare crime rates across countries. Interpol gathers crime data from national police agencies, but it does so in a way that make its reports next to worthless. The agency fails to assess the quality of the accounts that it receives, and it presents them in a way bound to cause confusion. Thus, not long ago, someone published an op-ed essay in which the author claimed that the Netherlands had a higher murder rate than did the United States. That is, to put it mildly, an implausible idea. In his defense, however, he displayed the Interpol report. At first glance, the document seemed to confirm his view, until one noticed that every homicide reported for the United States was completed—that is, there was a dead body—but the homicides reported for the Netherlands included both completed and attempted (no dead body) homicides. The attempts, of course, far outnumbered the actual murders, and there was no explanation of how the Netherlands decided which actions were attempted murders and which were just everyday assaults. We do not know very much, in short, about how the characteristics of nations or their various criminal justice policies affect crime rates.

Franklin Zimring and Gordon Hawkins, two members of the Earl Warren Legal Institute at the University of California at Berkeley, have plunged into this thicket, fully aware of the snags that it contains, to sort out how American crime rates differ from those of comparably industrialized nations. No one will be surprised to learn that the United States has a far higher rate of violent crime, especially homicide, than Western Europe or Australia. But some may be astonished to learn that the rate of property crime here is similar to the rate of property crime elsewhere, and in many cases it is much lower. Zimring and Hawkins conclude that what is often described as the American "crime problem" is in reality a lethal violence prob-

lem, and that the main goal of public policy ought to be to reduce violence.

To do that, we must first understand why our rate of violence is so much higher than in England, Australia, France or Germany. The answer given by Zimring and Hawkins is that we kill each other more often (and engage in property crimes, such as robbery, that often have fatal outcomes) in large part because Americans are more heavily armed than are other societies. Opponents of gun control will reflexively object to this conclusion, but, if they are to prevail, they will have tough going against the arguments made here. Using data from the World Health Organization, a group that counts dead bodies instead of merely repeating police reports, and gathering facts from big-city police departments abroad, Zimring and Hawkins show that American cities are not very different from foreign ones of similar size with respect to theft or burglary, but they are vastly higher with respect to robbery and homicide. New York City has less theft and burglary than London but vastly more robberies and homicides. The same difference exists between Sydney, Australia, and Los Angeles.

Robbery involves the threat of violence; burglary need not involve violence, though violence may occur if the dwelling is occupied when the burglar enters. In neither crime is death likely. But thefts in American cities are more likely to lead to death than are thefts in other nations. In 1992, there were seven deaths in London resulting from a burglary or robbery; in New York City, there were 378, even though New York has fewer such crimes than does London. American property crimes are much more deadly than English ones, in large measure because our thieves are armed. And much the same story can be told about assault. When one Londoner attacks another, death occurs in less than one-half of 1 percent of the cases, but when one New Yorker attacks another, death is the result in over 3 percent of the cases. The reason in part is that firearms are used in 26 percent of all

assaults but in only 1 percent in London.

Still, the use of guns is not the whole story. If one looks only at robberies in which a gun was involved, the rate in New York City is still three times as high as it is in London. Even in other cases, guns are not essential: 90 percent of all American homicides involve a gun. This means that robbers without a gun kill one another more often than do Londoners without a gun. Obviously something other than weaponry makes New York City a more lethal environment than London.

But guns are not the whole story, we know. There are extraordinary differences among states in how frequently people are killed. Maine and North Dakota have the lowest homicide rates in the country, less than one-tenth of the rates in Louisiana and Mississippi, but the reason cannot be that no one in Maine or North Dakota owns a gun. Rural states are probably armed to the teeth, as anyone who has visited them during deer hunting season. The answer must be that personal encounters in rural states are more law-abiding and less productive of personal violence. North Dakota not only has the second-lowest murder rate, it has the second-lowest property crime rate.

Zimring and Hawkins suggest that many American communities are more dangerous not only because guns are more available, but also because personal conflicts are more frequent and more violent. In their words, firearms are "neither a necessary nor a sufficient cause of violent death," but they are a contributing factor. If two men meet in a bar or on a street corner and have an argument, the result of that quarrel will depend heavily on what weapons might be available with which to manage any escalating violence. If there are only fists, only a fist fight can ensue; if there are guns, there may be a fatal shootout. Many years ago Zimring published articles suggesting that murder was often the consequence of an ambiguously motivated assault: at the outset, nobody intended the death of the other, but, as the fight progressed and a gun was at hand, death was the result. To reduce deaths one must either reduce the likelihood of fights or disarm the fighters.

In their new book, Zimring and Hawkins largely reject other popular explanations for violence. They have little use for studies of the impact of the media, and I think that their rebuttals are essentially correct. Violence in the media is everywhere, in London as much as in New York, in Sydney as much

as in Los Angeles, and yet those places differ dramatically in lethal behavior. When all cities are exposed to the same media, it is hard to see how the media can explain differences in violence. No doubt there are copy-cat killers, but their numbers are too small to explain why people in Tokyo almost never kill and those in Atlanta often do.

Violence also accompanies drug dealing, but the proportion of murders that are connected to the drug trade is too small to make much of a difference. The best estimates are that no more than 10 percent of all killings are connected to the drug trade, though from time to time the percentage is much higher in a few cities. Moreover, the laws on drug-dealing are about as tough in Australia as they are here, but drug-connected deaths are about sixty times more common in Los Angeles than in Sydney. In the United States, drug dealing on a large scale has probably created an array of armed gangs that make violent encounters, and thus lethal ones, more likely. But why? That is like asking why the vast majority of drug users are in this country even though almost every country has similar laws.

There is another contributing factor that the authors confront, but not, I think, quite adequately. They ask whether the very high rate of violence among African Americans explains the American homicide rate. There is no denying the core facts. Blacks are five times as likely to kill as are whites; black males are six times as likely to kill as are white males. Homicide is the leading cause of death among young black males, but it is the tenth cause for Americans as a whole. Zimring and Hawkins do not have much to say about why this is true, except to argue that it is probably because African Americans live disproportionately in urban "slum neighborhoods" and because less violent middle-class blacks live in "racial zones" that put them in close proximity to poor blacks.

This is not much of an explanation. Just limiting ourselves to big-city residents reduces the black-white difference in homicide from eight times nationally to only (only!) four times at the big-city level. Moreover, other equally poor and geographically isolated urban groups have much lower crime rates. Koreans, Vietnamese and Chinese are often poor, and recent arrivals, and many of them live in similar "racial zones," but they kill at a far lower rate than do African Americans.

Now, explaining these differences is not easy. I am not certain what it is, but I expect that it has much to do with the legacy of slavery, lynching and past fail-

ure to enforce the law when blacks harmed other blacks. Oddly, Zimring and Hawkins write as if the explanation is either unimportant or obvious: It is, in fact, neither. If African American murder rates were the same as white murder rates, the national murder rate would drop substantially. The effect of lowering the black murder rate to equal the white one would not make America as safe as other industrialized nations, but it probably would have at least as big an effect as banning the existence of all handguns. Non-gun homicides in New York

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**The ancient realists were Epicureans, and they were regarded as dangerous to civilization by Roman leaders, who favored the idealistic philosophies of Platonism, Aristotelianism, and Stoicism. Epicureans denied Providence, viewed man as an evolved animal, saw virtues and laws as manmade, avoided involvement with government, spurned communism, and welcomed women and slaves as fellows. Jews abhorred Epicureans. Nevertheless, evidence exists that Jesus based his teaching on Epicureanism, only changing its theory of how immortal gods are made into a theory of how immortal human beings are made. This evidence is in the recently discovered *Gospel of Thomas*, a collection of 113 sayings of Jesus which radically differ from the Bible's. They are demonstrably notes taken while Jesus taught, for they match chronologically the vestiges of history that underlie the Markan myth: They reveal the historical Jesus and his recurring use of Epicurean tenets.**

**You Will Not Taste Death**

**JESUS AND EPICUREANISM**

by Jack Hannah, 321pp.pbk. \$12 postpaid.  
Frank Publishing, 1816 Springmill Road,  
Mansfield, OH 44903-8907

## Four Corners, Vermont

October sun, blue sky burning the fields sienna, even the governor upstate raking a lawn, his kingdom of this world. That afternoon on Main Street, at the four corners, the cop was trying to push a small bat with the butt of his pistol from the window-box by the door of the Putnam Hotel, an unused window-box where the bat, mistaken, caught by daylight, had fluttered down like a fallen leaf. Three townsmen, not doing much but holding their own, keeping up on the news, kept watch. The policeman laughed, tucking his pistol back in its holster. The teenage bellhop so far with nothing to do has pitched the bat out now. It quavers to the walk by the rail of the hotel stairs. The bellhop and a man wearing a jack shirt, worn and too small for his arms, stomp at it, grinding their heels between the palings. The boy runs back inside. It is Norman Rockwell-ish, this tableau the passers-by are watching. Soon the boy is back and kneeling with a fork. The leaves have fallen but the day is warm; even the governor tidies his lawn. The boy will jab at the black remnant, the tines will ring out, hitting the pavement again; again. Everyone in the land must know his place, any beast of the field his lair, his own.

STEPHEN SANDY

City are three times as common as all homicides in London, a number that is only a bit smaller than the difference in white-only homicide rates between the two countries.

In fact, Arnold Barnett of MIT has made some calculations that suggest that the homicide rate of adult black males has in fact been coming down much faster than the white homicide rate. No one is quite certain why this has occurred, though certain possible explanations—social progress, residential relocation—are obvious enough. We tend to forget these trends and to dwell instead

on the great increase in juvenile homicide rates that took place between 1985 and 1992. Young people, white and black, were becoming much more lethal in the late 1980s, probably owing to the spread of gangs, their involvement in drug trafficking, and easier access to guns. The increase was greater for blacks. In the last few years, that rate has declined a bit, and this probably helps to explain why the homicide rate generally in the country has experienced so sharp a dip.

But this dip may prove to be short-lived. Census figures show that there will be an increase in the proportion of young people on the streets in the next few years, and there is no reason yet to suppose that those who now lead a life of no fathers, gangs for friends and easy dollars in the drug trade have decided to abandon that life. Rescuing young people from those conditions, a frightfully difficult and expensive proposition, may be as effective as figuring out a way (none now exists) to deny them access to the knives and guns with which they can kill others.

Zimring and Hawkins neglect almost all of these issues in their desire to reassure us that there is no "black problem" in crime. I'm sorry, but there is. It is certainly not the whole problem, and solving it would certainly not solve America's violence problem; Zimring and Hawkins are right to point out that equalizing racial differences in murder, desirable as that may be, would still leave America's homicide rate at least twice as high as the rate in other major industrialized nations. An all-white America would be much more lethal than Italy, Canada, France, Germany and England, and vastly more lethal than Japan.

But that is not the end of the story. It is impossible to deny that very high rates of violence among African Americans (rates that may have been coming down of late among black adults) not only contribute mightily to the problem of life in our cities, they also disfigure and polarize any effort to deal with our most serious domestic problem. The authors at least acknowledge this effect. As long as black violence is at so high a level, they observe, it will reinforce "white fear in ways that palpably contribute to the exclusion of blacks from the social mainstream."

**B**y this point the reader expects that Zimring and Hawkins will offer some remedies for murder. Given their analysis, there are only two such remedies: reduce the availability of guns or lower the frequency of hostile encounters. But they suggest neither. Though they devote two long chapters to "Prevention," reading them reminds me of watching Mike Hargrove getting ready to bat. He comes to the plate. He stretches his shirt, tugs at his glove, pulls at his pants, shifts his cap, adjusts his grip. He gets in place. Then he backs out and does this all over again. To watch Hargrove at bat was like killing time during a rain delay. Will this ever end?

In this book, no. Zimring and Hawkins write that a "book of this kind would be a terrible place to posit a detailed and comprehensive program of loss prevention from violence. . . ." A terrible place: Franklin Zimring has devoted much of the last thirty years of his professional career to studying the impact of guns on violence, and he still has nothing to say about what we should do? If not now, when?

Of course, he does have a few things to say, but mostly by way of criticizing other people's ideas. Zimring and Hawkins dislike many of our prison policies because they think that, under the impact of those policies, we send too many nonviolent offenders to prison. They argue that, in California, the "three strikes" law has had no connection to the recent reduction in the rate of violent crime, but they leave the explanation of this controversial judgment to a document that they do not bother to summarize. (You will have to look it up. But I warn you, it will be a waste of your time.) They attack people who support various popular anti-crime programs for making absurd predictions and failing to evaluate the results.

They are probably right about this. But what programs do they favor, and how should we evaluate them? They speculate about regulating handguns, but they offer no idea as to how it might be done better. They ruminate about violent encounters, but they suggest no way to reduce their frequency except to suggest that victims be "as cooperative as possible" if they are threatened by a robber. They note that some people are trying to teach violence avoidance in the schools, but they conclude that there are "insufficient data to form a judgment" as to whether these plans work.

Perhaps Zimring and Hawkins are vague because they do not have any good ideas. That is not an embarrassing predicament. Very few people have good ideas about this subject, and for good

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Eric Monkkonen, after years of digging in historical records, has been able to show that the homicide rate in New York City has exceeded that of London by a factor of at least five for the past hundred years. Similarly, Roger Rosenblatt has shown that in the early nineteenth-century Philadelphia had a homicide rate. Big-city Americans are killing each other at a far higher rate than were Londoners long before the invention of radio and television, and long before the introduction of automatic weapons (and automatic sale of any drugs (other than alcohol)). It is very hard, I think, to see an easy way to reduce a homicide rate that has been so high for so long. The hostility of American encounters is just as important as the presence of automatic guns. If New York City can reduce its non-gun homicide rate that is five times larger than the total homicide rate in London, then removing all automatic guns from the United States (which is possible) would still leave us in a troubling condition.

Suppose we take Zimring's and Hawkins's analysis of the problem as correct, and then try to imagine what might be done. We must begin with the fact that the private ownership of guns cannot be substantially reduced. There is no point-of-sale restrictions that will reduce this huge stock by very much. Moreover, point-of-sale restrictions overlook the fact that most guns used in crimes are stolen or borrowed. And no government can do very much when people believe, with some empirical support, that having a gun makes you safer.

Using the data compiled by the National Crime Victimization Survey (NCVS) of 55,000 families, scholars have estimated that there are, at a minimum, between 65,000 and 80,000 defensive gun uses per year. Some estimates based on private polls suggest much higher defensive uses, ranging up to 1.5 or even 2.5 million. The data supplied by private polls are controversial, since so much depends on inferring society-wide effects from the answers of a tiny number of respondents. (If, to take a recent study, only 54 people out of 2,500 surveyed said they used a gun to defend themselves, then each of the 54 represents 68,000 Americans. Reporting errors—lies, exaggerations, poor memory—on the part of just a few people can have huge effects on the total number of defensive gun uses.) So consider instead the much larger and more reliable NCVS, conducted by the Census Bureau, according to which defensive gun uses in America are not trivial: 65,000 to 80,000 uses each year. No democratic government can

afford to say that, while it is having its own trouble protecting people against crime, it wants to deprive these 65,000 people of the means to protect themselves. Under such conditions, you don't need the National Rifle Association to defeat a government effort to disarm Americans.

There are more desirable and less controversial forms of gun control. The most important is to reduce the chances that a person will carry concealed on his person an unlicensed weapon while he walks about town. With a bit of new technology that is now being developed, it may become much easier for the police to spot and to question such gun carriers. Doing this may reduce the rate at which guns will cause angry encounters to escalate into lethal violence.

We also might wonder a bit about the magnitude of our penalties for homicide. They are about the same here as in Europe—that is to say, they are short in both places. Nationally, the median homicide inmate is released from prison after only about six years, while in California the release comes after about three-and-a-half years. Even many offenders sentenced to prison "for life" spend much less time there. Some inmates, of course, spend a lot of time in prison. But the small number of years the median (and the average) offender serves suggests the low price that we generally place on the average victim's life. These sentences should be made longer.

And much remains to be done, finally, to lead children away from a life on the street. We are still trying to learn how best to do this, but a growing body of evidence suggests that early intervention in the lives of very young, at-risk children and their mothers (often there is no father) can make a lasting difference. It will take another generation to learn whether these plausible guesses will bear lasting results for large number of children, but the nation's perpetually high homicide rate suggests that it might be time well spent.

Above all, we will have to learn to think about our crime problem historically. It took England several centuries of tough rule, brutal punishment and the inculcation of class-based values to achieve a low homicide rate. America has spent less time at the task, and it has sought to inculcate different values. As someone once said, the low murder rate in England is produced the same way you produce good lawns: plant good seed and then roll it for three hundred years. Zimring and Hawkins offer some sensible data on violent crime rates, but they plant no seeds and they roll no lawns.

JAMES Q. WILSON is the author most recently of *Moral Judgment* (Basic Books).

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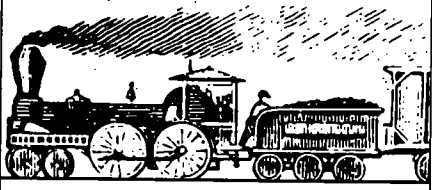


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## UNITED STATES

Los Angeles, 26% more than in 1990.

The revival of Los Angeles is part of a bigger story—California's apparent success in eliminating, at long last, the things that have been holding back its recovery. Aerospace manufacturing, which shed about 200,000 jobs in 1990-95, is starting to revive. Employment in navigation instruments increased by 8% in the year ending in March, and in the missile and space sectors by 2.7%. Tom Lieser, of the University of California in Los Angeles, predicts that the growth in this sector will continue until the turn of the century. The financial services and telecommunications sectors, both ravaged by mergers and downsizing over the past decade, are also beginning to add jobs.

With growth spreading throughout the state, the property market has turned around. Non-residential spending increased by 17.5% in 1996, to \$9.6 billion, and by a further 28.2% in the first six months of 1997. A study by California's real-estate research councils shows that, between April 1996 and April 1997, the average price of existing houses increased in 13 out of 20 counties surveyed, the first time increases had predominated since 1990. A year earlier only four of the 20 counties recorded increases, with the rest continuing a long string of declines.

The biggest increases are in the Bay Area; Santa Clara County leads the way, with a 12% increase in the year to April. But even in Los Angeles, where house prices had fallen by a quarter since 1990, they have now begun to rise. Howard Roth, of Bank of America, thinks the turnaround in the housing market will add the last missing piece to the Californian recovery, boosting consumer confidence, spurring spending on cars, furniture and consumer electronics, and stimulating house building, which remains at less than half the average rate of the 1980s.

### The lessons learned

The recovery goes on, and reaches so wide, because California made itself use the miserable years of recession to reorganise its economy. The state weaned itself off its dependence on military expenditure and redirected its energies into a myriad of civilian activities. Growth in a wide range of industries—with computers, films, biotechnology and multimedia in the lead—means that California now has 460,000 more jobs than it had before the recession began, many of them high-paying. (The average annual salary in those four industries is more than \$60,000.) The state has also diminished its dependence on big companies. More than half (407,000) of the 736,000 businesses identified by the Census Bureau in California have seven employees apiece or fewer.

The result is the most balanced economy in California's history. The success of

farming and light industry means that (unlike New York, for example) the state has jobs for less-skilled workers. To be sure, absorbing the 700,000 people likely to be thrown on to the labour market by welfare reform will be difficult. But the expanding San Diego economy, which now provides sophisticated services for industry over the border in Mexico, combined with LA's recovery, means that the Bay Area is no longer the only job-generator in the state. Mr Lieser predicts that California will add another 1.2m jobs before the end of the century, many of them highly paid.

There are problems to come, no doubt. Silicon Valley has severe shortages of space and talent. Anti-growth activists are beginning to flex their muscles, particularly in the Bay Area. An expanding population is putting strains on an already fragile school system. But, all in all, California is beaming down on the rest of the country again.

### Strengthening marriage

## Do you mean it?

NEW ORLEANS

**A**N EXPERIMENT begins next week in Louisiana that may interest quite a lot of other Americans. Almost half of all American marriages now end in divorce, even though many of them begin with a promise by the two partners to hold together "until death do us part". This is, of course, partly the result of a radical change of sexual mores in the West. But many Americans say the figures would not be so bad were it not for the spread of "no-fault" divorce laws. In Louisiana, a couple can legally split after six months' separation, with no questions asked; in some states, it is not



Until hard labour do us part

necessary to wait even that long. These laws, say the critics, further erode the idea of marriage as a commitment for life. Now Louisiana is trying to check the erosion.

On August 15th, a law creating "covenant marriages", passed overwhelmingly by the state's legislature, goes into effect. A "covenant marriage" is an optional form of marriage which is harder to enter and harder to leave than the usual late-1990s sort. It requires pre-marital counselling, and it allows divorce only under one of a number of fairly tight conditions: abandonment, two years' separation, adultery, physical or sexual abuse, or if a spouse gets sentenced in court to hard labour or death.

The law is a rare legislative triumph for religious conservatives, argues Representative Tony Perkins, the law's chief author. These people, he says, spend too much of their time opposing things—abortion, same-sex marriages, subsidies for what they consider immoral works of art. The concept of covenant marriage gives them an opportunity to put their weight behind something constructive.

For many Louisiana clergymen, this is excellent news. When the Reverend John Lancaster performs weddings at the First Baptist Church of Kenner, he often wonders how long the unions will last. Now he will require any couple who want him to escort them into wedlock to accept a covenant marriage. "Those few extra steps may save a lot of marriages, help a lot of kids, and that's worth it." The new law has also given Louisiana the unusual experience of looking, for once, like a moral guidepost. It has brought many inquiries from other states, some of which may now introduce similar legislation of their own.

But other local clergymen, and not a few marriage-guidance counsellors, fear the law may work in ways its originators did not intend. John Shalett, programme director at a counselling agency, Family Service of Greater New Orleans, thinks it could be used as a way of learning how to bring your marriage to an end. Want a divorce without waiting through two years of separation? Just have an affair, or thump your spouse. "It could possibly force one or the other of the couple into destructive behaviour they otherwise might have never thought about," he says.

Nor does the new law take into account every kind of destructive behaviour, complains Geraldine Levy, who looks after battered women at the New Orleans YWCA. There is more to domestic violence than physical battery; you can damage your partner by the language you use, or by the way you exploit an exchange of emotions. Yet, in a covenant marriage, neither is a ground for immediate divorce.

Despite these criticisms, many people in Louisiana believe that when the law takes effect covenant marriages will be a

## The lady who shamed Marion Barry

WASHINGTON, DC

**A**BUSIVE demonstrators, a false bomb threat, a handful of arrests: Washington's political theatre, after months of numbing budget-balancing, is suddenly vivid, loud and local.

At issue is what Mayor Marion Barry calls "the rape of democracy"—the decision by Congress and the president to rescue the nation's capital from impending bankruptcy and self-inflicted administrative chaos while stripping its elected officials of most of their powers for at least the next four years. The first step (hence the demonstrations about the loss of "home rule") came on August 5th. Hours after President Clinton had signed his new powers into law, Andrew Brimmer, chairman of the District of Columbia financial control board and the city's new de facto dictator, announced the replacement of four department heads. Mr Barry had not witnessed the Clinton signature: "It's like going to watch your own death."

Metaphorically at least, a lot of Washingtonians would welcome that death. By almost any yardstick of urban horror—infant mortality, AIDS, drug addiction, single-parent families,

armed robbery, rape—this city is either worst or near-worst in the nation. The streets have potholes worthy of tropical Africa; the water supply (it had to be taken out of the city council's direct control a year ago) was once officially considered dangerous to HIV-carriers and others with low immune systems. The city's population has slumped by a tenth since 1990.

The mayor has consistently blamed the "federal burden" (some 40% of the city's property is owned by the government and by non-profit organisations

and is therefore tax-exempt) and the need to provide health and prison services that for other cities would be underwritten by a state or county. Most people blame the mayor, a master of the political machine, who won successive elections in 1978, 1982 and 1986 and was re-elected in 1994 despite a spell in prison after being filmed in 1990 smoking crack cocaine.

Fortunately, there is one local actor with a blameless reputation: Eleanor Holmes Norton, for the past seven years the District's non-voting delegate to Congress. At least some of the rescue package's generosity—the federal assumption of the city's prison costs and its \$5 billion pension liability, cuts in its Medicaid contributions, tax breaks for homebuyers and investors—is due to Mrs Norton's tireless advocacy to a sceptical Congress.

Such are the obsessions of local activists that they accuse Mrs Norton of "selling out" the home rule—the right to elect a mayor and council—that Washington achieved only in 1974. Her reply is that she got the best deal possible from a Congress that might otherwise have appointed a city manager (shades of the colonial commissioner) and taken away all the functions of the mayor and his council. She is too polite to add that the real betrayer of home rule is the mayor himself.



Mrs Norton should be gesturing at him

popular choice among young couples. What bride and groom do not think their love will last forever? Yes, passions fade, dreary reality forces itself upon the scene. Mr Shalett says that most people do not truly know who they are, or what they want from life, until they have reached their thirties. He worries that the law may lengthen the duration of marriages at the cost of making many of them emotionally barren—which is good neither for the married pair nor for their children. Well, Louisiana now has a chance to find out whether the optimists or the pessimists are right.

### City planning

## Paradise dimmed

PORTLAND, OREGON

**B**AGUETTE sandwich in hand, Ethan Seltzer pauses in mid-bite to watch a young man with a fishing rod saunter by a street-side café. Nothing unusual in that, perhaps. But this is downtown Portland, Oregon, and the prospective fisherman is

heading for a favoured spot on the Willamette river, in the heart of the city. "That", says Mr Seltzer, "is what we're trying to protect—the image of a guy going fishing while people in suits sit here eating lunch."

Mr Seltzer is an urban-planning academic whose subject is Portland. He could hardly ask for a better one. In the past 20 years Portland has evolved from a snoozy riverside town best known for its wet winters and nine bridges over the Willamette into the nation's darling of urban correctness. Its strict planning, which sets tight limits on freeways and building sprawl in favour of green belts, high-density housing and mass-transit systems, draws admirers from as far away as Botswana and South Korea. Its compact downtown area is praised for its lively shopping projects and attention to pedestrians. And a 20-minute drive from the city centre lands you in a still-rural landscape of farms, hazelnut orchards and vineyards. Portland, it seems, has faced the bugbears of the 20th-century American city—congestion, urban decay, sprawl—and defeated them.

Or has it? Although many Americans think of Portland as the best-planned, best-

managed city in the country, in Portland itself a severe case of self-doubt is setting in. At the heart of the debate is the region's Urban Growth Boundary, its UGB.

Since 1979, the UGB has drawn firm lines around Portland and nearby towns such as Beaverton, Gresham and Oregon City. Those lines, once generous-looking, feel throttling now. Since they were drawn, some 700,000 people have moved into the region, attracted by Portland's benign climate and the nearby mountains and beaches, not to mention the thousands of jobs offered by high-tech companies in a booming "Silicon Forest" that has seen the region switch from a logs-and-farming economy to one driven by brains and microchips. Another 700,000 newcomers are expected in the next two decades.

The population explosion is straining the UGB, since just about every available acre of land within it has now been developed for housing, offices or the retail trade. The lack of land hits the housing market hardest. Ernie Platt, a vice-president of a home-construction firm, recalls the devices he used—including the assignation of a dummy buyer, in the hope that his manner



CAUTION!

# THEY'RE OUT TO STEAL YOUR MONEY

*Today's con artist is more sophisticated than ever,  
employing every trick from phantom securities to the  
Internet to crack into your retirement nest egg.*

*By Erick Schonfeld*

**I**NVESTMENT SCAMS come in all stripes and sizes. The phony sweepstakes promising free trips to Hawaii, the eel farm offering outrageous returns, and the Florida real estate that turns out to be a swamp are easy enough to spot. But grifters are becoming more sophisticated, and so are the stories that they weave. It is not just the trusting little old lady in Boca Raton who is being taken by today's swindlers, but doctors, lawyers, accountants, and even CEOs.

What's going on? Some people have fallen behind on their retirement savings and are looking for magic potions to make up for lost ground. Other investors have simply developed an insatiable appetite for high returns in this seemingly endless bull market. In either case, they keep reaching for the extra-plump returns, and the armies of sinister con men out there are only too willing to play on that greed.

New kinds of scams are popping up every day. Some of the more clever ones involve phony securities or investments sold over the Internet. Others are twists on old-fashioned frauds like Ponzi schemes or selling interests in worthless businesses. Even the most astute investors are liable to get taken by these new cons if they think they can get a free ride. Lee Errickson, an investigative investment analyst at Coopers & Lybrand, relates how once, while snowed in at a train station, he struck up a conversation with an international financier. The financier was about to loan several million dollars to an Arab in a complicated deal that was supposedly going to pay him 14% interest, when the normal rate at the time was closer to 6%. "I found holes in

his deal in 32 seconds over a cup of coffee at Penn Station in the middle of a blizzard," says Errickson. It wasn't that the financier was stupid, adds Errickson, rather that "he allowed greed to cloud his judgment." The best protection anyone can have against being swindled is simply to remove that cloud.

Here is a look at some of the latest scams that are cruelly separating investors from their money. Those who try to become familiar with as many different schemes as possible will be better equipped to avoid other people's costly mistakes.

## A \$700 MILLION PONZI SCHEME?

Sometimes an investment sounds so reasonable and enticing that no matter how careful you are, its fraudulent nature is nearly impossible to detect. Such appears to be the case with the Bennett Funding scandal, which duped 12,000 individuals and 245 banks in what the SEC calls America's most massive Ponzi scheme. How did it work? These people lost their retirement nest eggs and college savings by investing in supposedly safe office-equipment leases, which were for the most part innocently peddled by their brokers.

If anything can be learned from this, it's to diversify your investments. That's something Anthony Capriglione, 73, a former CEO of a small New Jersey bank, wishes he had done. Repeatedly over the years, he transferred all of his IRA and pension funds into Bennett leases and persuaded family and friends to do



*Patrick Bennett is charged with bilking investors of some \$700 million in a leasing scam.*

Department of Defense and, ironically, the FBI). Some even had an insurance component that seemed to guarantee the returns. The

catch for so many of the victims was exactly that—guaranteed high returns with no more risk.

Investors received a check every month up until the private, family-controlled company filed for Chapter 11. Other than the fact that they were not registered securities (and thus not filed with the SEC), there was nothing obviously outlandish about the leases. Their returns of around 8% to 12% were better than an average municipal bond's.

It's not that the Bennett operations were a complete fraud. There was a real business around which the alleged sham was built. "Around this core of reality," explains bankruptcy trustee (and former SEC chief) Richard Breeden, "was spun a web of imaginary activities, with the result that people could be shown things that were real, but they had no way of evaluating the magnitude of claims against those things." The problem, he says, was that Bennett sold the same leases multiple times to different investors. Some of the leases were pooled together, with the same ones represented in different pools. Others were entirely fictitious or were pledged as collateral to banks before being sold to investors who were unaware that what they had bought had already been pledged to someone else. By the end of the

DICK BLUME—THE SYRACUSE NEWSPAPERS

the same until their stake totaled \$1.4 million. "I put all my eggs in one basket," he says, "because it was doing so well." Before he invested, he took a trip on behalf of his bank to the Bennett offices in Syracuse, N.Y., and was impressed with the strong underwriting guidelines he saw enforced. All that due diligence was worthless, though, on the day the money dried up.

When the Bennett Funding Group went bankrupt last year, there were about \$1 billion worth of claims against assets valued at \$300 million, meaning investors are short some \$700 million. Its list of creditors include lawyers, doctors, a former judge, accountants, a risk assessor for an insurance company, and many successful entrepreneurs. Bennett purchased leases for office equipment such as copiers, faxes, phones, and computers, then resold them to investors. The leases were marketed as tax-free and safe investments, since the payments for the office equipment generally came from municipalities or federal agencies (including the

game, Bennett was paying out over \$30 million a month to investors but was collecting only about \$13 million from actual leases.

On June 26, U.S. Attorney Mary Jo White indicted former chief financial officer Patrick Bennett on 37 counts that include conspiracy, securities and bank fraud, lying to the SEC, money laundering, and concealing assets. His brother Michael and two others were charged with conspiracy to obstruct an SEC investigation. All pled not guilty. Patrick's lawyer says the company was not a Ponzi scheme, nor was it run for Patrick's "personal enrichment."

Court documents, however, paint a different picture—one of Patrick Bennett running amok in the company's finance department from 1990 to 1996, fraudulently overstating income in financial statements to make it appear that the company was profitable when it had actually suffered losses. (One red flag for investors: The company changed auditors in 1991, from Arthur Andersen to a smaller, less well-known firm.)



Patrick and his brother also allegedly diverted hundreds of millions of dollars to accounts that he controlled, and spent tens of millions on speculative ventures such as hotels, a horse race-track, failed casinos, and a mall project meant to attract a horde of Canadians to northern Maine (they never came). The most exorbitant waste of money, however, was probably the construction of a \$14 million replica of a side-wheeler casino boat called *The Speculator*.

Breeden has already distributed \$110 million to secured creditors such as banks, and another \$133 million is awaiting the court's decision on who is entitled to it. But that's small consolation for all the individual investors who have yet to see a dime. "I think the bankruptcy laws are cruel toward investors today," complains Henry Schaeffer, 78, who leads a small splinter group of displeased victims. "Professionals suck out so much money while investors sit on the sidelines." Without pros working on the case, though, it is doubtful anyone would

### GET YOUR "SPECIAL" BANK NOTES

The Internet, a place filled mostly with trusting people, is becoming a bonanza for the greedy grifter. The SEC now receives close to 40 complaints a day about Internet scams. Never make an investment decision based solely on what someone tells you on the Web. For one thing, you can never be sure whom you are talking to online. A smalltime con artist can give himself some credibility by building a Website that looks better than those run by large corporations. Behind that posted message or E-mail from a company officer could really be a shortseller who wants to scare you into unloading a perfectly good stock. Stock promoters can lurk clandestinely in popular investment chat rooms trying to create a buzz and pump up their shares; sometimes they go so far as to set up their own fake "investment newsletter" sites that are really just tout pages.

One recent and particularly pernicious Internet scam involved fake securities called prime bank notes. John Finnerty, an expert on bogus securities at Coopers & Lybrand, explains that imaginary investments like prime bank notes look "similar to something people have seen before but with a little twist that justifies the higher returns promised." Of course there is no such thing as higher returns without higher risk.

Traditionally targeted at portfolio managers and wealthy individuals able to put up millions, these prime bank note scams are wending their way down to the general investing public. In one instance the SEC brought a case against a trio who used CompuServe and the Internet to solicit investments ranging from \$12,000 to \$240,000. The m.o.: A promoter promises to get you into an exclusive circle of investors who are pooling their resources to participate in a secret market carried on among the top 100 "prime" banks in



*Anthony Capriglione failed to diversify and lost his retirement savings to a clever fraud.*

see any money at all. Breeden intends to recover at least 25 cents for every dollar that individual victims invested.

It is easy to say investors could have avoided much grief if they had exhibited more caution. But no one could reasonably have expected to know much about Bennett Funding—a private company without an independent board of directors, answerable to no one but the Bennett family. There were warning signs. The fact that the securities they bought were not registered with the SEC should have made investors automatically wary, as should the company's change of auditors. But the real question is, Are complex investments like these appropriate for the little guy? Probably not. Apparently, though, the coaxing of benighted brokers coupled with the lure of handsome guaranteed returns was too hard to resist. "It's like kids playing with firecrackers," reflects Breeden. "They do blow off their fingers sometimes."

the world. These banks transfer billions of dollars among themselves every day and are sometimes willing to pay extremely high interest rates, you are told, to temporarily park their funds in special holding accounts. Your money supposedly goes to open up one of these accounts and is guaranteed to at least double or triple.

In his pitch the crooked promoter strings together jargon from all sorts of legitimate financial instruments, such as derivatives. Upon close inspection his spiel is actually nonsensical, but many people who think they are financially sophisticated are too embarrassed to admit they don't understand exactly how the prime bank notes are supposed to work.

"It's easy to get taken in by the atmospherics," says SEC enforcer Paul Huey-Burns. While most conventional frauds involve something investors can inspect, "in the case of prime bank notes," he cautions, "there is nothing there except pieces of paper. They're tailor-made for the Internet." *continued*



## THERE'S GOLD IN THEM THAR HILLS

What investor can resist getting in on the ground floor of an exciting new high-tech industry, whether it's the Internet, wireless cable, or interactive video data services? The trouble is, most investors don't understand these businesses and are therefore juicy targets for a con. "One thing that is impressive," notes Huey-Burns "is the extent to which fairly sophisticated people can be taken. People read about Craig McCaw, and the pitch is, "You could be like Craig McCaw." These high-tech scams, which typically involve partnerships in phony businesses, have been pulled off hundreds of times by various con men who snare investors with a much older technology: the telephone.

A series of schemes investigated by the Federal Trade Commission started with an offer to invest in a 900-number dating service and psychic hot line. The scam evolved to an Internet shopping mall and Internet service providers that were going to set up operations in cities like Seattle, Chicago, and Detroit. All of these investments, says the FTC, were promoted by the same group of alleged tele-swindlers working mostly out of boiler rooms in Los Angeles.

According to the FTC, the con men would call potential investors and ask them to pony up between \$10,000 and \$20,000 for partnership shares. The promoters would then hold a partnership meeting and distribute about 15% of the proceeds to investors, pocket the rest, and wash their hands of any further involvement. By the time the investors would figure out what was going on, they'd be left with shares in companies that had little infrastructure and no money. The addresses listed as headquarters were just mail drops, and the phone numbers were answering services. Meanwhile, the promoters were busy rolling out their next operation.

Business investment scams are not limited to high tech. The FTC and SEC have brought actions against operations selling everything from shares in oil-drilling concerns and silver mines to movie production companies—even a coconut-chip distributor in Costa Rica.

Another favorite racket involves investments in goods such as rare stamps and semiprecious gem-

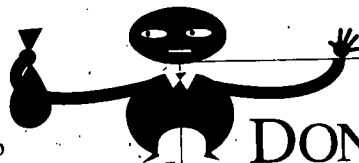
## THE ONLY THING WORSE THAN TRYING TO RECOVER FROM A SWINDLER'S SUCKER PUNCH IS TO GET SLUGGED AGAIN WHILE STILL WINDED.

told that the gem is now worth \$500 and you can put that amount toward one worth \$700. You like the quick returns, so you go for it. When it finally comes time to sell, the grifters can't be reached, and the price the stones fetch at a jeweler ends up being only about half what you paid for it. How can people fall for something like this? FTC attorney Robert Friedman explains, "People get sucked in because they think they have made money already."

The only thing worse than trying to recover from a swindler's sucker punch is to get slapped again while still winded. This is what happens in recovery-room operations, where a con man contacts victims of previous scams (their names are circulated on "mooch" lists) and says he'll help them get back the money they lost. Investors gladly pay a "processing" fee and are thus double-duped. In one 1994 case in Atlanta, alleges the FTC, some investors who had already been rooked into buying practically worthless mobile-radio licenses were called by a person posing as a telecom-license broker. For a fee, he told the hapless investors, he would help them recover their stake. Investors anted up and never saw their money again. Ouch.

What's your likelihood of getting ripped off? Most of today's brokers and financial planners are honest people who want to help you prosper. But your chances of becoming a victim are increasing. Investors are targeted by swindlers the same way they are by run-of-the-mill marketers. "People get on lists," says Susan Grant, a director of the National Consumers League. "Demographic information is available from government agencies, and it is possible to get names of retirees or people who have invested heavily," she adds.

The best defense is knowing whom you're dealing with and what you're buying. It's a pity to live in a world where fear and suspicion reign, but if you understand some of the ways the criminal mind works, you can save yourself not only a lot of money but a lot of pain.



RENEE ALLEN

## DON'T BE A SAP

### Ten ways to avoid being ripped off

**INVESTORS** should never put their money into any scheme or company they don't really understand.

**IF SOMEONE** is pressuring you too much, chances are he is not your friend.

**GOOD INVESTMENTS** usually don't have long stories attached; 12-minute tales should scare you.

**THE MORE PEOPLE** you get involved in your decision to invest, the better; talk to your accountant, lawyer, even your broker.

**MAKE SURE** you get proof of ownership for what you are buying. You may need it in court someday.

**BE EXTRA CAREFUL** when investing in financial instruments that are not registered with the SEC.

**LOOK AT THE COMPANY** and make sure it has adequate oversight from securities analysts, independent directors, and regulatory agencies.

**NEVER MAKE** investment decisions based solely on what you see on the Internet.

**IF ENTRY** into an exclusive circle of investors is part of the deal, search elsewhere. Chances are, you're really not that special.

**THERE'S NO SUCH THING** as high returns without high risk.

But while Rubin can muse about his modest contribution to the Republican fratricide, that doesn't change the fact that the administration has signed off on a seriously flawed tax bill—a bill that defies every standard by which tax bills have been judged. Tax bills, it is often argued, should simplify an already rococo code. This one adds incredible new gewgaws and curlicues. There are now at least six different rates at which capital gains are taxed. There are four different tax strategies that parents can use to help send their children to college. Any middle-class parent who wants to take advantage of these credits and deductions will need to hire an accountant.

Tax bills are also supposed to be fair, and, while the definition of fairness varies depending on who you ask, this one satisfies none of them. After two decades in which the private market has created wide disparities between income classes, this bill gives the wealthiest 20 percent over 75 percent of the benefits, according to Citizens for Tax Justice. In addition, people who have equal incomes will face spectacularly different tax bills, depending on everything from how they make their money to whether their children are in school. It will be a bonanza for accountants—and a new liability to anyone who can't afford one.

Tax bills are also supposed to help the economy by encouraging stable growth. Yet, while the education credit President Clinton so desperately sought might help a little to create a more competitive work force in the next century, nothing else in the bill will have a beneficial impact. Credible economists have yet to demonstrate that cutting capital gains tax rates spurs economic growth. In testimony this spring before the Senate Finance Committee, former Federal Reserve Chairman Paul Volcker remarked, "I'm not going to argue cause and effect, that the high capital gains taxes actually caused a good economy. But it's very hard to argue, I think, that a reduction in capital gains tax is vital to economic activity."

Even Rubin's scheme to force longer-term investments can't redeem the capital gains break. In fact, Rubin's plan to encourage patient capital—while popular in the early 1990s—no longer wins support from most tax experts. Jane Gravelle and Donald Kiefer from the Congressional Research Service and Margaret Blair and William Gale at the Brookings Institution all doubt that getting people to hold stock longer will necessarily affect whether corporate managers undertake long-term investments. And if corporate managers, whose investment patterns directly affect economic performance, don't change their behavior, then the economic benefit Rubin promised will be negligible. This whole argument, Gale says, is just "another disguised reason to give a capital gains tax cut."

Meanwhile, the tax provisions could have a disastrous effect on the deficit after 2002. Many of them are "backloaded" to take effect after that. Some of the capital gains cuts won't begin drawing out revenue until 2006. The bill also creates new "backloaded IRAs." In the past, taxpayers got to deduct from their current tax bill the money they put into IRAs, but would have to pay taxes on it when they finally withdrew it. Under the new plan,

they would include the money invested in an IRA in their current taxable income, but would not pay taxes when they pull money out. In effect, the interest they make would be tax-free. That will cost the Treasury billions over the next few decades.

There are, in fact, very few redeeming features of this tax bill. Rubin may have prevented a massacre of the tax code, but he settled for a rout. The major beneficiaries of this bill are not Americans as a whole but the individuals who live in the affluent suburbs of Archer's Houston and Gingrich's Atlanta and who now vote Republican. They will take this bill to the bank, while the rest of us pay for it. •

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## A limited defense of chemical castration.

# KINDER CUT

By Craig Turk

Last year, the California legislature became the first state to mandate "chemical castration"—the temporary and reversible suppression of sex drive through hormone shots—for several classes of convicted sexual predators. And sometime next year, a California court will almost certainly strike down the law. The court will likely say that the law is too vague, that the treatment may not always work and that the measure as written is "cruel and unusual punishment." In all of this, the court will be absolutely correct.

But lawmakers in Florida, Michigan, Massachusetts, Missouri, Texas and Washington should not abandon their efforts to pass similar laws just yet. In at least some cases, injections of medroxyprogesterone acetate (more commonly called Depo-Provera) can function as a sexual appetite suppressant, keeping convicted molesters from harming again. Moreover, when administered as part of a broader psychological treatment regimen, the shots can actually help in rehabilitation. California erred mainly by passing a law that applied the treatment so indiscriminately. A more carefully tailored measure—one that invoked chemical castration in more limited circumstances—would not only be an effective crime deterrent and rehabilitation tool, it is also more likely to pass constitutional muster.

Under California's law, which took effect in January, state courts can force anyone convicted of molesting children younger than 13 to undergo, as a condition of parole, Depo-Provera shots, which reduce testosterone to prepuberty levels and are supposed to prevent sex offenders from molesting again. After a second conviction, injections are mandatory. The concept of chemical castration is not new. Though not quite as effective

as surgical castration—an option California graciously offers, presumably for felons who really hate needles—physicians have used drugs like Depo-Provera for over twenty years. Published data strongly indicate that very low testosterone levels correlate with low sexual libido for men, and several studies have shown such treatment works in controlling the sexual behavior of certain types of pedophiles. Some of the most striking results, frequently touted by proponents of the California legislation, come from studies in Denmark and Switzerland, where voluntary chemical castration reduced recidivism rates from 50 percent or higher to substantially less than 10 percent. In a widely cited statement, one Danish sex offender raved, “My sex fantasies, which once made me a criminal, are gone. Watching a pornographic movie is like watching the evening news.”

But if California had bothered to check the details of these studies, it would have known better than to mandate chemical castration for such a broad class of sexual criminals. For starters, the European studies used small samples and lacked adequate control groups. Everyone who underwent the treatment did so voluntarily, which suggests the participants at least wanted to be treated and raises questions about whether Depo-Provera would work for offenders less eager to be reformed.

What's more, sex offenders are not a homogeneous group: even among those who prey only upon children, there are numerous types. Some individuals cannot attain sexual or emotional satisfaction with adults at all; others, such as the mentally retarded, sometimes turn to children because they cannot deal successfully or maturely with adults. There are those whose crimes are the product of impaired judgment—one study recently concluded that as many as 76 percent of sex offenders abuse alcohol, and that half of their crimes are committed while the offender is intoxicated. And there are also sadistic offenders motivated by malice.

**D**epo-Provera may help control the trenchcoat-wearing, candy-toting playground stalker, yet the evidence suggests it will do little to prevent crimes against children by predators who act for reasons other than sexual gratification, who harm children out of rage and emotional imbalance, or whose gratification for their crimes may not be wholly sexual. The only way to keep these criminals from molesting again, experts say, is to keep them in prison, or through intensive treatment and counseling. The California Psychiatric Association, which like most medical groups has opposed the California law, concluded: “While we support efforts in finding effective methods of stopping sex offenders from reoffending, psychiatrists fundamentally believe that not all offenders would necessarily benefit from this type of treatment intervention and that treatment is most effective when the person agrees to try to change their behavior.”

For practical purposes, this might not seem like a fatal flaw, given that the safety of children is at stake. “Nothing's 100 percent,” says Assemblyman Bill Hoge of Pasadena, who introduced the bill after being sickened

by a story of a child rape in Texas. The courts, however, will probably see things differently. There is, first, the question of whether chemical castration amounts to “cruel and unusual punishment,” as prohibited by the Eighth Amendment. Although jurisprudence in this area is somewhat muddled, it generally involves evaluations of how a punishment was viewed historically and how it meets modern standards of decency.

**G**iven the nature of the crimes at issue, the high-tech elegance of the procedure and its considerable political popularity, courts are unlikely to strike down Depo-Provera injections as cruel and unusual—if they are used in cases in which the treatment works. But, because the California law applies the punishment indiscriminately, it is constitutionally vulnerable: it may seem like we cannot be cruel enough to child molesters, but the Constitution makes no allowances for pure vindictiveness. Forcing weekly injections of a hormone—particularly one not FDA-approved for such purposes—on criminals who will not be controlled or rehabilitated by it is precisely the kind of severe and random punishment the Eighth Amendment sought to prohibit.

Another legal issue concerns the Fourteenth Amendment, which prohibits deprivation of life, liberty or property without due process. Although the Supreme Court has not recognized a right to a libido, it has declared—in a 1942 decision striking down involuntary sterilization for habitual felons—that procreation is a “basic civil right of man.” While chemical castration is reversible, and while it does not necessarily impair functioning to the point of making intercourse or procreation impossible for men, it does make procreation temporarily impossible for women. Indeed, for women Depo-Provera is a form of birth control—and it does not dampen their libidos.

To justify this infringement upon a fundamental right—the right to procreate—the state must show that it has a compelling interest, “narrowly tailored” to the situation involved. Controlling convicted child molesters through hormone suppression is likely to satisfy the “compelling state interest” test: sex crimes against children are a serious public problem, and Depo-Provera treatments can help redress it in some cases. But California's program fails the “narrowly tailored” test: Depo-Provera's temporary sterilization of women has nothing to do with the professed goal of lowering offenders' sex drives. And, even if it had been limited to men, the California law does not ensure that only those who can be helped by the process are chemically castrated.

This is not a case of unjustified public rage, but of legislative pandering subverting a potentially effective solution to a barbaric problem. Proponents of California's law claim their measure is better than nothing, but lawmakers elsewhere should realize that nothing is not the only alternative.

CRAIG TURK is a law student and former managing editor of *The Public Interest*.

# DEFINING DISABILITY DOWN

By Ruth Shalit

In July of 1995, Jon Westling, the provost of Boston University, traveled to Australia to attend the Winter Conversazione on Culture and Society, a highbrow tête-à-tête for globetrotting pundits and savants. Westling, a protégé of former B.U. President John Silber, is an avowed conservative; and the subtitle of his speech, "The Culture Wars Go to School," seemed to portend the usual helping of red meat for the faithful. But instead of decrying deconstruction, or puncturing the pretensions of tenured radicals, Westling took aim at an unexpected target—the learning-disabled. He told the story of a shy yet assertive undergrad, "Somnolent Samantha," who had approached him one day after class and presented him with a letter from the Office of Disability Services. The letter explained that Samantha had a learning disability "in the area of auditory processing" and would require certain "accommodations," including time-and-a-half on quizzes, double time on the midterm, examinations administered in a room separate from all other students, copies of Westling's lecture notes and a reserved seat at the front of the class. Samantha also notified Westling that she might doze off in class, and that he should fill her in on any material she missed while snoozing.

The somnolent undergrad, Westling contended, was not alone. A new, learning-disabled generation was coming of age in America, a generation "trained to the trelis of dependency on their special status and the accommodations that are made to it." Citing a Department of Education estimate that up to 20 percent of Americans may be learning-disabled, Westling mused on the evolutionary ramifications of such a diagnosis. "There may be as many as 50 million Americans," he observed. "What happened? Did America suffer some silent genetic catastrophe?"

Westling's speech, it turns out, was a prelude to action. Shortly after returning from Melbourne, the aggrieved provost took a cleaver to B.U.'s bloated Office of Learning Disabilities Support Services, a half-million dollar fiefdom whose policies had, in the words of *The New York Times*, earned B.U. a "national reputation" as a haven of support for the learning-impaired. He stepped up standards for documentation, and he issued a blanket prohibition on waivers of the school's math and foreign language requirements, contending that there was no

medical proof that students with learning disabilities are unable to learn these subjects. Henceforth, he declared, all requests for learning-disabled accommodations would be routed through his office. Westling then made a final announcement. In 1996, he said, he would become president of the university.

The learning-disability establishment was dumbfounded. "Here was someone coming in with no knowledge, taking the national model and destroying it," says Anne Schneider, the Park Avenue fund-raising doyenne who spearheaded the creation of B.U.'s program a decade ago, after her learning-disabled daughter Andrea nearly washed out of the university—due, Schneider says, to a lack of services. Schneider, whose personal fund-raising efforts have kept the office flush with cash, sees Westling's assault on her brainchild as analogous to "taking a seeing-eye dog away from a blind person." Janet Cahaley, mother of learning-disabled sophomore Michael, agrees: "These kids are the most vulnerable people on campus. Before, they were treated with humanity and decency and kindness. Now, they're hopeless and helpless."

Well, maybe not so helpless. Westling's putsch brought howls from disabled-rights advocates and from the media, which pounced upon the revelation that Somnolent Samantha was a fictitious composite—a "rhetorical trope," as Westling somewhat sheepishly admitted. And on July 15, 1996, ten students filed a lawsuit against Westling, claiming his unkind words and arduous new requirements amounted to illegal discrimination under the 1990 Americans With Disabilities Act. In their complaint, the students alleged that Westling's new standard for documentation—requiring applicants to submit an evaluation that is less than three years old and prepared by a physician or licensed psychologist—amounted to an "unduly burdensome prerequisite" that would screen out learning-disabled students from receiving their legally mandated accommodations. Also unlawful, the students contended, was Westling's prohibition on waivers of academic requirements. Finally, in their most enterprising claim, the students accused Westling of creating a "hostile learning environment" for the disabled, inflicting needless "emotional distress" and crushing their hopes of collective advancement. A ruling by Judge Patti B. Saris of Boston Federal District Court is expected by the end of August.

Recent rulings by other judges suggest that the learning-disabled students may well prevail in court. But even then the questions begged by Somnolent Samantha will remain. Westling and B.U.'s new guard insist that they have no animus against those with "genuine" learning impairments; they simply want to weed out the impostors. Yet, in holding up a trendy diagnosis to the bright light of public scrutiny, B.U. officials have raised issues that go to the core of a debate that has grown as civil rights law has expanded to cover not merely the halt, the lame and the blind, but the dysfunctional, the debilitated and the drowsy.

Should "learning-disabled" even be a protected category under federal law? What, exactly, is a learning disability? Are the B.U. plaintiffs at the vanguard of a new generation of civil rights warriors, as their supporters contend? Or is their lawsuit the *reductio ad absurdum* of identity politics and tort madness—Harrison Bergeron meets Perry Mason in *The Case of the Litigious Lollygaggers*?

The recent announcement by the Equal Employment Opportunity Commission that the Americans With Disabilities Act covers not only physically but mentally handicapped individuals has occasioned a flurry of hand-wringing editorials. Worried employers have painted a scary scenario of a law that will coddle murderous lunatics, endanger the welfare of unsuspecting customers and transform America's factories and foundries into dystopias of dementia. In some ways, however, it is the entrenchment of learning disability—a comparatively undersung, and seemingly more benign, "hidden impairment"—that poses the more subversive challenge to basic notions of fair play, professionalism and equal protection under the law.

No one would deny that an individual who is unfortunate enough to be afflicted with one of the classically defined mental disorders—schizophrenia, paranoia, manic depression, and so on—suffers from a clearly defined and clearly recognizable infirmity, one that is likely to impair significantly her educational achievements and career prospects. (Whether employers should be legally compelled to overlook these mental disabilities is another matter.) The diagnosis of a learning disability, in contrast, is a far more subjective matter. For many of the more recently discovered learning maladies—math disability, foreign-language disability, "dys-rationalia"—there are no standard tests. To be sure, real and debilitating learning disabilities do exist. But there are no good scientific grounds to believe that some of the more exotic diagnoses have any basis in reality. Yet, thanks to the interlocking protections of three powerful federal disability laws, refusal to accommodate even the most dubious claims of learning impairment is now treated by the courts and by the federal government as the persecution of a protected minority class.

Modern disability law was inspired by the most humane of motives, to protect the disabled from prejudices that deprived them of equal opportunities in the workplace and in the classroom. From the outset, however,

this grand aspiration was framed in the fuzziest of terms. The statutory framework for modern disability law was established in the Rehabilitation Act of 1973, which mandated assistance measures for the disabled in federal facilities. Here is how Section 504 of the act defined a learning disability: "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written ... [which] may manifest itself in imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations." This remarkably broad definition is echoed in all subsequent disability laws, notably the 1975 Individuals With Disabilities Education Act, which mandated an array of services for disabled public school students, and the 1990 Americans With Disabilities Act, which extended the protections of the Rehabilitation Act into the private sector. All three laws are equally vague in their description of how people with disabilities must be treated. As the ADA puts it, in the case of any individual possessing a "disability" that results in "substantial impairment" of a "major life activity," schools and employers cannot "discriminate" and must provide "reasonable accommodation." The meaning of these legal appellations, as interpreted by the courts and the regulatory agencies, would turn out to be remarkably expansive.

There were *some* limits written into the disability laws. For instance, only "otherwise qualified" individuals are entitled to protection; accommodations are only mandated if they do not result in "undue hardship." But recently a number of rulings by federal courts and government enforcement agencies have revealed how flimsy these limits are.

Although compliance with federal disability law is not supposed to come at the expense of education or job performance standards, the Department of Education's Office of Civil Rights has delivered stinging rebukes to schools that refuse to exempt learning-disabled students from academic requirements. Last May, a student afflicted with dyscalculia—math disability—filed a complaint with the San Francisco Office for Civil Rights after her college declined to waive the math course required of all business majors in paralegal studies. Despite the college's earnest attempts to accommodate her impairment—the student would receive extensive tutoring and extra time on tests—OCR issued a finding of discrimination anyway, writing on May 30 that "[a]bsolute rules against any particular form of academic adjustment or accommodation are disfavored by the law." When the school asked if they could require learning-disabled students to at least *try* to pass a required course, OCR said no way, arguing that "it is discriminatory to require the student to consume his or her time and jeopardize his or her grade point average taking a particular mathematics course when the person qualified to administer and/or interpret the psychometric data has determined that the student, due to his or her disability, is highly unlikely to pass the course with any of the accommodations the institution can identify and/or deliver." OCR added that this rule should apply even to borderline

dyscalculics, that "substantial group of students for whom interpretation of psychometric measures provide no clear prediction of success in a particular mathematics course."

This is the new frontier, the learning disability as an opportunistic tautology. The fact that one displays a marked lack of aptitude for a particular intellectual discipline or profession establishes one's legal right to ensure at least a degree of success in that discipline or profession. That is not a fanciful conceit, but an adjudicated reality. Several judges have recently ventured the enterprising claim that any person who is not performing up to his or her abilities in a chosen endeavor suffers from a learning disability within the meaning of the ADA.

Consider the lawsuit filed in 1993 by an aspiring attorney named Marilyn J. Bartlett. Bartlett graduated in 1991 from Vermont Law School, where she received generous accommodations of her reading disability and disability in "phonological processing." Nonetheless, Bartlett did not do well, graduating with a GPA of 2.32 and a class standing of 143 out of 153 students. She then went to work as a professor of education at Dowling College, where, according to court documents, she "receives accommodations at work for her reading problems in the form of a full-time work-study student who assists her in reading and writing tasks."

When it came time to take the bar exam, Bartlett petitioned the New York Board of Law Examiners for special arrangements. She wanted unlimited time for the test, access to food and drink, a private room and the use of an amanuensis to record her answers. Acting on the advice of its own expert, who reported that Bartlett's test data did not support a diagnosis of a reading disorder, the board refused Bartlett's demands. Three times, Bartlett attempted the exam without accommodation. After her third failure, she sued the board.

On July 3, 1997, Judge Sonia Sotomayor ruled in Bartlett's favor. Ordering the board to provide the accommodations Bartlett had requested, she also awarded Bartlett \$12,500 in compensatory damages. Judge Sotomayor did not challenge the board's contention that Bartlett was neither impaired nor disabled, at least not in the traditional sense. In an enterprising new twist, however, she declared that Bartlett's skills ought not to be compared to those of an "average person in the general population" but, rather, to an "average person with comparable training, skills and abilities"—i.e., to her fellow cohort of aspiring lawyers. An "essential question" in the case, said the judge, was whether the plaintiff would "have a substantial impairment in performing [the] job" of a practicing lawyer. The answer to this question was "yes," the judge found. And this answer—the fact that Bartlett would have a very hard time meeting the job requirements of a practicing lawyer—was, in the judge's opinion, precisely the reason why Bartlett had a protected right to become a practicing lawyer. Thus, Judge Sotomayor ruled that Bartlett's "inability to be accommodated on the bar

exam—and her accompanying impediment to becoming bar-admitted—exclude her from a 'class of jobs' under the ADA," and could not be permitted.

To drive home her point, Judge Sotomayor triumphantly cited Bartlett's performance during a courtroom demonstration of her reading skills. "Plaintiff read haltingly and laboriously, whispering and sounding out some words more than once under her breath before she spoke them aloud," the judge recalled. "She made one word identification error, reading the word 'indicted' as 'indicated.'"

It could, of course, be argued that the ability to read is an essential function of lawyering; that any law school graduate who cannot distinguish "indicated" from "indicted," who cannot perform cognitive tasks under time constraints, is incapable of performing the functions of a practicing lawyer and therefore, perhaps, should not be a practicing lawyer. But one would be arguing those things in the teeth of the law. Thanks to the Americans With Disabilities Act, the Individuals With Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973, Bartlett and her fellows among the learning-disabled are now eligible for a life-long buffet of perks, special breaks and procedural protections, a web of entitlement that extends from cradle to grave.

Jon Westling is a crusty chain smoker with owlish glasses and a stuffy, orotund manner, an easy figure to mock. But, as it turns out, his portrait of Somnolent Samantha was hardly a wild flight of fancy. Before beginning his formal audit of LDSS's practices, Westling asked its director, Loring Brinckerhoff, whether the office had ever turned down a single request for special dispensation on the grounds that the student hadn't presented enough evidence. When Brinckerhoff answered no, Westling asked to see folders and accommodation letters for the twenty-eight students who had most recently requested and received adjustments to their academic program. Of these twenty-eight, Westling pronounced no fewer than twenty-seven to be insufficiently documented. And, indeed, copies of the students' files, exhumed during the discovery phase of the lawsuit and now available as courthouse exhibits, seem to provide some support for this harsh assessment.

For starters, some of the diagnosticians themselves appeared somewhat impaired. One evaluator wrote that "taking notes and underlying [sic] while reading" would help a student "maintain her attention." Another student, a female, was erroneously referred to as "Joe" by the evaluator who pronounced her to be learning-disabled. Even more troubling, though, was LDSS's seemingly reflexive acquiescence to students' wish lists. Michael Cahaley, one of the plaintiffs in the lawsuit, was, according to Westling's affidavit, described by his doctor as having "minimal" deficits: "this very intelligent youngster should do well in high school and college." Nonetheless, Cahaley had requested—and was granted—double time on all of his examinations. In

another case, the clinical psychologist who examined a student reported that his "skill deficits" were "not severe enough to be a learning disability"; but a learning specialist misread the report and recommended accommodation anyway, on the grounds that "the student was evaluated and found to have a learning disability."

Sometimes the evaluator's recommendations seemed just bizarre. In one case, a student's psychologist opined that a student who "appears to have subtle verbal processing difficulties" should not be "asked to recall very specific data or information." As Westling dryly observed in his affidavit, requests for "very specific data or information" constituted "an essential element of every course and academic program offered by Boston University."

At the trial, the student plaintiffs came off as something other than inspiring champions for disabled rights. Elizabeth Guckenberger, a third-year law student who was diagnosed as having "a visual and oral processing disability" while a freshman at Carleton College, admitted she had received every accommodation she had ever requested under the Westling regime, including extra time on exams, a reduced course load and priority registration in the law school section of her choice. Benjamin Freedman, a senior with dysgraphia ("really, really bad handwriting," he says), also got everything he wanted, including double time on exams, the option to be tested orally and the services of a professional note-taker.

Plaintiff Jordan Nodelman, who claimed he suffered from Attention Deficit Disorder (ADD), also had received every accommodation he ever requested, including the right to take all tests in a distraction-free environment with extra time. At trial, he admitted that his attention deficit waxed and waned. When "something's very important to me," he explained at trial, he "forc[ed] [him]self to concentrate." Nodelman had a 3.6 GPA, had made the Dean's List and had taken his tests untimed in every class except Zen Guitar.

Perhaps the least compelling plaintiff was sophomore

Scott Greeley, who testified that he suffers from an "audio-visual learning processing deficit." At B.U., Greeley had been provided with a note-taker, time-and-a-half on tests and an open-ended right to have any test question "clarified" by the instructor. But the perks didn't help much—as Greeley explained at trial, after the accommodations were provided his GPA improved to a less-than-stellar 1.9. Over the course of the trial, B.U. attorneys established that this shoddy showing was perhaps not wholly attributable to societal persecution of the disabled. Queried about his spotty attendance record in a science course for which he received


a "D" grade, Greeley explained that "part of my disability is that I need a structured schedule." "Would you say you missed over half the classes?" persisted the judge. "Probably around that, yes," replied the undergrad.

It would be comforting to think that B.U.'s "disabled" plaintiffs represent an exception to the norm, but this does not seem to be the case. Over the years, proposed reforms to disability law have been effectively vanquished by televised testimony from sobbing children in wheelchairs. Increasingly, however, individuals with grave physical handicaps comprise only a small portion of the people who claim special privilege under the federal disability laws. As Manhattan Institute fellow

Walter Olson points out in *The Excuse Factory*, complaints by the traditionally disabled—the deaf, blind and paraplegic—have accounted for only a tiny share of ADA lawsuits. According to 1996 EEOC figures, only 8 percent of employment complaints have come from wheelchair users and a mere 6 percent from the deaf or blind, bringing the total for these traditional disabilities to a skimpy 14 percent.

The diagnosis of learning disability, by contrast, is experiencing something of a boom. In the space of only a few years, the number of children diagnosed with Attention Deficit Disorder, reading disability and math disability has swollen by hundreds of thousands. Of the 5.3 million handicapped children currently on

**WHAT DOES YOUR  
HEALTHY, NORMAL, PERFECT,  
LITTLE DARLING NEED TO  
GET AHEAD IN LIFE ?**



**A SMALL DISABILITY TO  
QUALIFY FOR SPECIAL AID !  
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DRAWING BY VINT LAWRENCE FOR THE NEW REPUBLIC

Individual Education Programs (specially tailored, often costly regimens of technology, therapy and one-on-one tutoring that public schools are mandated to provide to every child with a disability), the U.S. Department of Education estimates that just over half (51 percent) are learning-disabled. According to the authors of the book *Promoting Postsecondary Education for Students with Learning Disabilities*, up to 300,000 students currently enrolled in college have proclaimed that they are learning-disabled and need special accommodations.

The National Collegiate Athletic Association, meanwhile, is under intense legal pressure from the Justice Department to relax the initial eligibility standards that require student athletes to get a cumulative score of 700 on their SATs and to maintain at least a 2.0 grade point average in core courses. These standards are meant to offer a slight safeguard against the tendency of universities to enroll and graduate young men and women whose ability to pass a ball exceeds their ability to pass their courses. Not so fast, said Justice Department lawyer Christopher J. Kuczynski. In a March 1996 letter to the NCAA, Kuczynski warned that the association's academic standards may "have the affect [sic] of excluding students with disabilities from participation in college athletics." NCAA spokesman Kevin Lennon says the association is in the process of revising its policy "to accommodate students with learning disabilities."

**T**he most common estimate cited by advocacy groups and frequently repeated in government documents is that between 15 and 20 percent of the general population have learning disabilities. Any hypochondriac can test himself: in a recent booklet, the American Council on Education supplies a checklist of symptoms for adults who suspect they may be learning-disabled. Some of us will be disturbed to recognize in the checklist possible symptoms of our own: according to the council, telltale signs of adult learning-disablement include "a short attention span," impulsivity, "difficulty telling or understanding jokes," "difficulty following a schedule, being on time, or meeting deadlines" and "trouble reading maps."

As the ranks of the learning-disabled swell, so too do the number of boutique diagnoses. Trouble with numbers could signal dyscalculia, a crippling ailment that prevents one from learning math. Lousy grammar may stem from the aforementioned dysgraphia, a disorder of written expression. Dozing in class is evidence of latent ADD, perhaps even ADHD (Attention Deficit/Hyperactivity Disorder). Many tykes also exhibit the telltale symptoms of ODD—Oppositional Defiant Disorder. According to the American Psychiatric Association, the defining feature of ODD is "a recurrent pattern of negativistic, defiant, disobedient, and hostile behavior ... characterized by the frequent occurrence of at least four of the following behaviors: losing temper, arguing with adults, actively defying or refusing to comply with the requests or rules of adults, deliberately doing things that

will annoy other people, blaming others for his or her own mistakes or misbehavior." Rates of up to 16 percent have been reported.

A tongue-tied toddler could have dysphasia, otherwise known as a "difficulty using spoken language to communicate." Boorish behavior may be a sign of dyssemia, defined as a "difficulty with signals [and] social cues." (According to the Interagency Commission on Learning Disabilities, social skills are a domain in which a learning disability can occur.) An even more sinister malady is dysrationalia, defined in an October 1993 issue of *The Journal of Learning Disabilities* as "a level of rationality, as demonstrated in thinking and behavior, that is significantly below the level of the individual's intellectual capacity." A checklist of childhood precursors include "premature closure, belief perseverance ... resistance to new ideas, dogmatism about beliefs, and lack of reflectiveness."

**T**hese neo-disabilities are likely to strike the non-specialist as an exercise in pathologizing childhood behavior, and the nonspecialist would be on to something. Increasingly, scholars and clinicians in the field of learning disability are speaking out against the dangers of promiscuous diagnosis of disablement. "In the space of twenty years, American psychiatry has gone from blaming Johnny's mother to blaming Johnny's brain," says Dr. Lawrence Diller, an assistant clinical professor of behavioral pediatrics at the University of California at San Francisco. The problem, says Dr. Diller, is that in a variant of the Lake Wobegone effect, "Bs and Cs have become unacceptable to the middle classes. Average is a pejorative." And yet, as he points out, "someone has got to be average."

Some scholars have even begun to question the notion that there is such a thing as a learning disability. In a recently published book, *Off Track*, one of its authors, Robert Sternberg, a Yale professor of psychology and education, presents a powerful case for why the concept of learning disability ought to be abandoned. Drawing on the latest research into the physiology of the human brain, Sternberg argues that there is no evidence to support the view that children who are labeled as learning-disabled have an immutable neurological disability in learning. From a medical standpoint, he writes, there is no scientific proof that children labeled as learning-disabled actually have a discernible biological ailment "in terms of the underlying cognitive abilities related to reading." Says Sternberg: "I'm not denying that there are dramatic disparities in the speed with which people learn. ... But, most of the time, what you're talking about here is a garden-variety poor reader. You're talking about someone who happens to be not very good in math."

To be sure, there is no question that children who are intellectually normal, and sometimes even unusually bright, can have genuine, serious difficulties in learning how to read or to do math; and that educators should do everything in their power to put these students back on track developmentally. But as their clinics swarm with

hordes of pushy parents and catatonic collegians, all hankering for a diagnosis of intractable infirmity, a growing number of diagnosticians are crying foul. "The way the diagnoses [of Attention Deficit Disorder and learning disabilities] are being used right now, a backlash against the conditions is inevitable," says Diller. "We've created a paradox where the more problems you have, the better off you may be. That's a prescription for societal gridlock."

It's no puzzle, of course, why the learning-disability movement insists that learning disability is an immutable, brain-based disorder—a malady that is "fundamentally neurological in origin," according to the National Center for Learning Disabilities. For it is this understanding of learning disability that justifies its inclusion as a protected category under the ADA. If learning disability is an innate neurological defect that "artificially" lowers test performance, then it follows that learning-disabled individuals should be able to take tests under special conditions that will neutralize the effects of this handicap. In *Help Yourself: Advice for College-Bound Students With Learning Disabilities*, author Erica-lee Lewis stresses that asking for an untimed administration of your SATs "does NOT give you an unfair advantage; it just reduces the unfair disadvantage by providing you with equal access and opportunity. You deserve that and the law protects you against anything short of that fairness!"

**T**here's just one tiny problem: the two major studies on the subject say that precisely the opposite is true. As Dr. Warren W. Willingham, a psychometrician with the Educational Testing Service, points out in his widely respected textbook *Testing Handicapped Students*, institutions have long relied on standardized tests because such tests, for all their faults, tend to be highly reliable in their estimation of how well a particular applicant will actually perform in college or on the job. The case of learning-disabled students, in contrast, "presents a very different picture," writes Willingham. When students diagnosed with learning disabilities were allowed to take the SAT on an untimed or extended-time basis, the "college grades of learning-disabled students were substantially overpredicted," suggesting that "providing longer amounts of time may raise scores beyond the level appropriate to compensate for the disability." The other study—by Marjorie Ragosta, one of ETS's own researchers—confirms Willingham's pessimistic diagnosis.

Both researchers raise a troubling question: whether, as Willingham puts it, "the nonstandard version of the SAT is seriously biased *in favor* of [learning-disabled] students." The concern is not just theoretical. There is reason to suspect that fast-track students, and their parents, have figured out that a little learning disability can be an advantageous thing—can make the difference, in a hypercompetitive setting, between getting into (and getting successfully out of) the right school. The privilege of taking the SAT on an untimed basis raises stu-

dents' scores by an average of 100 points, according to the College Board. In the last couple of years, testing agencies have been bombarded with requests from students who proclaim that they are learning-disabled and will therefore need additional time. According to Kevin Gonzales, a spokesman for the Educational Testing Service, 18,000 learning-disabled examinees received "special administration" for the SAT in 1991-92. By 1996-97, that number had more than doubled, to 40,000. Requests for accommodation on Advanced Placement exams, meanwhile, have quadrupled—in 1996, 2,244 learning-disabled eggheads took their A.P. tests untimed. To reap the benefits of this particularly useful perk, ETS requires only a letter of verification from a school special education director or a state-licensed psychologist or psychiatrist.

Certification and licensure exams—long, carefully standardized examinations that function as gatekeepers into the professions—are also under assault. In 1995, the National Board of Medical Examiners administered over 450 untimed Medical College Admissions Tests—a fivefold increase from 1990. Lawyers, too, are requesting special dispensation. This year, in New York alone, more than 400 aspiring attorneys have asked to take the bar exam untimed. "The requests have increased tremendously," says Nancy Carpenter, who heads up the New York Board of Legal Examiners. "ADD is becoming much more common. We have a lot of dysgraphia. Some dyscalculia. . . . Most applicants just say, 'unspecified learning disability.' They are all over the lot."

ETS officials do not like to talk about the Willingham and Ragosta studies. Indeed, far from planning to toughen up its accommodations policy, the agency seems poised to eliminate its only check on spurious claims—the marking, or "flagging" of a score to indicate that an applicant took the test under nonstandard conditions. For years, the learning-disability industry has railed against the asterisk, arguing that it violates a student's right to keep his or her disability a secret. Now ETS seems prepared to agree. "We are taking a good, hard look at the whole issue of flagging," says ETS's newly appointed director of disability services, Loring Brinckerhoff. "I'm not prepared to say it's going to go away overnight. . . . My gut feeling is that it may well be a Section 504 violation." Yes, that's the same Loring Brinckerhoff who recently resigned under pressure by Jon Westling from his B.U. sinecure. "Isn't it ironic," muses Brinckerhoff. "I'm told by Boston University that I'm unqualified to do my job. Yet here I am—at the biggest testing agency in the world—determining accommodations for hundreds of thousands of people with disabilities."

**O**f course, a legally recognized disability means more than just extra time on tests—or even extra privileges in the classroom. Under the Individuals With Disabilities Education Act, a diagnosis of L.D. also qualifies a child for an Individual Education Program—a handcrafted educational program, replete with techno-goodies and other kinds of

specialized attention. The law, which states that "all children with disabilities" ought to have available to them "a free and appropriate public education," encourages parents to be bound not by what the school district can offer, but by what they think their child needs. It specifies that, in the event that the parents don't care for their child's IEP, the local school district must convene a "an impartial due process hearing"—a trial-like proceeding in which both parties have the right to be represented by a lawyer, the right to subpoena, confront and cross-examine witnesses, and the right to present evidence. If a school district loses the due process hearing, it must pay the parents' attorneys' fees. The result, says Raymond Bryant, director of special education for Maryland's Montgomery County public schools, has left school districts vulnerable to parental tactics bordering on extortion. "It used to be that kids didn't try hard enough, or didn't work hard enough," says Bryant. "Now, it's ADD or L.D.... They want their child to read half the material. They want him to do half the homework. They don't want him to take the same tests. But guess what? They want him to get the same grades!"

**I**n prosperous, sun-dappled school districts around the country, exotic new learning disabilities are popping up, each requiring its own costly cure. In Orange County, where "executive function disorder" (difficulty initiating, organizing and planning behavior) reigns, parents have begun demanding that schools foot the bill for horseback riding lessons. "This is now supposed to be the way to help kids with EFD," says Peter Hartman, superintendent of the Saddleback Unified School District. "There's some stable in the area that they all go to." In Holliston, Massachusetts, parents of children with Attention Deficit/Hyperactivity Disorder hanker for a trendy new treatment called "educational kinesthesiology," a sort of kiddie Pilates for angst-ridden tots. "Unfortunately, the treatment can only be done by a, quote, licensed educational kinesthesiologist," sighs Margaret Reed, special-ed administrator for Holliston Public Schools. "And it seems there's only one in the district. And she charges \$50 an hour."

Sometimes, it seems, the problem is less inattentive children than overattentive parents, many of whom are unwilling to believe their progeny is less than perfect. Consider the case of Michael F., whose plight was thrashed out at length at a 1996 hearing after his parents expressed discontent with his Individual Education Program. Michael, then a ninth grader, was thriving at his high school—earning As in honors courses and demonstrating "overall cognitive functioning in the very superior range (99th percentile)." He had also written a book, played in the school band and, according to the hearing officer, "successfully completed bar mitzvah training."

At the hearing, it emerged that Michael did all of this while fighting off the ravages of "attention deficit disorder, language-based specific learning disabilities, neuro-motor dysfunction, and tactile sensitivity." These

numerous handicaps had made Michael eligible for a generous dose of special-education services. Under the terms specified in his IEP, Michael received three and three-eighths hours a week of special tutoring; extra time on homework assignments and tests; "allowance of standing up, stretching and/or walking around in class"; "permission to chew gum or hard candy to help him concentrate and focus"; "seat assignments in close proximity to the teacher"; and "access to a tape recorder, transcripts of lectures, outlines and notes and/or a laptop computer if needed." Now Mr. and Mrs. F. wanted even more. Michael's low grade on his Honors Geometry midterm, they argued at the hearing, revealed evidence of a new, previously unsuspected disability "with the concepts of quadratic equations and the Pythagorean theorem." They blamed the school for numerous "procedural violation[s]," including "failure to pursue a math reevaluation of Michael" after he received a 65 on his midterm. Now, they said, their son would experience "substantial regression" over the summer, unless his high school saw fit to furnish him with "extended summer programming in the form of math tutoring."

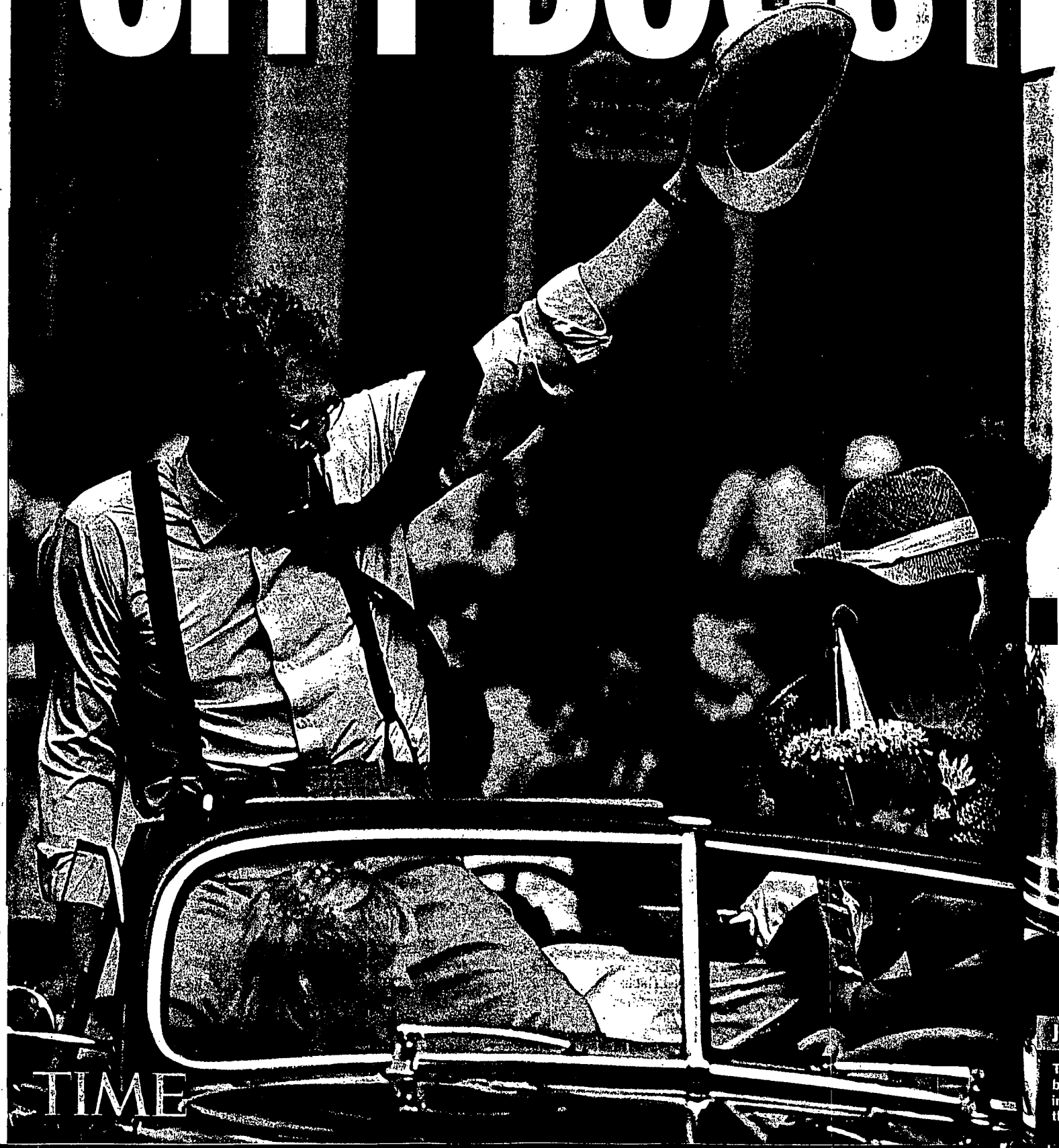
This, the hearing officer would not do. True, she wrote, Michael's poor showing on his geometry midterm might well be "related to his learning disability and/or ADD." On the other hand, she boldly ventured, it could also be that "math remains a subject where Michael will not receive. As in an Honors track."

**E**nsconced in his pleasantly stuffy office, an Anglophile's fantasy of elephant ear plants and bas-relief cornucopias in carved wood, Jon Westling awaits the decision of Judge Patti B. Saris. He is resigned to the knowledge that, whatever is decided, the learning-disabled activists and their supporters will regard him as a villain. "This is a cause where the support and commitment verges almost on fanaticism," he says, puffing on one Marlboro Light, then another. "And whenever you have less than ideal science coupled with something close to fanaticism, you can move beyond appropriate use into areas of abuse."

The students say that, whatever the outcome, the litigation has salvaged their faltering self-esteem. Ben Freedman, a 21-year-old senior who has maintained a 3.6 GPA despite a reading and writing disability and dysgraphia, likens his crusade to the civil rights movement of the 1960s. "I don't want to compare myself to Dr. King, but there are great similarities," he says.

Anne Schneider, too, says she's achieved closure on the whole regrettable incident. To the true believers, it seems, there's an explanation for everything; and it's usually the same explanation. "I've been thinking about Jon Westling," she tells me one evening. "For all his bragging about his Rhodes scholarship, he didn't do the final paper. He's not a finisher." Schneider lets out a reflective sigh. "To tell the truth," she says, "I've always thought: learning disability." •

# CITY BOOST



TIME

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By ADAM COHEN INDIANAPOLIS

**S**TEPHAN FANTAUZZO, HEAD OF Indiana's public-employee union, has seen a lot over the years, but nothing beats the day his auto mechanics came to him and said they didn't want their raises. Indianapolis had just put out to competitive bidding the business of repairing city vehicles, and that meant his workers had to bid against private companies to keep their jobs. Fantauzzo's workers were worried that they would be underbid. So they gave up their pay raises—and narrowly won the contract. The competition has brought a new efficiency to the operation: costs are down 29%, turn-around time on repairs has improved markedly, and customer complaints have fallen more than 90%. At the same time, the workers have more than made up for their lost raises, averaging 5% salary hikes in each of the past four years, well above the city average. Says a once skeptical Fantauzzo: "We found a way to make this a win-win situation."

Auto repair is only one of more than 70 municipal operations Indianapolis' Republican Mayor Stephen Goldsmith, the nation's leading exponent of "competing out," has spun off in five years in office. The city's wastewater-treatment plants are being run by a private company, at a projected savings of \$65 million over five years. Indianapolis International Airport is now run by the British Airport Authority, which promises it will save \$32 million over 10 years. Goldsmith even managed to privatize Indianapolis' 2,200-job Naval Air Warfare Center, which had landed on the Pentagon's base-closing list. With the Federal Government's permission, he brought in Hughes Technical Services to take over the operation and sell products and services back to the Navy.

Indianapolis is hardly alone among cities that have been quietly putting the fashionable buzz words "reinventing government" into practice. Municipal government has long been regarded as the great backwater of American democracy: a world of political patronage and special-interest jockeying in which policy discussions rarely move beyond synchronizing traffic lights. But a new breed of activist mayors, recently hailed by the *New Republic* as "the Pride of the Cities," has been turning city halls into hothouses of governmental innovation. They are challenging entrenched interests and butting heads with traditional allies in the pursuit of real reform: overhauling the school system in Chicago, reshaping labor-management relations in Philadelphia and privatizing municipal services all over.



**Stephen Goldsmith**

A pioneer in privatization, he has put more than 70 city services up for competitive bids; mayors across the country are learning from his success

The driving force behind this fresh approach to urban government is a handful of "new pragmatist" mayors—Indianapolis' Goldsmith, Cleveland's Michael White, Philadelphia's Edward Rendell, Milwaukee's John Norquist, Chicago's Richard M. Daley and to some extent Los Angeles' Robert Riordan and New York City's Rudolph Giuliani—who actively collaborate and compare notes on how to make cities work. Goldsmith visits Giuliani every few months to talk shop; Rendell and Goldsmith bounce ideas off each other at frequent joint speaking appearances. And good practices, big or small, travel fast. "You learn a lot from each other," says Republican Riordan, who used Indianapolis-style competing out to award cleanup contracts after the 1994 Northridge, Calif., earthquake. Goldsmith is using a silicone-based antigraffiti sealant he learned about from Daley. Says White: "If there's anything that binds us, it's simply that we pride ourselves on being result-oriented."

What makes these mayors' governmental pragmatism possible is that they have also developed a flexible, post-ideological approach to politics. Cities that once thrived on straight-ticket Democratic machine politics, where labor unions and social-welfare programs were considered untouchable, are led today by some of the nation's most nonpartisan and politically unpredictable politicians. On school vouchers Cleveland's White, an African-American Democrat, is sparring with his city's traditionally Democratic teachers' union and the N.A.A.C.P. Goldsmith

# ERS

A new breed of activist mayors is making City Hall a hothouse for innovation



**John Norquist**

The popular mayor has pushed unions to be more efficient, saying it's "an act of injustice" to waste taxes in a city where the average family income is \$27,000

MICHAEL L. ABRAMSON FOR TIME

MARK PETERSON—SABA FOR TIME

alienated his party's establishment by firing patronage appointees who stood in the way of his efforts to privatize. Says New York's Giuliani, a Republican who broke with his party by lobbying to save rent regulations: "It's better to keep your constituents happy than to keep a political party happy." So far, it's been a winning strategy: all these mayors have been re-elected handily, except Giuliani—who is running this year and led his nearest rival by 23% in a recent poll.

The new pragmatism is at least partly a response to economic necessity. Mayors are operating in an age of sharply limited resources. Federal aid to cities has fallen sharply in the past 20 years, and urban tax bases have eroded as businesses and affluent residents have fled to the suburbs. Since the mid-1970s, when New York and other big cities teetered on the brink of bankruptcy, mayors have had to work hard just to stay afloat: they literally can no longer afford to preside over bloated bureaucracies or coddle unions at contract time. "There's just a different set of problems mayors are facing today," says Barnard College political science professor Ester Fuchs. "If they want to have cities at all, the name of the game is keeping their budgets balanced, keeping the business community and the middle class happy, and coming up with programs that work."



**Michael White**

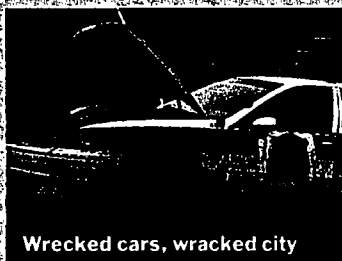
The hard-driving Democrat has adopted a business style of management to help turn around a troubled city once dubbed "the Mistake by the Lake"

Few cities have been more buffeted by economic forces than Cleveland, whose hard

driving basic services. Building on improvements made by his predecessors in city hall, White has helped reverse Cleveland's slide. The hard-driving mayor, who gets to city hall before 7:30 a.m. and sometimes works past midnight, has adopted a business style of city management. "We serve a city of 500,000 people a day," says White. "If we don't serve them well, a lot of them are going to go somewhere else." The centerpiece of his strategy for improving service to his "customers" is a 60-page "People's Budget," set-

times once earned it the nickname "the Mistake by the Lake." Cleveland has lost more than 400,000 people, almost 45% of its population, since mid-century, and in 1978 it became the first major city to default on its debts since the Great Depression. Along the way, city government all but stopped pro-

## Disaster on the Potomac: How Not to Run a City



Wrecked cars, wracked city

OTHER CITIES MAY BOAST OF innovative, hard-bargaining mayors, but at least one urban center is clattering along in just the opposite direction. Beset by financial woes, high crime and decaying city services, Washington has now suffered the indignity of having its mayor, Marion S. Barry, stripped of nearly all power. As part of a \$1 billion federal aid package included in the new budget agreement, nine of the city's major agencies, covering everything from schools and housing to public works and the police, have been taken away from Barry and placed under the jurisdiction of a financial control board, which was appointed by Congress two years ago to get the city's finances in order and is headed by economist Andrew Brimmer. Only relatively minor agencies (including

tourism and parks and recreation) remain under Barry's purview. Asked at a press conference what residents should do if they want to complain about potholes, Barry replied bitterly, "Call Dr. Brimmer—504-3400."

Other countries like to argue that Americans know nothing of life in the rest of the world. Not so in the District, whose government seems to aspire to the standards of a Third World nation. Fecal matter in the water, bodies piled and rotting in the un-air-conditioned morgue, potholes that could kill if the stray bullets don't—these are familiar stories to District dwellers. A recent expose in the *Washington Post* offered jaw-dropping statistics on the amount of wasted funds and government bloat. Washington spends more money and has more employees than any other city. Yet the high school dropout rate has passed 50%, crime is up 16% since 1991, and tuberculosis and infant mortality rates are the highest in the nation. Just last week officials announced that the city's public schools would open three weeks late this fall because building repairs haven't been finished.

With such things to commend him, few believed Mayor Barry when he insisted that the congressional moves were not about Marion Barry. The mayor has turned the city into a machine that would impress Boss Tweed: jobs for all and once hired, never fired. Money earmarked for services and repairs often found its way to payroll to put yet more unskilled workers on the clock. Also

ting out goals for the year and evaluating whether they have been met. The city has generally been able to give itself high marks: the report card cites such achievements as 40% more dead trees removed in 1995 than the year before and twice as many children screened for lead poisoning.

Cleveland's problems are not all behind it, but under White's administration, there is a clear sense that the city is on an upswing. Downtown boasts not only a new \$72 million light rail line to move tourists along the lakeshore but also Gateway Complex, which features a new baseball stadium and a basketball arena that lured the Cleveland Cavaliers back from the suburbs. Most important, the city's long period of fiscal crisis has subsided. After a general fund deficit that grew to almost \$7 million in 1990, the city has balanced its books and has accumulated a rainy-day fund of \$25 million. Standard & Poor's, which suspended the city's bond rating after its 1978 bankruptcy, today gives the city an A.

A prime article of faith among the new mayors is that city employees must become more efficient. Rendell, a Democrat and a tough-talking former prosecutor, is widely credited with saving Philadelphia by going eyeball-to-eyeball with the city's powerful public-employee unions shortly after he took office in 1992. Rendell offered workers a contract that froze wages for 33 months and cut back on paid holidays. After a 16-hour strike, the unions capitulated. Under Rendell, a city that was cited five

years ago by *City and State* magazine for setting "the standard for municipal distress in the 1990s" now has a budget surplus of \$118.5 million.

**A**LTHOUGH A LIBERAL DEMOCRAT, Milwaukee's Norquist has also taken a tough line with city workers. He was faced a few years ago with a standoff between his public-works and fire departments over the painting of firehouses. The fire department wanted the buildings painted in the summer, when its trucks could easily be kept outside, but public works said too many of its people would be on vacation. Norquist allowed the fire department to engage a private contractor to get the project done in the summer. "The good news for the public-works department is they learned from this and changed their procedures," says Norquist. "Competition didn't put them out of business, but it almost did."

In Chicago, Daley has taken on his city's most intractable problem: a \$3 billion school system that former U.S. Education Secretary William Bennett once called the worst in the nation. Two years ago, Daley, a Democrat, convinced Illinois' Republican state legislature to hand him authority over the schools. He ousted the city's entrenched educational bureaucracy, installed a school board that put nearly 20% of the schools on probation for low performance and got approval for \$850 million in bond issues to

build new school buildings and renovate old ones. The Daley regime's hard-hitting reforms, which included cutting 1,700 non-teaching jobs, are particularly impressive in a town where, in the days when Daley's father reigned as mayor and political boss, politicians used to say that the purpose of the public schools was to provide jobs for the people who worked there.

Critics of the new-style mayors say many of their reforms are unproven. Goldsmith's detractors say privatization projects such as the wastewater-treatment plants may look better in press releases than in practice. "We don't even know if we're saving any money," says City-County Councilor Susan Williams. "Every time I blink, it seems they want \$10 million to fix this or \$8 million to fix that." And handing over government operations to the private sector can open the door to patronage and other kinds of malfeasance, the very reason the civil-service system was instituted more than a century ago. Indianapolis suffered through "golfgate" three years ago, when private operators of municipal golf courses were accused of improperly handing out renovation contracts. When Goldsmith made an unsuccessful run for Governor last year, Democrats attacked him for accepting contributions from companies that had won contracts for city services. "Privatization is just patronage in pinstripes," says former Marion County Democratic Party chairman Kipper Tew.

To some, the new pragmatism is only a pretext for tilting government away from the

detering change is the racial politics of the highly segregated city. For the mostly black District residents, Barry—re-elected in 1993 despite serving jail time for crack use—promised a toehold into the middle class. "It's the ultimate patronage," says a D.C. Council senior aide. "If you have a government check, a refrigerator full of food, who cares about the pot-hole outside?"

Onto this battlefield steps Brimmer, 71, a former Federal Reserve Board member. Like Barry, Brimmer is black, but there the similarities end. While Barry is fond of dashikis and bling rhetoric, Brimmer is as precise and exacting as the cut of his charcoal-gray suit. He took immediate action last week, firing three department chiefs and threatening that more heads will roll unless changes are made. Still, some are skeptical of his ability to tackle a job akin to fixing a plane while flying it. "I can't predict the outcome, but

I can predict the effort," Brimmer says. "It will be done."

The federal takeover has roiled the city's always testy political waters, inspiring loud public protests. So loud that Eleanor Holmes Norton, the District's nonvoting representative in Congress, did an about-face after first calling the deal a "big win," she denounced it as "too high a price." Meanwhile, Barry—whose popularity is so low that nearly 80% of residents say it's time for him to go—is using the setback to his advantage. "Democracy has been raped," he asserts, decrying the white Republicans in Congress—particularly North Carolina Senator Lauch Faircloth—who spearheaded the takeover. Says a congressional aide: "Faircloth doesn't realize that he just became treasurer to Marion Barry's re-election campaign."

—By Tamala M. Edwards. With reporting by James Carney/Washington



Barry, before the takeover, meets with Norton in March



# THE TIES THAT BIND

Should breaking up be harder to do? The debate over easy divorce rages on

By WALTER KIRN

**H**OW QUICKLY IN A FREE SOCIETY controversy becomes consensus only to become controversy again when the new conventional wisdom jells. Take the national debate about divorce. In 1992 Vice President Dan Quayle made his infamous Murphy Brown speech railing against single motherhood and was ridiculed by almost every social observer to the left of Pat Robertson. Less than a year later, social historian Barbara Dafoe Whitehead published an essay in the *Atlantic Monthly* titled "Dan Quayle Was Right." Citing studies that tracked the development of children raised by single par-

ents, she identified broken families as Public Enemy No. 1, responsible for a generation of sad and angry, underachieving youngsters. In a flash, Whitehead's point of view won converts no less influential—and liberal—than Donna Shalala and Hillary Clinton, who in her book *It Takes a Village* wrote of feeling "ambivalent about no-fault divorce when children are involved."

It seemed that 1990s America was growing as disillusioned with divorce as 1960s America had grown with marriage. As the backlash against divorce progressed, state legislatures across the country, in an as yet unsuccessful attempt to reduce what was still the world's highest divorce rate, called for a rollback of no-fault divorce laws and even for premarital waiting periods. Last week, in a melodramatic flourish, a

North Carolina jury added to the simmering debate by taking the side of an abandoned wife, ordering the "other woman" to pay her \$1 million (see following story). Though the decision was based on an antique "alienation of affection" law, it still sent chills through the country's Second Wives Club—and its associated husbands.

Nevertheless, the worm has already begun to turn again. Last winter, Whitehead expanded her essay into a book, *The Divorce Culture*, and all hell broke loose. A *New York Times* reviewer dubbed Whitehead's treatise a "self-blame book" and mocked its scholarship. *Esquire* magazine ran the bold-face cover line DIVORCE IS GOOD FOR YOU. In the *New York Times*, essayist Katha Pollitt took on the new Louisiana law that created "covenant marriage," a more binding vow

# E/C N POLL: DIVORCE

believe it should be harder than it is married couples to get a divorce?

50% No 46%

it be harder than it is now for married with young children to get a divorce?

61% No 35%

people be required to take a marriage-on course before they can get a

64% No 34%

is the 1 reason for the increase in number of divorces?

seriously by couples 45%

more accepting of divorced people 15%

er to get divorced today 10%

are selfish 9%

in women's and men's earning power 7%

ily 9%

increase in the number is due more to:

in women's attitudes toward marriage 38%

in s attitudes toward marriage 18%

ually 32%

the government make it harder for to get a divorce?

37% No 59%

poll of 1,017 adult Americans taken for TIME/CNN on May 7-8 by Partners Inc. Sampling error is ±3.1%. Not sures omitted.

be ended only because of extreme stances. "You don't have to be abused," Pollitt declared, "to have a bad marriage." Earlier Pollitt had baldly asserted, "Marriage is an American value." Thus, in a dramatic backflip, the backlash against the no-fault divorce is under way. "Should I prefer a world in which there is no divorce?" asks Larry Bumpass, a sociologist at the University of Wisconsin. His answer is an obvious yes. Do I think that is a realistic policy objective? The answer is no." He contends that the anti-divorce movement isn't a genuine movement but a think tank-inspired pseudo-movement. He points to the role being played by organizations like the Institute for American Values and its offshoot, the Council on American Family Policy. "They have a very explicit objec-

tive of getting these issues on the national-policy debate. I can tell you, though, there is no indication that public attitudes are swinging in a way consistent with this move." Other academics agree with Bumpass. Stephanie Coontz, who teaches family studies at Evergreen State College in Olympia, Washington, derides the think-tank activists as old-fashioned social reactionaries in disguise. "Divorce is the entering wedge for these people. They found an issue that looked less mean than attacking unwed moms. Everyone is against divorce in the abstract, but in the concrete, they understand why particular people they know had to have a divorce." "These think tanks know how to tap into people's anxieties," says Arlene Skolnick, a research psychologist at the University of California, Berkeley. "The gap between the way we'd like families to be and the way they are creates a constant toothache that can be poked." But Maggie Gallagher, who is affiliated with the Institute for American Values and is the author of *The Abolition of Marriage: How We Destroy Lasting Love*, rejects the charge that reforming divorce laws is a hothouse, right-wing issue. "The real reason that public opinion has changed is not because a small group of very clever people have been manipulating it but because as more and more social-science data accumulated, a number of prominent family scholars changed their minds. As more ordinary Americans had actual experience of what happens with a 50% divorce rate, they too became concerned." Like adversaries in a divorce court, each side in the public-policy debate has its own roster of expert witnesses and armory of exhibits. Divorce opponents including Gallagher and Whitehead point to the mountain of evidence about the corrosive effects on children. But that research, say their critics, is garbage. "You cannot compare the children of two-parent homes with children of divorce," argues Pollitt. "You have to compare the children of divorce with the children of people in marriages that are dreadful but continuing." She dismisses the list of remedies offered by the antidivorce crowd

and is skeptical of mandatory counseling. Divorced and quick to admit it, Pollitt says, "I had marital counseling. It is very expensive, and like all forms of therapy, it works only if you want to be there."

Pollitt sees an ulterior motive behind the assault on no-fault divorce: a backlash against feminism. While husbands once initiated most divorces, the situation has reversed itself: more wives now seek divorces. And if you believe Ashton Applewhite, author of *Cutting Loose: Why Women Who End Their Marriages Do So Well*, divorce, though usually painful at first, is a true liberation for many wives. In her book, she profiles 50 women, including "Dina," an immigration attorney. The mother of two sons, Dina regrets agreeing to share custody with the children's father. Ultimately, though, she works things out, illustrating Applewhite's point that the key to successful postmarital parenting is flexibility. In Applewhite's view, divorce can bring opportunities for personal growth, particularly when that growth has been thwarted by a suffocating union.

Whitehead, however, regards this promise of self-renewal through divorce as the original sin of recent decades. She calls the phenomenon "expressive divorce" and locates its origins in postwar prosperity. For Whitehead there's a close connection between soaring divorce rates and middle-class narcissism, and though divorce rates have actually plateaued, the siren song of personal liberation sounds as sweet as ever. Pollitt is contemptuous of the notion. She says, "The picture is that people are going along married and in a state of, if not ecstasy, then reasonable content. And then somebody decides to be selfish, frivolous and pleasure seeking."

**T**HIS IS THE DEBATE'S GREAT QUESTION, the one that keeps the divorce ball bouncing: Does the high divorce rate reflect a massive cop-out by increasingly self-indulgent individuals, or is it based in vast social forces such as the economic independence of women? It's a question that can't be answered with statistics, though certain experts try. According to sociologist Bumpass, "There have been fluctuations around the trend line, but the overall dynamic that has given rise to increased divorce has deep historical roots." He takes a lofty, long view and tends to speak in ivory-tower mouthfuls, such as "the underlying individualism of modern industrial-market society." Which isn't to say he doesn't have common sense. Almost alone among the debaters, Bumpass detects a self-regulating mechanism in the nation's experience with divorce. "It's quite possible that co-



CHUCK KENNEDY FOR TIME

**Edward Rendell** PHILADELPHIA

A former prosecutor, he took a tough line with municipal unions and endured a strike. His formerly distressed city now boasts a budget surplus

poor and racial minorities. In Cleveland, White's housing program has drawn criticism for its focus on building \$100,000-to-\$200,000 homes in neighborhoods where the median cost of a house is \$35,000 and the poverty rate is 41%. Williams, who represents a poor Indianapolis district, says her constituents are too often left out of Goldsmith's market analyses. "An inner-city swimming pool shouldn't be a profit center," she argues. City halls are lowering expectations, says Barnard's Fuchs, because the money and political will for antipoverty programs are just no longer there. "It's not about doing more with less," she says. "It's about doing less with less."

Indeed, there are limits to what even the most pragmatic mayors can do for cities today, despite the most robust national economy in decades. The harsh truth is that even the best-managed big cities have problems too large to solve on their own. Just as Philadelphia has emerged from its gloom, it is facing the loss of \$2.3 billion in welfare, Medicaid and other social programs over the next five years. As many as 40,000 welfare recipients could lose their benefits by the year 2000, and Rendell estimates that incentives to private industry will produce jobs for only 4,000 of them. Claiming that the federal cutbacks are "a runaway freight train headed our way," Rendell traveled to Washington this spring to urge the White House and Congress to help out by enacting a jobs bill. It is unlikely that federal relief will come anytime soon. Still, articulating the limits of what city government can accomplish is sometimes the most pragmatic step of all.

—With reporting by Erik Gunn/  
Milwaukee and Kevin Fedarko/Cleveland

VIEWPOINT

George J. Church

# Robin Hood in Reverse

The poor shouldn't pay my pension—but they will

**E**VERY TIME I SEE A COOK FLIPPING BURGERS OR A CLEANING WOMAN emptying the trash baskets, I wonder if I can resist the temptation to rob them. Nobody would stop me. In fact, the government *wants* me to do it. How? Just quit working. I'm nearly 66 and retired, but I earn too much now as a writer to qualify for a Social Security pension. If I were to loaf full time, however, I could collect about \$15,000 a year.

I don't need or even want it. A company pension, plus income from savings and investments, should keep me and my wife in comfort for however long we live. But even if I resist the temptation until 2001, I can then expect a letter urging me to apply for a Social Security pension. After age 70, there are no more restrictions: I'll be entitled to Social Security checks even if I'm still working.

Officially, I've earned them by paying Social Security taxes for 44-plus years. Balderdash. Those taxes wouldn't defray my pension for more than a few years—and they've already been used to pay the pensions of those who retired years and years ago. My pension, in fact, will be paid by people still on the job.

That points up one of the great inequities purposely ignored in the recent budget agreement. The working poor continue to pay far more than their fair share of the Social Security tax. That tax is levied—at a current rate of 6.2%—on only the first \$65,400 of income, so those who earn more pay much less than 6.2% of their total earnings. The working poor pay the full 6.2% on every cent of their meager wages. And this is a merciless tax—no exemptions, no deductions, no credits. (One exception in the new tax bill: the working poor will get the \$500-a-child credit. Big deal.) Taxing the poor to give to the rich throws Robin Hood into reverse.

That should be a problem for the nation's conscience as well as mine. Government programs are shot through with benefits for those who don't need them. Yet any proposal to institute a means test is either ignored or howled down. Example: Medicare premiums are the same for me as for someone with a fraction of my income. But the Senate's proposal to make affluent seniors pay more was dropped from the tax bill, largely because House Republicans feared a savage attack from Democrats.

Why is this? One excuse is that the well off and the middle class must be bribed to allow the government to do anything for the poor. For instance, they will not support subsidized school lunches for poor kids unless their own children also get cheap food. But the real reason is that everyone who gets a government benefit comes to regard it as a sacred right that must never be taken away. Or reduced. Or even increased less rapidly. Witness the screaming after a panel of economists suggested the consumer price index overstates inflation. Why? Adjusting the index would lead to smaller future increases in benefits (including Social Security) tied to the CPI. Monstrous! To the barricades!

Benefits thus must go on increasing, needed or not, even if they drive the programs paying the benefits (Social Security, Medicare) toward bankruptcy. Moreover, there is not the slightest sign this mind-set will change. So maybe I should collect that pension after all. It's robbery, and I know it. But why should I be the only sap who spurns a share of the loot?



ILLUSTRATION FOR TIME BY S.B. WHITEHEAD

habitation is, in a sense, pruning off divorces that would otherwise have occurred. You have what a colleague of mine calls premarital divorces."

By encouraging couples to marry less hastily and keeping them frightened and honest when they do wed, the high divorce rate may be, paradoxically, its own antidote. Revising no-fault divorce laws could be irrelevant and mandatory counseling redundant, especially when one considers the boom in voluntary counseling. At a con-

vention in Washington, "Smart Marriages, Happy Families," therapists from around the world gathered to share findings and techniques. Some events, like the lecture on "Hot Monogamy," were reminiscent of a *Reader's Digest* article. Other ideas, such as church-based programs that ask engaged couples to fill out marital "inventories," seemed promisingly pragmatic. The present is always struggling against the past. Much as the laid-back breakups of 20 years ago arose from the hard-bitten marriages of

an earlier time, the current soul searching about divorce owes its existence to the hang-loose '70s. If mistakes have been made, who's to say that we can't learn from them without resorting to blunt reversals of policy and nasty ideological purges? Looked at from ground level, away from the clamor of dueling research studies and butting talking heads, the idea that divorce could prove a friend to marriage has the unlikely ring of truth.

—Reported by Wendy King/Washington and Andrea Sachs/New York

## An Antique Law Sends Tremors Through Many a Heart

**L**AST WEEK, WHEN A NORTH CAROLINA WOMAN SUCCESSFULLY SUED HER HUSBAND'S LOVER FOR wrecking their marriage, it gave the current national recalculation of the costs of divorce a new bottom line. Lawyers have a word for it: They call these "heart-balm" cases, the heart being the injured party, the balm in this case a cool, soothing \$1 million.

The melodrama was set in Burlington, N.C., a small town about 20 miles from Greensboro, where Dorothy Hutelmyer was twice president of the PTA, her husband Joseph coached baseball and ran Seaboard Underwriters, and Lynne Cox worked as his secretary. The Hutelmyers was a storybook marriage, says Dorothy's lawyer Jim Walker. "He wrote poetry to her, love songs."

But then, as a parade of witnesses testified, along came Lynne Cox, freshly divorced and newly reborn in makeup and contacts and short skirts. She was soon spending more time alone and on the road with her boss, and admits to having an affair with him. Thus were laid out the preconditions for an "alienation of affection" suit, a rare legal recourse for spurned spouses that only a handful of states still recognizes.

In order to prevail in court, a plaintiff needs to show that the marriage was perking along quite contentedly until a wanton intruder came along to wreck it. The complaint charges that Dorothy enjoyed the "love, society, companionship, support, affection, right of consortium and kindly offices" of Joseph until Cox "intentionally, wrongfully and unjustifiably and with malice alienated and destroyed a love and affection that previously existed."

If the language sounds archaic, it matches the spirit of the law; such suits date back at least to 18th century common law when wives were viewed as property, and stealing a wife was akin to cattle rustling. In this century, as women gained greater legal and financial independence, most states threw out their alienation of affection statutes; in only a few conservative states—including Missouri, Mississippi, North and

South Carolina—have there been successful suits in recent years, and no verdict within memory anywhere close to last week's \$1 million award. After a seven-day trial, the jury deliberated for just three hours before making its ruling. To Dorothy, who receives child support and is seeking alimony, the verdict is assurance that people around this county are saying to me: "You were right to stand up for yourself, and saying to the other person: 'You were wrong in what you did breaking up my family.'"

Cox, who is now Mrs. Hutelmyer herself—she married Joseph this year—says the jury merely chose to ignore her side

of the story. She has never denied that she and Joseph had an affair, but the idea that he had been happily married before she came along is "ludicrous and absurd." The two of them had not had any physical relationship in over seven years. "If my husband had not made love to me in seven years, I would think there was a problem."

Will Dorothy ever collect \$1 million from her? "Are you kidding?" says Lynne. "I make \$425 a month. I'm a full-time student. I clean an office building part time to

have some pin money. Do you think she's going to get \$1 million? I own no property. I have no savings. Nor does she have money to fight the ruling. My attorney's fees are in excess of \$14,000. I'd love to appeal, but there's nothing I can do."

While the verdict may have come as balm to the hearts of desperate summer talk-show hosts, spurned spouses and anti-divorce activists, it's unlikely to start a trend. The vast majority of states that have rejected such suits aren't likely to start allowing them again, says Professor Dan Subotnik of Touro Law Center in New York. As for Dorothy's sweet revenge, the new Mrs. Hutelmyer claims to feel no rancor. "I feel sorry for her," she says. "Until she can acknowledge that she shares in the responsibility of the breakdown of that marriage, she can never get on with her life."

By Nancy Gibbs  
Reported by Andrea Sachs/New York



**ALIENATION:** Dorothy, with Joseph in happier times, left, and smiling last week after the \$1 million verdict against the other woman.

BY MATTHEW MILLER

# Little baby steps

**W**hen President Clinton recently toasted the bipartisan budget deal, its expanded health coverage was among his proudest boasts. "It's a victory," he said of the agreement, "for every child in a poor household who needs health care."

Actually, it's more like every fifth child. The budget deal's provision of \$24 billion over five years to cover uninsured kids is the biggest such effort since Medicaid was created in 1965—yet for all the celebration, experts say the package will probably end up insuring fewer than 20 percent of the nation's 10 million uncovered children. Dissecting this disappointment helps explain why "incremental" health reform—the only kind politicians dare endorse after Clinton's grand fiasco of 1993-94—is even more incremental than it sounds, thanks to the peculiar economics of American health care.

In theory, insuring kids should be both politically popular and cheap. A decent benefit package runs just \$1,200 a year, versus \$6,500 for seniors, who tend to get sick more often and more seriously. The new budget's \$5 billion yearly for children's health should therefore insure about 4.2 million new kids. (Clinton claims he'll cover "up to 5 million," harmless rounding up, it would seem.)

In reality, it will probably cover only 2 million, according to the Congressional Budget Office. That's because of our byzantine system of health finance. Unlike nations such as Canada, which basically has one public source of health funding, the United States has both private and public insurers, and both state and federal governments sharing the bills. This means that when the federal government moves to subsidize health care, that new money, instead of being added to other health spending, typically displaces some of it. The reasons are simple. If you're a business owner, it's only common sense to drop insurance for employees newly eligible to get it from the government. If you're an individual who buys your own insurance, you also would be wise to let the government pay instead.

**Repercussions.** These kinds of individual decisions have enormous cumulative impact. When Medicaid, the health program once offered only to welfare recipients, started covering pregnant women and children in low-income, working families in the late 1980s and early 1990s, economists found between 30 and 50 percent of the "newly" insured already held

private coverage. Some bosses promptly stopped providing coverage; some employees switched to Medicaid because its benefits were more generous.

State governments compound this problem. Many observers expect governors to use fresh federal dollars in lieu of state money they now spend themselves covering needy kids. By saving the states health care money, the health initiative would end up, for all practical purposes, being a federal supplement for general state expenses like road repair and prison building.

The problem is it's hard to reach those who need public help without attracting those already covered. The Clinton administration did the best it could. But the strange solution it had to devise was to offer lousy benefits.

The Clinton kiddie-care package is thus intentionally less generous than Medicaid and many private plans. Under Medicaid, for example, most states include extra screening, testing, and vision and dental benefits. The administration plan doesn't. And unlike Medicaid, the new plan will require copayments and deductibles that could reach 5 percent of income. The theory is that only those who really need coverage will sign up.

There's evidence this "cruel to be kind" approach works: Experts say it helped Florida and Minnesota be more cost effective when expanding kids' coverage in recent years.

Having to worry that good benefits can backfire and leave fewer Americans insured is just part of the fun of incremental health reform. Meanwhile, the trends that plagued health care back when Clinton sought more-ambitious fixes are getting worse. There are 40 million uninsured Americans, more than when Clinton called for universal coverage in 1993;

their ranks are growing by a million a year, as companies outsource or turn to temps to avoid paying for benefits. Though cost growth has abated recently, thanks to managed care, most experts expect costs to take off again soon, driven by new health technologies and the aging population. And managed care is squeezing hospitals in ways that make it harder for them to treat uncovered folks free as a last resort.

Liberals comfort themselves by viewing Clinton's latest win on children's coverage as a step in the right direction. Still, some fret, only in America would an activist president aim to cover just *half* of uninsured kids—and then celebrate a "victory" likely to reach fewer than half that many. ■



Children's health care is politically popular.

## Why the biggest health care initiative in decades won't end up covering most kids

BY ARIANNA HUFFINGTON



# Peppermint Prozac

Is your daughter depressed about acne? Soon, you may be able to take her to a dermatologist for peppermint-flavored Prozac. Is your son blue over an ingrown toenail? Take him to a podiatrist for some antidepressants. Is he angry about having to wear braces? His orthodontist may soon be handing out pills along with a dinosaur toothbrush.

Already, at least 580,000 children are being prescribed antidepressants—and those numbers are likely to increase dramatically. For now, doctors can prescribe Prozac to kids but Eli Lilly, which manufactures the drug, can't market it as a children's remedy. According to the *Medical Sciences Bulletin*, however, "the FDA is currently evaluating Prozac for use as an antidepressant in children." If the FDA gives its blessing, Eli Lilly will be free to peddle "children's" Prozac—especially now that the FDA is about to clear the way for TV advertising of prescription drugs. The company already has on the market a peppermint-flavored version of Prozac. And where Prozac leads, other antidepressants, such as Zoloft and Paxil, are sure to follow.

Doctors may prescribe antidepressants to children without any psychiatric evaluation. Yet the symptoms used to identify depression in a recent Prozac ad range from feeling "unusually sad or irritable" to finding it "hard to concentrate." I have two healthy little girls, ages 6 and 8, both of whom have experienced these symptoms. Indeed, I don't know any normal children who haven't.

No doubt there are children and teenagers who could genuinely benefit from antidepressants. But it's easy to see how millions might wind up taking antidepressants as a false cure for childhood and adolescence. One father in Southern California wrote to me recently to say that one of his son's friends is on antidepressants "because her parents are 'too strict' and she is depressed at not being able to do what other kids do."

**A passing cloud.** Signs of depression may be nothing more than a passing cloud—or an indication of unresolved grief and loss. A doctor spending a few minutes with a child cannot possibly know the difference. "It's part of the human condition to feel crummy if something bad is happening in one's life," says Harold Koplewicz, vice chairman of psychiatry at the New York University Medical Center. "But that is very different from having a clinical disorder."

Indeed, substituting the quick fix of a drug for the often frustrating reality of parenting can be a subtle form of child

abuse. It is our job as parents to help our kids navigate life's emotional roller coaster. Their mental health depends not only on their life experiences—good and bad—but on how they learn to cope with them.

Children behave notoriously in line with the expectations of the adults around them. If we think they can't cope without a pill, they will grow up believing that. If we teach our children that pills will make them feel better, how can we then tell them not to try a joint or a few drinks to lift their spirits?

It may not be long before stressed parents and teachers, bombarded with ads promising immediate relief for their kids—and themselves—will turn to Prozac with alarming frequency. Forty percent of American children live without a father in the house. How tempting antidepressants will seem to those overwhelmed mothers.

One psychologist, Barbara Ingersoll, recently proclaimed that before long "mood disorders will be treated not as exotic, uncommon conditions in children but more like [cavities] or poor vision . . . There won't be a stigma for kids on Prozac—the stigma will be on not taking Prozac." In the past, the upper classes typically dealt with the stresses of childhood by sending their kids to boarding school. Now, instead of being sent to Hotchkiss, children can be transported to Camp Prozac.

There are so many forces pushing us to accelerate the use of antidepressants for children. But we need to slow down. "Children are so vulnerable," says Michael Faenza, president and CEO of the National Mental Health Association. "We don't have a good body of research yet about how antidepressants will affect them long term." Even in Aldous Huxley's *Brave New World*, Soma—the drug that kept everyone manageably numb—wasn't put in the kids' bottles.

Here is a modest solution. Until much more is known about the effects of antidepressants on children's brains, why can't doctors simply refuse to prescribe the drugs without a full psychiatric evaluation? Since Eli Lilly claims to be concerned primarily with the mental health of its customers—as opposed to opening an enormous new market for Prozac—company executives would no doubt agree to such a restriction. And if they find that pill too hard to swallow, maybe the FDA could give it to them in a nice peppermint-flavored version. ■

*Arianna Huffington is a nationally syndicated columnist.*



CHIP HENDERSON—TONY STONE IMAGES

Will Prozac be used for childhood blues?

Overprescribing antidepressants to kids is a form of child abuse.

BY MORTIMER B. ZUCKERMAN / EDITOR-IN-CHIEF



# Attention must be paid

*New evidence for an old truth: Babies need love that money can't buy*

Later than I might have expected, I have begun learning about parenthood firsthand. On July 7, Abigail Jane Zuckerman was born. Now I understand what all the excitement has been about.

Looking at a newborn in her crib, anyone must have a sense of the many things that have been determined about her life, by genes and circumstance, but also of the countless decisions and shaping experiences that lie ahead. Parents of every era have worried about making these choices in the right way. Recent scientific findings give new reason for concern—in particular, about whether children can thrive under the modern belief that parents can contract out their basic responsibilities for care.

Every day a newborn baby's brain is developing with phenomenal speed. Billions of nerve cells—neurons—are growing and specializing. By age 2, the number of synapses, or connections among the neurons, approaches adult levels, and by age 3 a child's brain has 1 quadrillion such connections. The synapses are the basic tools of processing within the brain. After this early spurt of rapid growth, they are then selectively pruned, enabling the brain to form physical "maps" that allow communication and learning to take place. According to recent findings, the neuron links that are the keys to creativity and intelligence in later life are mainly laid down by the age of 3.

Is inherited ability the main factor in establishing these connections? Apparently, not. Interactions with an attentive adult—in most cases, a mother—matter most. The sight, sound, touch, smell, and, especially, the intense involvement, through language and eye contact, of parent and child affect the number and sophistication of links within the brain. These neural patterns—again, set by age 3—seem to be more important than factors we usually emphasize, such as gender and race. In their book *Meaningful Differences in the Everyday Experience of Young American Children*, professors Todd Risley and Betty Hart say that the number of words an infant hears each day may be the single most important predictor of

later intelligence and economic and social success.

This should be hopeful news, for it suggests that rich possibilities are open to every child. But the same research shows that verbal stimulation differs by income and education. On average, the child of professional parents hears about 2,100 words an hour; of working-class parents, 1,200 words. Parents on welfare speak only about 600 words an hour. Professional parents give their children emotional encouragement 30 times an hour—twice as often as the working-class baby and five times as often as the welfare baby. This word play is so important that those left behind at age 2 may never catch up.

These findings come when many subscribe to the notion that there is no harm in a mother's leaving her baby in someone else's care and returning to work. More than half of all mothers are back at work before their baby is 1. The working mother is a fundamental feature of this era. But what will parents do when they learn that absence in the first three years may have a significant effect

on their baby's future? Most working parents know in their hearts that "quality time" is no substitute for quantity time—the time that a child requires for emotional and, it now seems, intellectual development.

What children need is the touching, holding, cooing, rocking, and stimulation that come traditionally from a mother. In some households a stay-at-home father will fill the role of the absentee mother, but that is rare. In most families, if it is not the mother spending those three years with an infant, it will be a baby sitter or day-care worker. Often there are class, educational, and—increasingly—language differences between the parents and the hired caretaker. Parents are therefore going to be challenged to find a better balance between raising their children and working, especially parents who are too tired and emotionally drained to give children the stimulus and engagement they need. When babies are cared for by caring adults, they become much better learners and are much more confident to take over the world. Attention is the greatest gift that parents can bestow. ■

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