

# Slate.com

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**Advanced Search**

Friday, October 19, 2001, at 6:39 PM ET

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**books**

**Why Implausibility Sells**

The strange quest to write history in the absence of evidence.

By Christopher Benfey

Monday, June 23, 2008, at 8:10 AM ET

Nonfiction has to be true, of course, but it doesn't have to be believable, which may help explain why so many recent best-sellers are of the *Ripley's* variety. Coincidences that no novelist could get away with happen all the time in "real life." And while characters in fiction have to be consistent, people rarely are. A man wakes up at 50 after a quiet life in the suburbs and goes on

a shooting spree or, a better option, decides to climb Mount Everest. Another leaves his wife and moves a few blocks away, buys a wig, and spies on her for 20 years—oops, no, that's Nathaniel Hawthorne's "Wakefield," a work of fiction purportedly based on a newspaper article.

Whole genres of nonfiction have sprung from this "stranger-than-fiction" terrain. There's "true crime," an odd moniker when you think about it, and all those perilous journeys such as *Into Thin Air*, *A Voyage Long and Strange*, and *The Perfect Storm*. And then there's the harder-to-name category of tales of intellectual eccentricity, sometimes with a crime thrown in, which Simon Winchester and Dava Sobel have made their own. Such books often have subtitles beginning with "the true story of" (Sobel's *Longitude* and Sebastian Junger's *The Perfect Storm*) or "the fantastic story of" (Winchester's *The Man Who Loved China*), as though implausibility is itself the major selling point.

Miles Harvey, a former writer for *Outside* magazine, had a best-seller in 2000 with *The Island of Lost Maps: A True Story of Cartographic Crime*, in which he managed to combine all three of the genres—true crime, perilous voyage, and tale of intellectual eccentricity—in the story of the enigmatic Gilbert Bland (a name you couldn't get away with in a novel), who razed rare maps from American libraries and sold them to unscrupulous dealers. In *Painter in a Savage Land: The Strange Saga of the First European Artist in North America*, he has done it again in a book that could bear a further subtitle: "The Strange Quest for a 'True' Saga When There Isn't Enough Evidence To Go On."

Maps, dealers in antiquities, and an enigmatic protagonist also figure in *Painter in a Savage Land*, which goes in search of new information about a shadowy 16<sup>th</sup>-century French Huguenot painter named Jacques Le Moyne de Morgues, best known for his detailed botanical renderings of blossoms and fruit. "His story, I would learn, was stranger than fiction and sometimes more thrilling," Harvey writes, "a tale replete with shipwrecks, mutinies, religious wars, political intrigues, pirate raids, Indian attacks, famines, hurricanes, and mass murders." Whether Le Moyne's own life was "replete" with such high drama is less clear; the manuscript of the "riveting narrative of his adventures in the New World," as Harvey concedes, "has long since disappeared, leaving only Latin and German translations of questionable accuracy." Harvey's quest for plausible speculations amounts to a daring exploit—and one that inspires vivid prose but ends up putting a strain on the author himself, not just on the patience of his readers.

In 1564, Le Moyne accompanied a party of roughly 300 other French Protestants to found a colony, Fort Caroline, near present-day Jacksonville, Fla. He was apparently (if we believe the patchy visual documentation) an eyewitness to negotiations and altercations with local Indians, and he survived the destruction of the colony, the following year, by Spanish forces.

Whether Le Moyne's drawings survived remains a mystery; engravings supposedly based on his watercolor sketches of the Timucua people were later published in Germany. Mannerist in style, the prints make the idealized Indians, with their sculpted limbs and flowing locks, look like they've stepped out of Michelangelo's Garden of Eden. Like so much else in his life, Le Moyne's original artwork has vanished, however, and inconsistencies in the engravings—the Indians brandish Brazilian weapons and wield European farm implements—suggest that he may have made later drawings from memory after his return to France or that the engraver "improved" on his originals. It's legitimate to wonder whether there actually *were* originals.

The missing paintings are just one of many "gaps" in the biographical record. Nothing is known of Le Moyne's 30 years of life before his departure for the New World, nor do we know what he did during the 15 years after his return, wounded and wretched after a near-miraculous Atlantic crossing without a pilot or sufficient food and water. What we do know is that the late-16<sup>th</sup> century was a dangerous time for French Protestants, when religious wars erupted into periodic fits of ethnic cleansing. Drawing on research of previous scholars, especially art historian Paul Hulton, Harvey picks up the trail when Le Moyne has moved his base of operations to London circa 1580, where he becomes an adviser to the great Sir Walter Raleigh, who had New World schemes of his own.

More than once Harvey compares Le Moyne's journey into unknown territory with his own "quest" in search of Le Moyne, and he keeps the reader guessing with a few too many suspense-creating clauses: "Their visit had lasted only three days. It would change the world." Harvey is a master of injecting suspense even into admissions of ignorance, which he turns into occasions for flamboyant prose and speculative improvisation, as in this "portrait" of the artist as a young man:

No portrait survives of the painter, then about 30 years old. We do not know whether he was slim or burly, tall or short, handsome or disfigured, his voice deep or nasal, his complexion olive or fair. We know only that he was thick-skinned, that some combination of good genes and good luck bestowed on him a genius for survival. We have no idea what a lover would have remembered about his touch or a fortuneteller would have discovered in his palm, yet we can guess that his hands were strong and nimble, skilled at crafting illustrations of infinitesimal detail yet also adept at handling a harquebus, the unwieldy predecessor to the musket. We cannot say whether he inherited dark eyes from the Gauls or blue from the Normans, but the more we learn about him, the more we are convinced

that those eyes, whatever their color, took everything in and gave very little away.

Faced with so much uncertainty, Harvey does some legwork of his own, tracking down a possible relative of Le Moyne's who served as embroiderer to Mary Queen of Scots, and arguing that Le Moyne's art may be more closely tied to embroidery patterns than has been thought. Harvey fills out his own blank pages with accounts of the Florida congressman (and *Ripley's Believe It or Not!* contributor) who pushed through legislation to protect the supposed site of the original Fort Caroline, the archeologists who have tried in vain to find its foundations, and the successful bidder for a recently discovered book of Le Moyne's botanical images, who immediately razored them out, a la Bland, for quick sale.

Such space-filling ends up feeling strained and far-fetched, a bit like the unicorns and gold-filled mountains in maps of the terra incognita of the New World. Harvey aims to draw on our sense that truth is strange and bizarre things happen. And yet he ends up making it all seem contrived—rather than, as in life, fortuitous. To make all of this—well—embroidery seem worth the effort, Harvey does what he can to puff what he calls the "extraordinary career" of a relatively minor artist, reaching for words like *stunning* and *sublime and uncanny* to describe rather conventional work. Or what sounds like rather conventional work: Since little of it exists, it's actually rather hard to know just how to assess Le Moyne's work, which is why he is an ideal subject for an enterprise such as this.

Our recent literary history is notorious for uneasy trafficking along the badly policed borders of fact and fiction, with illicit memoirs and historical fiction that, like *The Da Vinci Code*, play fast and loose with the past. Harvey isn't remotely guilty of trying to pull a fabrication; he's all too upfront about what a fabrication it all is. Along the way he has, perhaps unwittingly, stumbled onto a genre of its own, the biography built of gaps: A.J.A. Symons' *The Quest for Corvo* is a masterpiece of this kind; another is poet Muriel Rukeyser's *The Traces of Thomas Hariot*, about an enigmatic intimate of Walter Raleigh (who happens to make a cameo appearance in *Painter in a Strange Land*).

The trick in such books is to preserve the gaps, letting the mystery open up until it's a metaphor for our troubled access to other lives, past and present. The appeal, when it's successful, is that it manages to make the most of the obduracy of fact and the artistry of fiction, creating a blend in which we're aware of the unpredictable mix of coincidence, unseen connections, and melodramatic juxtapositions that go into creating the messiness of life. Harvey's nervous attempt to fill the gaps defeats his purpose. *Painter in a Savage Land* ends up seeming dogged and contrived where it should be light and suggestive. By the end of the book, Harvey himself seems exhausted by the sheer effort of piecing together a plausible tale of Le Moyne's "long strange

odyssey." "I confess," he writes, "that I've finally grown tired of him, too."

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## bushisms

### Bushism of the Day

By Jacob Weisberg

Friday, June 27, 2008, at 10:56 AM ET

"One of the things important about history is to remember the true history."—Washington, D.C., June 6, 2008

Got a Bushism? Send it to [bushisms@slate.com](mailto:bushisms@slate.com). For more, see "[The Complete Bushisms](#)."

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## bushisms

### Bushism of the Day

By Jacob Weisberg

Monday, June 23, 2008, at 5:31 PM ET

"The German asparagus are fabulous."—Meseberg, Germany, June 11, 2008

Click [here](#) to see video of Bush's comments. The Bushism is at 4:53.

Got a Bushism? Send it to [bushisms@slate.com](mailto:bushisms@slate.com). For more, see "[The Complete Bushisms](#)."

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## chatterbox

### Guns of Convenience

The Supreme Court thinks convenience is an argument against gun control. Actually, it's an argument for it.

By Timothy Noah

Thursday, June 26, 2008, at 12:49 PM ET

[The](#) Supreme Court has discovered a constitutional right to convenience. In *District of Columbia v. Heller*, which strikes down D.C.'s handgun ban, Justice Antonin Scalia\* writes,

It is no answer to say, as petitioners do, that it is permissible to ban the possession of handguns so long as the possession of other firearms (i.e., long guns) is allowed. It is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon. There are many reasons that a citizen may prefer a handgun for home defense: It is easier to store in a location that is readily accessible in an emergency; it cannot easily be redirected or wrestled away by an attacker; it is easier to use for those without the upper-body strength to lift and aim a long gun; it can be pointed at a burglar with one hand while the other hand dials the police; it can be twirled around the index finger like Lee Marvin did in *Seven Men From Now*. Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.

OK, I added the clause about [twirling it](#) on your finger (and anyway, John Wayne had no difficulty twirling an [18.5-inch Winchester rifle](#) in *Stagecoach*). My point is that a handgun's convenience when put to good uses is heavily outweighed by its convenience when put to bad ones. A handgun can be concealed easily, and it can be tossed down a sewer drain without attracting much notice. The barrel can be used to break a snitch's jaw. (There's no such thing as "rifle whipping.") If it's easier for a woman to handle (I presume that's the meaning of Scalia's gallant reference to upper-body strength), imagine how much easier it is for a 4-year-old child. It can be twirled on a table when you want to play Russian roulette. It can be used to caress a woman, as various witnesses attested in Phil Spector's [murder trial](#) (which, despite this testimony, ended in a hung jury; a [retrial](#) commences Sept. 29). Because of its light weight, it can be accessed immediately after your wife tells you she's been sleeping with your best friend, but well before she heads out the door with a suitcase. Because of its small size, it can be used to shoot a cop dead before the chump even realizes you've got it in your hand.

It's this second set of conveniences that led the District of Columbia to ban handguns. Granted, in jurisdictions where gun ownership is permitted, criminals seldom obtain their guns legally. But illegal guns begin life as legal ones. Glock, Beretta, and other handgun manufacturers are not illegal enterprises; rather, they manufacture a legal product that is subsequently [stolen](#) and fenced by criminals. More legal guns therefore mean more illegal guns. More illegal guns mean more people get

killed. The inconvenience this poses to the dead and their families, and to society at large, does not concern Scalia.

**Correction, June 26, 2008:** *This column originally misstated Justice Scalia's first name. It's Antonin, not Anthony. ([Return to the corrected sentence.](#))*

[*Update, 4 p.m. EDT:* At the request of several readers, I should clarify that while there's no such *term* as "rifle-whipping," it's fairly common to [use rifle butts as a club](#). The term of art is the misleadingly pornographic phrase "butt stroking," the butt in this instance referring to the flat end of a rifle. Sometimes it's called "clubbing," which is similarly misleading because it connotes dancing and drinking. (If someone tells you *We went clubbing, and I picked up this chick, and we went back to her place for some really fine butt stroking*, do not respond "You dawg!" Instead, phone the police.) It would be far preferable to call this activity "rifle-whipping," but that term has virtually no currency.]

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## Convictions

### Nino Get Your Gun

Commentary on the Supreme Court's ruling in a major gun rights case.  
Thursday, June 26, 2008, at 10:56 AM ET

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## corrections

### Corrections

Friday, June 27, 2008, at 7:08 AM ET

In the June 26 "[Chatterbox](#)," Timothy Noah referred to the Supreme Court justice as Anthony Scalia. Scalia's first name is Antonin.

In a June 25 "[Convictions](#)" blog post, Eric Posner misspelled *Boumediene*.

In the June 24 "[Foreigners](#)," Peter Maass originally claimed that an SEC investigation led to money-laundering fines against Riggs Bank. The Office of the Comptroller of the Currency pursued the investigation.

In the June 24 "[Gearbox](#)," Jason Stein wrote that California residents who bought a Lexus GS 450h qualified for a Clean Air Vehicle decal that allowed for free metered parking. The car does qualify as a super-low-emission vehicle, but the state has given away its full allotment of the decals.

In a June 23 "[Science](#)," Carl Zimmer incorrectly stated that early cephalopods used bursts of air to propel themselves and that octopuses have been observed to push toys around a tank with jets of air. In both cases, the animals used water, not air. The piece also described the octopus as having about 500,000 neurons in total. The octopus has 500 million neurons, not 500,000.

In the June 20 "[Culturebox](#)," Jonah Weiner stated that Lil Wayne was the first hip-hop artist to fantasize about eating his competition. Other rappers have contemplated consuming their rivals.

A June 17 "[Hollywoodland](#)" raised questions about a photograph of Claus von Stauffenberg that appeared in a United Artists promotional campaign for the movie *Valkyrie*. The piece pointed out that the photo UA used looked more like Tom Cruise, the star of the film, than a similar-looking AP photo of von Stauffenberg. Because of insufficient photo research by *Slate's* editors, we failed to discover another archival image of von Stauffenberg, which appears to be the one UA used in its publicity campaign. As a result of this mistake, the question the piece raised—whether the photo had been doctored in an effort to make Claus von Stauffenberg look more like Tom Cruise—was unwarranted.

In the June 5 "[DVD Extras](#)," Troy Patterson misspelled Tanehisi Coates' first name.

*If you believe you have found an inaccuracy in a *Slate* story, please send an e-mail to [corrections@slate.com](mailto:corrections@slate.com), and we will investigate. General comments should be [posted](#) in "The Fray," our reader discussion forum.*

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## day to day

### A First for the Second Amendment

Thursday, June 26, 2008, at 4:34 PM ET

**Thursday, June 26, 2008**

#### The Breakfast Table: Supreme Court Strikes Down D.C. Handgun Ban

In a dramatic 5-4 ruling, the Supreme Court declared for the first time that the Second Amendment guarantees an individual's right to self-defense and gun ownership. Will this put an end to handgun bans nationwide? Legal analyst Dahlia Lithwick breaks it down for Madeleine Brand. ([Listen](#) to the segment. [Read](#) *Slate's* "Breakfast Table" dialogue.)

**Wednesday, June 25, 2008**

#### The Breakfast Table: Exxon Valdez Damages and Death Penalty for Rape

Justices slashed Exxon's damages for the 1989 *Exxon Valdez* oil spill. They ruled that the amount was excessive under maritime law. Instead of \$2.5 billion, Exxon now has to pay just \$500 million. And in a 5-4 decision, justices banned the death penalty for people convicted of raping a child. The ruling emphasized that the death penalty is appropriate only in cases where the crime results in death. NPR hosts Madeleine Brand and Alex Cohen talk to legal analyst Dahlia Lithwick about both cases. ([Listen](#) to the segment. [Read](#) *Slate's* "Breakfast Table" dialogue.)

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## dear prudence

### Who's My Daddy?

How do I tell my son that "Gramps" isn't my real father?  
Thursday, June 26, 2008, at 7:13 AM ET

Get "Dear Prudence" delivered to your inbox each week; click [here](#) to sign up. Please send your questions for publication to [prudence@slate.com](mailto:prudence@slate.com). (Questions may be edited.)

#### Dear Prudence,

I am the product of a relationship my mother had as a college student. They never married, and I have never met my father, though I do know who he is and where he lives. I am an adult now with three children of my own, ages 5, 3, and 18 months. My mother married when I was 33 and though the man she married takes a grandfatherly role with my children, it is pretty clear he and I are not father and daughter (largely due to my age when they married, etc.). My oldest son asked me out of the blue the other day, "Mom, who is your dad?" I knew this question would come, as he is a very bright and inquisitive boy, but I was totally unprepared. This subject was handled with a total shutdown when I was a child. No questions were allowed or answered. I do not want to do this to my children, but I also do not want to burden them with too much information for their age. This would be a huge problem if they brought it up to my mother or her husband, so I have to address it somehow—and soon, as we are going to see them shortly. This has always been my problem to deal with, but having to pass it on to my children is nearly unbearable.

—Dadless Mom

Dear Dadless,

I actually doubt your 5-year-old inferred all that you are reading into his question. Likely he noticed that you call your mother "Mom," but instead of calling the man who appears to be your father "Dad" you refer to him instead as "Bob." You're right: You don't want to give your children more information than they can understand, but you want to be able to answer their

questions honestly. Since your son is probably trying to figure out who "Bob" is, tell your son he's your stepfather. Explain that means he married your mom after you were born, and he's like a dad. I'm sure he has friends with stepfathers, and you can explain that Bob is to you as his friend Zack's stepdad is to him. That might be all he wants to know. But if he follows up and asks where your real dad is, simply tell him the truth, that you know who your dad is, but you didn't grow up with him. Your own painful childhood taught you that as important as the information you convey is the way you convey it. You want to be calm and comfortable when you have this conversation so that your children don't feel, as you did, that there's a cone of silence around the subject. More importantly, stop worrying about how your mother will feel if this comes up. She caused great pain by making this subject verboten, and you're a grown woman now who can make a different decision. What's your mother going to do? Send you to your room? You're right not to want to pass on the fear and shame you lived with, but you have to free yourself from the belief that you're still living under her control. This might mean discussing this with a therapist or support group and even exploring whether you someday want to contact your father.

—Prudie

### *Dear Prudence Video: Dogs Gone Wild*

#### **Dear Prudence,**

My boss is an educated, intelligent man. He's also a good guy, and I enjoy working for him. He's a VP and therefore has a good deal of exposure to the senior executives and board members of our company (including almost daily meetings with the COO). I'm struggling with this problem: My boss consistently uses the word *duplicitous* when he actually means *duplicative*. Needless to say, this misuse dramatically alters what he's trying to say. Unfortunately, he misuses the term frequently in conversation. Should I correct him to help prevent ongoing potential embarrassment on his part? I'm concerned that doing so would not only be uncomfortable, but that I would come across as being some kind of smarty-pants.

—Don't Wanna Be a Vocabulary Monitor

Dear Don't,

This isn't a case like that of John McCain saying the "transcendental" issue of our time is the war on terror when he means "transcendent"—you know what McCain's trying to say (and it also made for a [good bit](#) on *The Colbert Report*). But in your boss's case, when he's trying to say something was redundant, he ends up leaving the impression that an employee is doing something deceptive. Surely he'd want to know if he's inadvertently smearing his colleagues. You should correct him, but the task for you is to do it with both tact and confidence. The next time you hear him misuse the word, shake off your embarrassment, and when you get a chance to be in private with

him, at the end of whatever you're discussing, say matter-of-factly, "Oh, one other thing. I noticed at the meeting you said 'duplicitous' when it seemed clear what you really meant to say was 'duplicative.'" Don't spell out the definitions. If he's the smart and good guy you say he is, he'll look them up himself, and maybe even thank you for pointing out his error.

—Prudie

#### **Dear Prudence,**

I have some of the best friends I could ever ask for, but they have one habit that absolutely drives me up the wall. Every time we are out doing something as a group, one of them always has to be attached to his or her cell phone, text messaging people who are not with us. I don't use text messaging, and I don't consider myself to be a very demanding person. Is it unreasonable for me to request that they have a conversation with the people who are there instead of spending a half-hour texting with someone who isn't? At times, I just want to get up and leave. I've brought it up once or twice, and it stopped for about a week at most. I've thought about bringing some stationery with me and writing out a letter to somebody the next time it occurs. How can I reach them without having to go to such extreme measures?

—H8s Txts!

Dear H8s,

I love your idea, especially if you write your epistles on parchment using a quill pen and an inkwell. However, the result would probably be that your friends start snapping your photo with their cell phones and sending text messages about you to everyone who's not there. I wish someone could explain why a banal text message from a disembodied person is so much more alluring than a conversation with the friend in front of you. Perhaps if you were to leave the room and start texting your thumb-wagging friends, you'd suddenly become the focus of their attention. I endorse the rule promulgated by David Shipley and Will Schwalbe, authors of the e-mail etiquette guide [Send](#): Are you in a situation in which it would be rude for you to be doing a crossword puzzle? If the answer is yes, then stop texting. Since you've brought this up before, and everyone tried to reform, raise the issue again, and mention the crossword-puzzle edict. Let everyone agree to some ground rules. For example, it's fine to send a text to someone who's joining you to alert them to your location. But if people are too addicted to refrain from lengthy exchanges on their PDAs, they should banish themselves from the table and join the smokers outside.

—Prudie

#### **Dear Prudence,**

I'm a 50-year-old female. One of my dearest friends, who is just a few years older than I, has recently given up wearing a bra. Unfortunately, this is causing no small distress to several of her

friends, as it is rather distracting. Recently we all went on a trip together, and when we went through our snapshots, she kept discarding pictures because "I look terrible in this one." As far as we could tell, the only problem was that her bust line is now at the level of her waistline. She is a feminist and seems to really enjoy the freedom to hang loose, as it were, but how can we tactfully tell her that this is not a good look for her? I thought of a sports bra with a birthday card that says "Only your friends will tell you" but am afraid that it wouldn't go over well. Any suggestions?

—She's a Bust

Dear Bust,

This reminds me of a friend who, noting the effects of age and childbirth, said she could stop buying brassieres because it would be cheaper just to stick her breasts in her pants pockets. And wasn't there an episode of *Maude* in which the well-endowed Bea Arthur explained that she had a black eye because she was jumping rope without a bra? If your friend is old enough to have gone braless back in the day as a protest against repression, she is too old to go braless now. Maybe the reason she's going *National Geographic* on you is out of some physical discomfort. Ask if the reason she's suddenly braless is because there's a medical issue she needs to address. If there isn't, then tell her that since you're bosom buddies, you have to let her know that she really needs to resume containing herself.

—Prudie

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## dispatches

### The Headmaster and the Schoolboy

David Addington and John Yoo visit the Hill.

By Emily Bazelon

Thursday, June 26, 2008, at 8:05 PM ET

Two hostile witnesses are better than one. This we learn today on Capitol Hill from the mashup of David Addington, the vice president's *consigliere*, and John Yoo, author of the [2002](#) and [2003 torture memos](#). Appearing before a House subcommittee, Yoo-Addington is like the witness version of good cop-bad cop. Yoo is wide-faced, plaintive, perplexed as to why anyone in Congress might be upset about anything he's written or done or his refusals to answer their questions. He goes for schoolboy sympathy. Addington, on the other hand, is all stern-faced headmaster. No one is schooling him today, thank you very much.

The purpose of hauling in these reluctant witnesses, Rep. Jerrold Nadler, D-N.Y., says at the outset of the hearing, is to examine

the role of Bush administration lawyers in developing interrogation policy—the policy that led to water-boarding and other harsh methods that are hard to square with the Geneva Conventions, no matter how long you squint at them. Addington and Yoo listen politely to Nadler's wishful thinking. Their lawyers have already done their best to whittle today's substance to the barest of bones. When the House judiciary committee initially asked Addington to testify, the Office of the Vice President said no, with lots of fighting words about how Congress couldn't compel Dick Cheney or anyone who works for him to talk. It seemed a foregone conclusion that Addington would go the way of nonwitnesses [like Harriet Miers and Josh Bolten](#): to court rather than to the committee room.

Then, in May, Cheney's top aide and his office relented. Sort of. Addington would show up but only with a long [off-limits list](#). As he and his lawyer understood it, Congress would not ask him to speak with authority about the nature and scope of presidential power in wartime, the administration's approach to those questions under U.S. and international law, or U.S. policy relating to interrogation by the CIA or the military. What would Addington discuss? This is the mystery when the gavel raps at 10 a.m.

Rep. John Conyers, D-Mich., optimistically opens with his own list. He wants Addington and Yoo to come clean about 1) the torture memos: how they were drafted and why; 2) the effect of Yoo's legal advice on interrogation at Guantanamo Bay; 3) the so-called War Council in which Addington and Yoo reportedly participated, which "made key legal decisions on national security issues outside of normal channels," as Conyers puts it in a written version of his remarks.

Addington parries with no written statement, just a list of exhibits, most of them about the back-and-forth between his lawyer and the subcommittee. (Oh, and a speech by the president, in case we missed it on C-SPAN.) He has five minutes to open. He uses about 30 seconds to correct two small errors in Nadler's rendition of his bio. [Then](#) he's done. Nadler is thrown off balance. "Is that the entirety of your statement?" he asks.\* Addington sits back and nods. It's a great move—his version of nimbly stepping out of the way as his opponent lunges forward.

Yoo, on the other hand, has a written statement that is supposed to shield him with a shrinking spell. The Office of Legal Counsel at the Justice Department, where he worked when he wrote his infamous memos, "was not involved in the making of policy decisions," he asserts. He continues, "Those policy choices—adopting particular techniques within the lines that OLC had determined to be lawful—were not mine to make, and I did not make them." Also, he wants the subcommittee to know that his bosses at the Office of the Attorney General reviewed and edited everything he wrote. This opening gambit implicitly denies that Yoo had any role on any War Council, thereby refuting the much-cited reports of Jack Goldsmith, the OLC guy

who later pulled Yoo's torture memos and denounced them (and then left the DoJ, too, and is now [tapping away somewhere for Slate](#) on the latest Supreme Court decisions).

Yoo is so determined to distance himself from interrogation-related policymaking that he pulls Rep. Keith Ellison, D-Minn., into a tug-of-war over the meaning of the word *implemented*. Ellison wants to know whether the legal advice was implemented that reduced the definition of torture to acts that damage a suspect's internal organs. By which he means, Did interrogators use the tactics allowed by Yoo's theory of the law? The answer to this, of course, is yes, and to know that answer, all Yoo would have to admit is that he reads the newspaper. But he won't go there. "The memo was signed," he offers after much demurral. This exchange peters out, as do the next few, leading a further questioner, Steve Cohen, D-Tenn., to grimly mutter, "You guys sure are good at beating out the clock." To which Yoo replies, with an innocent shrug, "I don't play basketball." Too busy being captain of the debate team.

The next point, though, goes to Rep. Nadler. He asks a series of questions that other questioners have also gone through, along these lines: Did Yoo's memos allow the president to bury a suspect alive? To torture the child of a suspect? To cut off a suspect's fingers? To which Yoo replies with some variation of, "An American president would not issue such an order." Nadler responds that he hadn't asked what the president *would* do. I asked what he *could* do," given Yoo's legal theory and advice.

"It's not fair to ask that question without any facts," Yoo complains. But that's not really what his questioners are doing. They're trying to establish whether anything is off limits to the president in Yoo's legal universe. And Yoo doesn't come up with a single example, even as he insists that "my memo does not authorize anyone to torture anyone." This is an assurance that's not reassuring.

As a result of all this back-and-forth, Addington gets less air time. That seems odd, since he's the higher-up and the one who's still in office. But if you could choose between going after the slightly whiny student and the caustic, blustery headmaster, what would you do? Addington does a lot of smacking down of the questioners. (I understand what *I* mean. I'm not sure exactly what *you* mean.) He doesn't admit to making interrogation policy, either, only to "monitoring what was going on" and, during a handful of visits to Guantanamo, observing "a detainee in an orange jumpsuit sitting in a chair talking" to an interrogator. It's all so benign that it bores him. As for the War Council, that was a name the Department of Defense seems to have come up with for a regular gathering that also included former DoD General Counsel William Haynes, former White House Counsel Alberto Gonzales, and a few deputies. "To me, it was just the lawyers getting together to talk," Addington says. Need I add that his tone was dismissive?

Addington also gets in a little fear-mongering: When the torture memos were written, he says, "the smoke was still rising" from 9/11. Actually, by 2003, that was no longer the case. But never mind: Addington's point is that things were different then, "but not as different today as a lot of people may think. ... No American should think that we're free, or that the war is over. Because that's wrong." He's the teacher. That's the lesson. Now, go copy it onto the blackboard 500 times, Congress.

**Correction, June 27, 2008:** *The original sentence misattributed the reaction to Addington's opening, and the subsequent quote, to Rep. John Conyers rather than Rep. Jerrold Nadler. ([Return to the corrected sentence.](#))*

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## dvd extras

### The Complete Carlin

What you can learn from watching 800 minutes of George Carlin.

By Joshua David Mann

Thursday, June 26, 2008, at 1:28 PM ET

The future scholar of comedy who sets out to publish *The Complete Works of George Carlin* had better be prepared for a multimedia endeavor. A truly comprehensive collection of the comedian's work would have to include his Grammy Award-winning albums, his best-selling [books](#), and a transcript of his argument before the Supreme Court in defense of his immortal ["Seven Words" routine](#). In the meantime, mourners of Carlin, who [died](#) of heart failure earlier this week, can make do with the recently released [George Carlin: All My Stuff](#). The retrospective box set, weighing in at more than 800 minutes of material, is comprised of 12 HBO specials, beginning with a 1977 performance at USC and ending with 2005's *Life Is Worth Losing*. Carlin's assiduous touring schedule (he was sometimes on the road for nearly three-quarters of the calendar year) gave him a staging ground where he could hone his material. But it was the HBO specials that gave him a truly national audience and a chance to showcase his best stuff.

Carlin's career spanned more than 40 years, remarkable longevity for a stand-up artist, and *All My Stuff* offers a window on how his routine adapted across the decades. Though the infamy of "Seven Words" may doom Carlin to be remembered as a blue comic, early in his career he pioneered a form of observational humor now often classified as Seinfeldian. At the USC show, he describes his vocation as sharing "little ideas that occur to me." ("Why aren't there any Chinese guys named Rusty?" he asks at one point in the performance.) In 1982's *At Carnegie Hall*, Carlin discusses his craft in more philosophical terms—his expertise, he says, lies in "reminding you of things you already know but forgot to laugh at the first time they

happened." The bulk of the material in his early shows was concerned with such pedestrian acts as grocery shopping and, yes, walking. In one early performance, he constructs a bit around the phantom stair phenomenon, when we accidentally trick our legs into thinking a staircase has one more step than it actually does.

The stair bit works on an observational level because we have all experienced it. But Carlin also makes it work on a physical level, embellishing the joke through his wild gesticulations. Unlike Seinfeld, Carlin was also a gifted physical comic, and in his early performances, the influence of Carlin's idols—Buster Keaton, Danny Kaye, the Marx Brothers—is particularly evident. He contorts his face into wrinkly malformations. He squats slightly and mimes masturbatory motions. He freezes onstage in strange postures, an American ambassador to Monty Python's Ministry of Silly Walks.

Carlin lost a step or two over the years, but to his credit, the substance abuse and heart trouble that plagued him offstage never really managed to slow him down when he was on it. Physical comedy remained part of Carlin's repertoire throughout his career, as did his special brand of scatological humor. He got almost 30 years of mileage out of examinations of the words *cornhole* and *dingleberry*. Yet over the years, Carlin's routine evolved from a collection of whimsical, if often R-rated, observations into longer, more pointed set pieces, often on politically charged material. Take the evolution of his abortion rant. In the 1982 Carnegie Hall performance, he begins the night by asking: "Have you noticed that most of the women who are against abortion are women you wouldn't want to fuck in the first place?" In '82, he leaves it at that, quickly moving on to other musings. Eight years later, the line has blossomed into a slightly longer treatment in *What Am I Doing in New Jersey?* Another eight years later, in 1996's *Back in Town*, Carlin not only opens with abortion but meditates on it for nearly 10 minutes, poking holes in the logic of the pro-life cause: "If a fetus is a human being, how come the census doesn't count them? If a fetus is a human being, how come when there's a miscarriage they don't have a funeral? If a fetus is a human being, how come people say 'we have two children and one on the way' instead of saying 'we have three children?'"

Whether he's discussing misleading euphemisms, license plate mottos, or the sounds of foods he wouldn't eat (yogurt, squash, wheat germ), a common thread in Carlin's best material was his close attention to the uses and abuses of language. Occasionally, his linguistic observations can come off as pedantic, as when he takes issue with a box of cookies labeled "open here" by asking if the manufacturer really thought that the consumer might move to Hong Kong just to open the box. More often, however, he uncovers some nonsensical or lily-livered phrase in common use and attacks it mercilessly. The victims of Carlin's linguistic sorties range from the inaccurate ("You don't *take* a shit. You *leave* a shit.") to the redundant ("Personal belongings. What

other kinds of belongings are there?") to the semantic ("If crime fighters fight crime, and firefighters fight fire, what do freedom fighters fight?"). Often, he will organize a series of such observations around a theme, as in this Philippic from *Jammin' in New York* (1992), in which he deconstructs the mindless array of airport and airline announcements:

*All My Stuff* offers evidence of Carlin giving similarly withering treatment to lacrosse, New Jersey tollbooths, and the Reagan administration. Yet the institution he challenges with the greatest fervor over the course of these 12 specials is religion. Carlin attended parochial schools, though he says that he was only "Catholic until the age of reason." The early specials don't take on religion directly, yet the heavy burden of his upbringing can still be felt—such blasphemy and bombast could only come from the mind of an altar boy in apostasy. In the later HBO specials, Carlin takes on organized religion directly. In [this bit](#), from 1999's *You Are All Diseased*, he describes Judeo-Christian theology as "easily the greatest bullshit story ever told":

Religion has actually convinced people that there is an invisible man, living in the sky, who watches everything you do, every minute of every day; and the invisible man has a special list of 10 things he does not want you to do; and if you do any of these 10 things, he has a special place, full of fire and smoke and burning and torture and anguish, where he will send you to live and suffer and burn and choke and scream and cry, forever and ever, until the end of time. But he loves you. He loves you. He loves you and HE NEEDS MONEY.

Carlin cites war, disease, hunger, poverty, crime, and the Ice Capades as proof that there is, in fact, no supreme being. Yet one of his favorite ways to lay bare the absurdities of organized religion is to invent his own esoteric systems of belief. In *Jammin' in New York*, Carlin is a worshipper of something he calls "The Big Electron," a nebulous entity that doesn't punish, reward, or even judge—it just is. By 1999's *You Are All Diseased*, he is a heliologist, a worshipper of the sun, though he submits his prayers directly to Joe Pesci. In 2005's *Life Is Worth Losing*, he develops a Revelation-worthy vision of the end of the world. The rant at the end of this performance is perhaps the most impressive of Carlin's diatribe-rich career, not for the sheer power of memorization it required (which is daunting), nor for Carlin's use of the phrase "incendiary cyclonic macrosystem" (which is impossible to imagine coming out of the mouth of another comic), but for its utter bleakness. He describes an apocalypse that is part Stephen King, part Quentin Tarantino, and part George Romero. In the end, the world is consumed in a

mighty conflagration. Only hedonistic New York, Carlin's birthplace, is spared.

Despite his lack of faith, Carlin was rather upbeat when it came to the subject of death. "We're all going to do it. It's one of the few fair things in life. Everybody catches it once," he says in *George Carlin Again*. Death, to Carlin, seemed like a pretty good deal—it brings instant popularity, lots of flowers, and the knowledge of where we actually go in the afterlife. In his final HBO special *It's Bad for Ya*, which aired in March after *All My Stuff* had been pressed, Carlin warned that we need to be realistic about the hereafter. He certainly would not want us to think of him smiling down on us from the clouds. If we want to imagine where, precisely, George Carlin has gone, we'd do better to recall what he told us in a line from one of his first HBO specials, back in 1978: "I think when you die your soul goes to a garage in Buffalo."

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## explainer

### Why Don't Jehovah's Witnesses Vote?

Because they're representatives of God's heavenly kingdom.

By Jacob Leibenluft

Thursday, June 26, 2008, at 6:39 PM ET

Serena Williams [told reporters](#) at Wimbledon on Wednesday that she's excited about Barack Obama's candidacy but won't vote for him because Jehovah's Witnesses "don't get involved in politics." Her sister Venus—who is also a Jehovah's Witness—wouldn't even comment on the presidential election. Why don't Jehovah's Witnesses vote?

Because of [John 17:14](#) and other passages in the Bible. In that verse, Jesus says of his followers: "They are not of the world, just as I am not of the world." Jehovah's Witnesses have interpreted that statement [as a call to remain neutral in all political matters](#). (In some of the sect's literature, members are described as "[representatives of God's heavenly kingdom](#)"; they are thus obligated to stay out of local political affairs in keeping with the behavior of ambassadors.) Witnesses also refrain from serving in the military, running for public office, and pledging allegiance to the flag.

Voting is not expressly prohibited, but it is discouraged. The *Watchtower*, the official publication of the Jehovah's Witnesses, ran [an article in 1999](#) suggesting that the decision whether to vote was one of personal conscience, although it carefully laid out reasons for staying out of the voting booth. In reference to countries that require all citizens to show up at the ballot box, the *Watchtower* has explained that "[w]here Caesar makes it compulsory for citizens to vote ... [Jehovah's Witnesses] can go

to the polls and enter the voting booths," but the *Watchtower* did not specify what Witnesses should do with the ballot itself. [According to some](#), the requirement for political neutrality led to the violent persecution of Witnesses in Malawi during the late 1960s and early 1970s, when adherents refused to register with the ruling Congress Party.

Most Jehovah's Witnesses in America do, in fact, abstain from voting. According to a [survey](#) released this week by the Pew Forum on Religion and Public Life, the religious group is [far more likely than any other](#) to believe that there is only one true way to interpret religious teachings. In keeping with that adherence, just 13 percent reported they were registered to vote.

While Witnesses have shied away from electoral politics, they have left a strong mark on the judicial branch: The group has brought [several dozen civil-liberties](#) cases before the Supreme Court, including a [famous 1943 case](#) over whether Jehovah's Witnesses could be forced to recite the Pledge of Allegiance in schools.

Jehovah's Witnesses are by far the largest religious group that refuses to vote, but they are not the only ones: Old Order Amish, [Christadelphians](#), and Rastafarians have all traditionally shunned politics. (In the case of both the [Amish](#) and the [Rastafarians](#), though, attitudes have changed a bit in the last few years.) Nationally, [about 2 percent of people who don't register to vote](#) cite religious reasons. If Jehovah's Witnesses did vote, they probably wouldn't form a large bloc anyway: the group makes up less than 1 percent of the U.S. population and is [widely distributed across the country](#).

Got a question about today's news? [Ask the Explainer](#).

*Explainer thanks Jim Beckford of the University of Warwick, John Green of the Pew Forum on Religion and Public Life, Bryce Hemmelgarn of the Watchtower Office of Public Information, Donald Kraybill of Elizabethtown College, and Rodney Stark of Baylor University.*

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## explainer

### Are Black Muslims Sunni or Shiite?

Many say, "None of the above."

By Chris Wilson

Wednesday, June 25, 2008, at 7:19 PM ET

The Barack Obama campaign rejected help from Muslim congressman Keith Ellison during the Democratic primary, the *New York Times* [reported this week](#). Ellison, an African-American who was raised as a Catholic, [converted to Islam in](#)

[college](#). What's the deal with black Muslims—are they Sunnis or Shiites or something else?

Most are Sunnis, if they care to make the distinction. A [2007 survey](#) by the Pew Research Center found that among the several million Muslims in America, 20 percent are native-born African-Americans. Among those black Muslims, half identified themselves as Sunni—as [Ellison does](#)—and another third said they had no affiliation. There are a handful of predominantly black Shiite mosques in the United States, though they represent a small minority of all black Muslims. Another small percentage belongs to the [Nation of Islam](#), an independent Muslim movement that has had strained relations with the mainstream Islamic community. Estimates of the Nation of Islam's membership vary [from 10,000 to 200,000](#) with most guesses falling near the low end.

Decisions to identify as "Sunni" may reflect the desire of some black Muslims to differentiate themselves from the Nation of Islam rather than from Shiites or other Muslim sects. Muslims born in the United States are less likely than those from other parts of the world to identify with the [Sunni-Shiite divide](#). And "Sunni" may be a default choice for some people, since it describes [85 percent of all Muslims](#) in the world. Many of those black Muslims who do happen to identify themselves as Shiite were inspired by the [1979 Iranian revolution](#); younger American Shiites might have been exposed to the sect of Islam during study-abroad programs.

There are some cultural differences between African-American Muslims and other Islamic groups in the United States. While nearly all self-identified Muslims in America adhere to the [five pillars of Islam](#), imams at predominantly black mosques tend to deliver longer sermons and are more likely to have other employment, experts say. Imams who preach to immigrant communities are more likely to be supported wholly by the mosque and are often brought in from abroad.

Got a question about today's news? [Ask the Explainer](#).

*Explainer thanks Ibrahim Hooper of the Council on American-Islamic Relations, Jamillah Karim of Spelman College, Lawrence H. Mamiya of Vassar College, and Anthony B. Pinn of Rice University.*

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## explainer

### What's Up With Chinese Menus?

The stories behind "chicken without sexual life" and "bean curd made by a pockmarked woman."

By Brian Palmer

Monday, June 23, 2008, at 3:04 PM ET

In preparation for this summer's Olympic Games, the Chinese government has recommended new English translations for [more than 2,000 traditional Chinese dishes](#) to appeal to Western tourists. The menu items in question include "bean curd made by a pockmarked woman," "ants climbing a tree," and "chicken without sexual life." Where did these unusual names come from?

Stories of a recipe's creation, its physical appearance, or a description of its ingredients. The same naming conventions are common in Western cuisine; the Chinese simply employ them more dramatically. The difficulties of direct translation contribute to the awkwardness.

"Bean curd made by a pockmarked woman," a combination of ground pork, tofu, and Sichuan chilies, is named for its legendary origin. In the most colorful version of the tale, a widow was forced to live on the outskirts of Chengdu on account of her dermatologic flaws. One evening, a pair of travelers who were caught in a rainstorm took shelter in her home. The dish she prepared for them was so delicious that her house became a regular stop for travelers to Chengdu. Other versions describe the woman as the wife of a restaurateur or a grandmother with a street-food stand.

"Ants climbing a tree" describes the classic Sichuan dish's appearance—the bits of minced pork clinging to bean thread noodles recall insects moving through a tree's branches. Similarly, a Huaiyang dish called "lion's head" comprises a large pork meatball stewed in a broth with cabbage and other vegetables. The meatball and cabbage appear as a lion's head and mane.

Even when the name of a dish simply describes the ingredients, the language is often much more vivid than a Western gourmand would expect. "Chicken without sexual life" (often translated as the far less awkward "virgin chicken") refers to a young bird weighing between 12 and 20 ounces. The French call it a "poussin;" in English, it's a "spring chicken." (The phrase "She's no spring chicken" appeared in the United States no later than 1906 to describe a woman past her prime.) The Chinese name makes explicit the chicken's *raison d'être*: It will be slaughtered for meat before it can lay eggs.

In fact, only a few of the 2,000 dishes on the government's translation list would raise a Western eyebrow. And Western fare has its own abstruse names. Hush puppies, or deep-fried cornbread batter, were used either by fisherman, Civil War soldiers, or runaway slaves to quiet barking dogs. In the English dish "toad-in-the-hole," sausages partially submerged in Yorkshire pudding resemble peeking amphibians. When Napoleon defeated the Austro-Hungarian army in Marengo, Italy, in 1800, his famished troops scavenged the town for ingredients. The fruits of their pillaging supposedly composed the original chicken Marengo.

Chinese cuisine does have more of these colorful names, but that may be a result of its focus on traditional dishes. Chinese-restaurant patrons don't need to be told the main ingredients for centuries-old specialties. In contrast, many Western restaurants formulate entirely new recipes, making explicit description more important. Some chic Asian eateries, however, do label modern recipes with pseudo-traditional metaphorical names. The [Tung Lok Group](#), a Singapore-based chain, offers menu items such as "night is in the air" and "pillow talk."

Got a question about today's news? [Ask the Explainer](#).

*Explainer thanks Jennifer 8. Lee, author of [The Fortune Cookie Chronicles](#).*

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## family

### Family Feuds

How to make "timeouts" less like bar fights.

By Alan E. Kazdin

Friday, June 27, 2008, at 7:24 AM ET

The "timeout" has replaced the swat on the behind as many parents' default punishment for a misbehaving child. It's worth noting, then, that this parenting tool is widely misunderstood and frequently misused.

Most parents already have a rough working notion of how to use timeouts. When a child does something wrong, you send him off to sit somewhere by himself and do nothing for a set amount of time, like a hockey referee putting a player in the penalty box. Two minutes on a bench for hitting at the playground, five minutes on a stool in the corner for talking back, and so on. Because the timeout seems so simple, most people feel comfortable using it intuitively, guided by assumptions that the punishment should fit the crime, that a timeout gives the child an opportunity to reflect and repent, and that it teaches the child who's in control.

These assumptions lead many parents to use more and longer timeouts to match the frequency and severity of a child's offenses. If a child gets five minutes for, say, hitting a sibling, then a more serious offense, such as biting, should rate 15 or 30 minutes, right? Not necessarily. Using more and longer timeouts might seem proportional, and it might even conceivably teach a lesson about justice, but it won't help change the behavior that's causing you to give timeouts in the first place. And if you don't change the behavior, you're going to be enforcing a lot more timeouts.

Excessive timeouts do more harm than good, making a child irritable and more volatile in his reactions, and more inclined to escape and avoid the adults who punish him. Just as important, parents who punish excessively tend to escalate punishment, increasing the side effects and losing track of the original intent of giving a timeout, which is to improve a child's behavior. The opposite happens, in fact.

A reliable body of scientific research accruing over decades has given us a clear idea of how to use timeout most effectively. The technique's full name, "timeout from reinforcement," provides the key. Timeout has nothing to do with justice, repentance, or authority. Rather, it follows a simple logic: Attention feeds a behavior, and a timeout is nothing more than a brief break from attention in any form—demands, threats, explanations, rewards, hugs ... everything.

So, what does this tell us about the right way to use timeouts? They should be:

- **used sparingly**, because the side effects of excessive punishment are more significant than any benefits the timeouts might have. If you're giving more than one or two per day for the same offense, that's too much.
- **brief**, because the timeout's positive effect on behavior is almost all concentrated in its first minute or two. Some parents feel obliged to add more time to satisfy their sense of justice, but the extra time has no value in terms of changing behavior. If you feel that you must go beyond one or two minutes, treat 10 minutes as the extreme upper limit.
- **immediate**, following as closely as possible upon the behavior that made it necessary. If you can, do it on the spot, not when you get home from the store or playground. Delayed timeouts are ineffective.
- done **in isolation** from others, with the child in a separate room or sitting alone in a chair off to one side. Complete isolation is not needed if you feel it would be good to keep an eye on the child.
- administered **calmly**, not in anger or as an act of vengeance, and **without repeated warnings**, which lose their effect if they are not regularly followed with consequences. Make clear to the child which behaviors lead to timeout, and then be consistent about declaring one when such behavior occurs. One warning is plenty.

If you're calm, you will also be in the right frame of mind to do something important that's nearly impossible to do when you're angry: Praise compliance with the timeout, such as going to the isolated spot when asked, sitting quietly, and completing the whole timeout. A lot of parents balk at this. "WHAT?! Praise the child when I'm punishing him for misbehaving?" Absolutely. We want to build compliance whenever it occurs, and especially under difficult situations. We want the child to go to timeout when we tell him to, so we reward that behavior with praise. It

does not have to be effusive, but, like all effective praise, it should still specify what the child did—*It's good that you went straight to timeout when I asked you to, and you sat quietly for the whole time, like a big boy*—and combine verbal encouragement with a gentle pat or other contact.

If you have to touch, drag, or restrain the child to make the timeout happen, you're doing it wrong, and the timeout won't work. During punishment, a child will be more oppositional than usual and is likelier to physically resist going into timeout, which may inspire stronger physical control by the parent. Things escalate from there into dragging, pushing, pulling, and perhaps hitting. What's happening is more like a fight in a bar than timeout from reinforcement, and you're reinforcing all the wrong behaviors. The same goes for locking a child in a room to enforce a timeout. Besides being unsafe, locking a child in, like dragging him, is what psychologists call a "setting event" for opposition—an event that makes a behavior more likely. You're saying, in effect, *Resist me! I expect it from you*, and your child will get the message.

Let's say you declare the timeout and your child says, "No, I'm not going." Instead of using force, give her an extra minute penalty. You can do this twice: Up the timeout from two minutes to three, then to four. Then, if that doesn't work, take away a privilege—something significant but brief, like no TV today. (It helps to decide on this penalty in advance rather than winging it on the spot when everybody's excited and upset. You can also use it if the child comes out of timeout too early; one warning, if you wish, and then invoke the penalty.) Then pivot and walk away. Don't give in if she then says, "OK, OK, OK, I'll do it," because that reinforces an unwanted sequence. Let the consequence do the work, and resist the temptation to add a little zinger like, "You never listen, and now you're paying the price!" Saying such things may release steam, causing your child-induced aneurisms not to burst, but it will increase the side effects of punishment.

Finally, and this is the greater key to success, research shows that the effectiveness of timeout depends on the effectiveness of time in. You must devote your energies to identifying the problem behavior (hitting, for instance), identifying a desirable behavior to replace it (keeping your hands to yourself), and reinforcing that desirable behavior with lots of praise and other rewards. Timeout won't get rid of an unwanted behavior, not on its own. It's a consequence you can use to control that behavior while you work on replacing it with something better.

And consider giving yourself an informal timeout now and again. Everyone will benefit. When your child is singing the "I Hate Mommy" song for the 17<sup>th</sup> time in a row and you feel yourself about to lose control and run wild up the parental misbehavior scale—nagging, shouting, threatening, overpunishing, all the way up to laying hands on the little miscreant—try turning around and walking out of the room. Go

sit somewhere quiet for a couple of minutes and cool off. Sometimes a little timeout from reinforcement is just what you need.

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## fighting words

### Mourning Glory

The media goes overboard with "the Russert Miracles."

By Christopher Hitchens

Monday, June 23, 2008, at 12:36 PM ET

When the late Tim Russert actually became the late Tim Russert, I wrote an [appreciation](#) for the *Vanity Fair* Web site and said what I genuinely thought: that he was a nice and generous man and a first-rate journalist and one of nature's democrats. I added that he'd been very fair-minded to me when it came to our own greatest difference, which was his highly devout Catholicism. He'd always made room on his cable show for opinions that clashed with his own and had, in fact, positively sought out people like me who disagreed with him. And then I added, because I may have had some kind of premonition, that the journalistic profession sometimes overdoes things when one of its senior members dies and has a tendency to bang on as if some great and irreplaceable saint or statesman has passed away.

A few days after I published this innocent little appreciation, one could already detect a slight feeling that the media "tribute" industry had gone a tad far. Surely Tim can't have been the only person ever to have done well after being born into a working-class family in Buffalo, N.Y., for example? And other people must have served on the staff of Sen. Daniel Patrick Moynihan (even if not so brilliantly able to imitate the crusty old solon). The job of hosting *Meet the Press* was a job that a mere mortal could actually do, otherwise Tim would not have been able to do it. The seat would be filled soon enough. In a moment of irreverence at the Russert memorial service, Tom Brokaw pronounced that the largest group present was composed of people who thought they should be filling his shoes; I notice he's now landed the job.

But it was precisely around the time of these various wakes and memorials that the thing began to get seriously out of hand. One started to hear whispers about something more than the merely ordinary, as if a numinous and mysterious element had crept into the everyday obsequies. I quote from an e-mail entitled "The Russert Miracles," which came to me from someone quite well-known in the world of Washington TV and media:

The first "Russert miracle," as attendees called it, happened at the private funeral service held at Holy Trinity Church in Georgetown; the family had requested that Senators Obama and

McCain sit together. ... CNN Washington Bureau Chief David Bohrman describes the scene to *Newsweek*: "They sat side by side and spoke for twenty minutes. The body language was total friendship. ... I kept thinking here we are at the funeral of the son of a sanitation worker, and the presidential candidates are having their first one-on-one conversation here."

So at this point we are supposed to celebrate the holy miracle of "bipartisanship," an everyday occurrence in the Senate of which both men are members. The second "miracle," according to similar e-mails, consisted of the appearance of Bruce Springsteen on a big screen at the end of the next service or memorial, which took place at the Kennedy Center. The Boss did a version of "Thunder Road" and announced to Tim's son Luke that "this is for your pop." Springsteen is known—very much to his credit—to do these kinds of favors for the living. And the way in which this miracle was transmitted to the waiting flock is easily understood—not by me, admittedly—but by almost all the media folks who were present.

Last on the list of miracles (and do please beware anything that comes in threes) was the apparition of a huge and beautiful rainbow arcing over the Potomac as the mourners came up to the Kennedy Center rooftop for a reception. In the words of NBC News executive Phil Griffin, "After the magical experience of this service, to come out and see the rainbow and Luke at the bottom of it made the last dry eye weep." It was further pointed out that the last song at the memorial service had been "Somewhere Over the Rainbow." Tim's son Luke was quoted as asking, "Is anyone still an atheist now?"

Not pausing to answer that question, I think this media mythmaking, however tongue-in-cheek some of it may be, helps our understanding of why people are theists. After all, just remember why we mourners of that day were gathered in the first place. One of our friends and colleagues had been struck stone dead by his coronary arteries, in the prime of life, at just the moment when he had been celebrating his son's graduation. He had had everything to look forward to. For my part, I was distressed by all this and sorry about it, which is why I donned a tie and went along to bow my head. But now I read that, because of room-temperature political politeness and the vagaries of the weather, I was supposed to have been *grateful* for the bereavement? What if it hadn't been an election year? What if the network couldn't have contacted a rock star? What if the sky had been merely sunny or had filled with lightning? Surely our mass media would adopt a tone of polite condescension if it was reporting on such primitive attitudes in the backlands of Alaska or Peru or Congo.

In John Updike's brilliant novel *In the Beauty of the Lilies*, the son of a Presbyterian minister who lost the faith is listening to

those who eulogize his departed father and suddenly realizes how the myths about Jesus got started in the first place. Surveying my e-mail traffic this week, I could see another such bubble of legend begin to swell. And I remain unshakably certain on two points. The first is that no benign deity plucks television news-show hosts from their desks in the prime of life and then hastily compensates their friends and family by displays of irradiated droplets in the sky. (I bet you now that it won't happen for Brokaw or Williams or Olbermann, even if they all convert to Catholicism, and you know I am right.) My second bet is that Tim Russert, a man of firm but modest faith, would reject this foolish superstition and the silly cult of celebrity. This latter cult belongs to the material world, which, in the absence of a supernatural one, is the only world we have.

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foreigners

## Protecting the Oil Supply

What if the Chinese were to apply the Carter Doctrine?

By Shmuel Rosner

Wednesday, June 25, 2008, at 6:03 PM ET

"Let our position be absolutely clear," Jimmy Carter [declared](#). It was January 1980, and a year later he would no longer be president. But the doctrine he espoused in his final State of the Union address was, arguably, one of the few policies that outlasted his tenure. The Carter Doctrine: "An attempt by any outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States of America."

Two weeks after the president made a commitment to protect the free flow of oil from this contentious region by any means necessary, his national security adviser, Zbigniew Brzezinski, and then-Deputy Secretary of State Warren Christopher embarked on a weeklong trip that concluded in Saudi Arabia. Their task was to explain why the United States had decided to throw a security blanket over oil-producing countries in Asia and the Middle East. Their reasoning was straightforward: The Soviet Union was mired in its battle for Afghanistan, and the aftershock of the Iranian revolution was still fresh in the hearts and minds of everyone involved.

Every couple of years, oil becomes Topic 1 for a while. Every couple of years, attention is paid—and then it fades. The 1970s brought the Arab embargo and the energy crisis. The early 1980s brought the Carter Doctrine and the Iran-Iraq War. In the early 1990s, Iraq invaded oil-rich Kuwait. In 2003, some claimed the United States had launched a war in Iraq because of oil.

On Tuesday, an entertaining news nugget barely made the headlines: The number of drivers stuck on the road calling for help because they [don't have enough gas in the tank](#) has increased dramatically. Apparently, the price of gas has made people more reluctant to fill up when the tank is still half-full. Waiting until the last minute on the all-too-crowded roads of America is a recipe for trouble—and a boon to AAA roadside services. Suddenly, oil has become a major election issue, and the somewhat boring debate about offshore drilling is the hottest topic in town.

Tuesday was also the day in which oil markets responded to [rumors](#) that the United States or Israel had attacked Iran. The rumors were false this time around, but everybody understands that one of these days something will happen that will send the price of oil through the roof, testing the Carter Doctrine in ways it has never before been tested. Earlier this year, Iran's supreme leader, Ayatollah Ali Khamenei, explicitly warned that oil is a legitimate weapon when he predicted, "If the West did not receive oil, their factories would grind to a halt. This will shake the world!" That would be "an assault on the vital interests of the United States."

When the Iranians attacked Kuwaiti tankers during the Iran-Iraq War back in the 1980s, Ronald Reagan decided to put U.S. flags on 11 of the tankers and defend them against such attacks. This "reflagging" worked quite well, and the aggressor backed away from confrontation. But what will the U.S. president do if Iran threatens to retaliate against a future attack on its nuclear facilities by blocking the Strait of Hormuz, through which 40 percent of the world's internationally traded oil passes each day?

One assumes that the Carter Doctrine provides an answer to this question. Of course, I've oversimplified both the question and the doctrine, but this is a perfect example of the extent to which life has become more complicated since the 1980s. Battling the Soviet Union—with its vast independent energy sources—is one thing. Threatening the free flow of oil to China and India is quite another.

Consider this: China is the world's second-largest oil consumer today, and its consumption will surpass the United States' by the year 2030. A Chinese defense-policy document recently stated that "security issues relating to energy, resources, finance, information and international shipping routes are mounting." India, the second most populous country in the world, is also growing economically and needs oil as never before. No wonder that India has shown ever-growing interest in signing energy deals with countries like Iran and Saudi Arabia in recent years. In August 2007, the Indians announced a revision in their defense doctrine, extending the strategic reach of their air force in ways that will make it easier for them to defend oil routes.

As its needs and dependence on Middle East oil grow, China is more likely to challenge some of the policies the United States is

pursuing in oil-rich regions. Using sanctions to help stop the genocide in Darfur appeals to Washington but is disruptive to relations between China and Sudan. Preventing Iran from interfering in Iraq or from building nuclear capabilities is crucial for the United States, but China is becoming more and more nervous that a confrontation will upset its access to oil.

In 2006, Secretary of State Condoleezza Rice told the Senate foreign relations committee: "We do have to do something about the energy problem. ... It has given extraordinary power to some states that are using that power in not very good ways." She was talking about Iran, Venezuela, and Sudan. But from Beijing, the picture might look much different: Iran, Venezuela, and Sudan are all more than willing to supply China—but a country with extraordinary power is making oil more expensive and less available.

We do have to do something about the energy problem.

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## foreigners

### Who's Africa's Worst Dictator?

Hint: It's probably not Robert Mugabe.

By Peter Maass

Tuesday, June 24, 2008, at 1:34 PM ET

A pop quiz: Who is the worst dictator in Africa?

- a) Robert Mugabe
- b) Robert Mugabe
- c) Robert Mugabe
- d) None of the above

The answer seems obvious. Thanks to extensive coverage in the news media and abundant criticism by Western governments, everyone knows that Zimbabwe's leader is trying to hang onto power by crushing his rival, Morgan Tsvangirai, who would roll to victory in the final round of elections on June 27 if his followers were not being killed, beaten, jailed, or harassed by state thugs. Even President George W. Bush described Mugabe's rule as a "nightmare."

But Mugabe may not be Africa's worst. That prize arguably goes to Teodoro Obiang, the ruler of Equatorial Guinea whose life seems a parody of the dictator genre. Years of violent apprenticeship in a genocidal regime led by a crazy uncle? Check. Power grab in a coup against the murderous uncle? Check. Execution of now-deposed uncle by firing squad? Check. Proclamation of self as "the liberator" of the nation? Check. Govern for decades in a way that prompts human rights groups

to accuse *your* regime of murder, torture, and corruption? Check, check, and check.

Obiang, who seized power in 1979, had promised to be kinder and gentler than his predecessor, but in the 1990s, even the U.S. ambassador to Equatorial Guinea received a death threat from a regime insider, the ambassador has said, and had to be evacuated. Not long after that, offshore oil was discovered, but the first wave of revenues—about \$700 million—was transferred into secret accounts under Obiang's personal control. The latest chapter, written in the last month, may be the least surprising, because Obiang's ruling party [won 99 of the 100 seats in legislative elections](#). A government [press release](#), hailing Obiang as the "Militant Brother Founding President of the PDGE," carried the headline, "Democracy at Its Peak in Equatorial Guinea."

If you haven't heard any of this, don't worry; as far as I can tell, the only American journalist who has reported on Obiang's electoral theft is [Ken Silverstein](#), who writes for *Harper's* and has for many years poured out a primal scream of investigative reports into Obiang's misrule. Other than Silverstein's recent postings and several wire-service stories that were not picked up in America, there has been a vacuum of coverage about a suppression of democracy in Africa that is more complete than what Mugabe is trying to get away with. True, Equatorial Guinea is a small country with a population of less than 1 million, its economy is expanding in an oil boom, and Obiang's "victory" did not require the obvious and crude violence of Mugabe's ongoing terror. But Obiang's enforcers don't need to club people on the streets. His would-be opponents are too frightened to openly demonstrate against him. His is the Switzerland of dictatorships—so effective at enforcing obedience that the spectacle of unrest is invisible.

The reality of the regime's brutishness nearly hit me over the head as I was being expelled from the country while researching a book on oil in 2004. I had already been chilled by the docility of the people—unlike other countries in the Third World, no one approached me as I walked the streets. (The only place where I had felt a similar pattern of fear was North Korea.) After I had [been in Equatorial Guinea](#) for a bit more than a week, the minister of information, Alfonso Nsue Mokuy, summoned me to the patio of the Bahia Hotel, where Frederick Forsyth had written *The Dogs of War*, and told me I was an anti-Obiang agitator or a spy—he wasn't sure which. I would be on the next plane out of the country, he said. One of his aides escorted me to the airport, and soon after we arrived, the minister showed up and rifled through my bags, seizing memory chips and notes, accusing me of being a spy (he had concluded I was not an agitator), and threatening to take me downtown for a real Obiang-style interrogation.

To understand what happened next, and to understand a crucial reason why we hear little about Obiang, you need to know that

since oil was found in the country's waters in the Gulf of Guinea, ExxonMobil, Marathon Oil, Chevron, and other firms have invested more than \$10 billion to extract the treasure, transforming Equatorial Guinea into the third-largest energy exporter in sub-Saharan Africa. But the first wave of revenues seemed to disappear—the people of Equatorial Guinea remained as poor, ill-housed, uneducated, and unhealthy as ever. Rather than putting the money into a transparent government account and using the proceeds for social services, Obiang hoarded it in accounts he personally controlled at Riggs Bank in Washington, D.C. [An investigation](#) by the [Office of the Comptroller of the Currency](#) led to millions of dollars in money-laundering fines against Riggs, but Obiang was not charged.\* In fact, things only got sweeter. In 2006, he was invited to Washington and met Secretary of State Condoleezza Rice, who called him a "good friend."

It's no secret why Rice is BFF with Obiang—he controls oil that Washington wants access to. The stance is indefensible even on pragmatic grounds. King Abdullah is a "good friend," too, but the Saudi monarch controls more than 260 billion barrels of oil; the morals-for-oil transaction is plausible if it nets us a lot of gas, albeit at \$4 a gallon. Obiang controls 1.1 billion barrels of oil—a global pittance. We shouldn't bow to him, and we don't even need to. I learned that at the airport.

The minister was shouting and began to slap my arms as I moved, too slowly for his satisfaction, to unpack my bag. He was serious about taking me downtown. To hold him off, I told him the U.S. government would be angry if I were to be arrested. I was counting on the insecurity of Obiang's regime. There had just been a [bizarre and failed coup plot](#) involving Mark Thatcher, the buffoonish son of former British Prime Minister Margaret Thatcher. I had noticed, while attending a presidential speech and parade, that Obiang's key bodyguards were Moroccan mercenaries rather than compatriots, whom he apparently could not trust. Although U.S. power is diminished by the quagmires in Iraq and Afghanistan, it remains fearsome to an autocrat whose air force consists of less than a dozen planes apparently piloted by Eastern Europeans. So, my bluff succeeded. The minister ceased harassing me.

For the usual and shameful reasons, the White House does not use its clout to condemn Obiang as it condemns Mugabe—there has not been a word of censure from Washington about Obiang's 99-for-100 triumph in May's elections. Yet that's only part of the reason Americans hear little about him. There isn't a gag order on America's media, after all. There is, however, a famous dictator trying to crush a peaceful uprising in a far larger country with a historical narrative that we're familiar with and fascinated by—in a dramatic fashion, Zimbabwe has gone from white rule to independence to destitution. Mugabe's government admits to an inflation rate of 150,000 percent, but that's the *optimistic* view, because unofficial estimates are a calculator-busting 1 million percent. This drama casts an unfortunate spell, because

Obiang is not just a worse tyrant, he is a better story. The U.S. government is not propping up Mugabe, but with billions invested by American companies in Equatorial Guinea, it is propping up Obiang. The Equatorial Guinean minister who owns the building that houses the U.S. Embassy in Malabo has even been accused of torture by human rights organizations. Instead of seeking an indictment against the man, the U.S. government is putting rent money in his pocket. (A lot of rent money, actually—\$17,500 a month.)

You haven't heard that before? The tragedy is that you might not hear of it again.

***Correction, June 25, 2008:** This article originally claimed that an SEC investigation led to money-laundering fines against Riggs Bank. The Office of the Comptroller of the Currency pursued the investigation. ([Return](#) to the corrected sentence.)*

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## foreigners

### Nice Guys Finish Last

Why do we expect presidential candidates to be kind?

By Anne Applebaum

Monday, June 23, 2008, at 8:03 PM ET

Perhaps it's just a coincidence, but in the past few days I feel I've been overwhelmed by a tsunami of commentary, all of which purports to prove the fundamental nastiness of Barack Obama or, alternatively, the deep unlikability of John McCain. You thought our presidential candidates were nice guys, regular guys, guys who you'd like to sit down and have a beer with? Guess what, lots of people are now telling me: They aren't!

Thus David Brooks of the *New York Times* has contrasted the warm-and-fuzzy Obama on our television screens with "Fast Eddie Obama, the promise-breaking, tough-minded Chicago pol who'd throw you under the truck for votes." The *Daily Mail* of London has called McCain a "self-centered womaniser who effectively abandoned his [first] crippled wife." In recent months I've also read, or been told, that John McCain snubbed the Vietnamese peasant who saved his life and is rude to his (second) wife in public; that Obama abandoned his beloved church to save his political skin and for similar reasons had some nasty friends in Chicago; that both candidates "[flip-flop](#)" on the issues nearest and dearest to them, merely in order to win votes.

From whatever political quarter it comes, and regardless of whatever merit it may have, all of this commentary starts with the same assumption: The reader is meant to be shocked, shocked, that these two men—men who have submitted themselves to months of brutal campaigning, men who have thrown their wives and families to the wolves, men who know

they might at any second need to abandon their closest friends—these two men are not, in fact, very nice people at all!

But why on earth should anyone expect them to be? In its wisdom, America has devised a presidential election system that actively selects for egotistical megalomaniacs: You simply cannot enter the White House if you aren't one. You might start out as an idealist, of course, and I would even give both Obama and McCain the benefit of the doubt here. I'm sure both are patriots, both care about America, both want to make the world a better place.

But in order to become the candidate, both also had to make a series of utterly ruthless decisions, decisions that most nice guys would find unpalatable. I don't care what a helpful father Michelle says he is, there is absolutely no sense in which Obama's presidential campaign—or, should it come to it, Obama's presidency—is good for Obama's children. Neither is there a scenario under which Cindy McCain, who always looks profoundly uncomfortable in the limelight, is ever going to relax and enjoy her husband's golden retirement years. Anyone who was ever closely associated with either candidate is now at risk of unpleasant media exposure. No one who works for them right now has job security, and no one who knows them can expect any favors.

Think hard, as well, about what a presidential campaign truly demands of a candidate. To become president, you must love talking about yourself: Talk, talk, brag and talk, every day, every evening, on national television, in the company of newspaper reporters, in every spare moment, and not just for a few days or weeks but for years and years on end. If you don't crave attention; if you don't long for adulation; if you don't, at some level, feel you are God's gift to the American people, then you don't run for president at all.

And yet despite the existence of this extraordinarily harsh, ruthless presidential selection system, Americans, possibly uniquely among democratic nations, do at some level expect their leaders to be nice. I'm convinced George W. Bush became president in part because he seemed nice—refreshingly inarticulate, just like the rest of us—even though his former associates often admit that he isn't nice at all. It was once said of Ronald Reagan that his career proved the limitations of charm: If you turn it on for the public, you don't have much left over in private. Still, the desire to be represented by a nice person penetrates quite deep into the American psyche. We "like Ike," and we like Jimmy and Bill, and we want our country to be run by the sort of person we can call by a nickname.

Neither of our current presidential candidates seems much inclined to nicknames, which is just as well, really. Perhaps a touch of formality will help us remember that, whatever their many good qualities, both are self-centered, driven, ambitious, calculating, manipulative politicians—because they have to be.

That's what it takes to be president of the United States, and we might as well get used to it now.

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## **gabfest**

### **The Supreme Court Wrap-Up Gabfest**

Listen to *Slate's* review of the week in politics.

By Emily Bazelon, Dahlia Lithwick, and David Plotz

Friday, June 27, 2008, at 12:13 PM ET

*Listen to the Gabfest for June 27 by clicking the arrow on the audio player below:*

*You can also download the program [here](#), or you can subscribe to the weekly Gabfest podcast feed in iTunes by clicking [here](#).*

John Dickerson is on vacation this week, but Dahlia Lithwick stepped in to chat with David Plotz and Emily Bazelon. They discussed the final decisions of the Supreme Court term, campaign high jinks, and elections in Zimbabwe.

Here are links to some of the articles and other items mentioned in the show:

Dahlia, David, and Emily discuss several recent rulings by the U.S. [Supreme Court](#), including decisions on [the right to bear arms](#), [the 1989 Exxon Valdez oil spill](#), and the [death penalty for child-rapists](#).

Presumptive Democratic nominee Barack Obama [spoke out](#) against some of the court's decisions.

Yale law professor Jack Balkin writes that [Obama supports a compromise](#) on wiretapping legislation because he feels he may need such a measure if he becomes president.

John McCain's adviser Charlie Black says a [terrorist attack on U.S. soil](#) before November would help the Republican's candidacy.

As Africa prepares for [Friday's presidential run-off election in Zimbabwe](#), in which [opposition candidate Morgan Tsvangirai has refused to run](#) following increased violence against his supporters, some are [calling for military intervention](#) in the southern African nation.

Emily chatters about a [visit to Capitol Hill](#) by Dick Cheney aide David Addington and former Deputy Assistant Attorney General

John Yoo. The two appeared to testify about their roles in developing [the Bush administration's interrogation policies](#).

Dahlia giggles over a Department of Justice [inspector general's report](#) about the politicization of the department's summer intern program.

Daniel Kimmage, a senior regional analyst for Radio Free Europe, [wrote an op-ed in the New York Times](#) about al-Qaida's [failing Internet operation](#).

The e-mail address for the Political Gabfest is [gabfest@slate.com](mailto:gabfest@slate.com). (E-mail may be quoted by name unless the writer stipulates otherwise.)

Posted by Dale Willman on June 27 at 12:00 p.m.

## **June 20, 2008**

*Listen to the Gabfest for June 20 by clicking the arrow on the audio player below:*

*You can also download the program [here](#), or you can subscribe to the weekly Gabfest podcast feed in iTunes by clicking [here](#).*

Emily Bazelon, John Dickerson, and special guest William Saletan talk politics. This week, a discussion of flip-flops from both John McCain and Barack Obama, the role of candidates' spouses, and legalizing gay marriage.

Here are links to some of the articles and other items mentioned in the show:

John opens the show with a discussion of [flip-flopping](#) by McCain and Obama.

Emily thinks [flip-flopping](#) on [domestic oil drilling](#) is a worthless exercise.

Obama decides [not to accept campaign-matching funds](#). One reason is the belief that McCain's Republican supporters are going to use so-called [527 political groups](#) to attack Obama, so his campaign will need as much money as possible to counter those hits. Perhaps the most well-known 527 group was [Swift Boat Veterans for Truth](#), which attacked John Kerry's Vietnam service during the 2004 presidential campaign.

A June 18 [poll](#) by Quinnipiac University found that Obama leads McCain in three crucial swing states: Florida, Ohio, and Pennsylvania. Obama commands a particularly strong lead among women.

[Content analysis of the past week's news](#) by the Project for Excellence in Journalism finds that Obama received far more coverage, both positive and negative, than McCain did.

Emily talks about [Michelle Obama's visit](#) to [The View](#).

Michelle Obama [thanks first lady Laura Bush](#) for coming to her defense over the attacks on her husband's patriotism.

McCain's first wife told British newspaper the [Daily Mail](#) that he divorced her because he "didn't want to be 40, he wanted to be 25."

As [gay marriage becomes legal](#) in California, William writes about [what science has to say](#) about the brains of gay and straight people.

Emily chatters about the end of the [Supreme Court](#) term.

William talks about so-called pro-life pharmacies that are [refusing to fill](#) prescriptions for any form of birth control.

John pays a [final tribute](#) to Tim Russert, who [died on June 13](#).

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Posted by Dale Willman on June 20 at 11:08 a.m.

**June 13, 2008**

*Listen to the Gabfest for June 13 by clicking the arrow on the audio player below:*

*You can also download the program [here](#), or you can subscribe to the weekly Gabfest podcast feed in iTunes by clicking [here](#).*

Emily Bazelon, John Dickerson, and David Plotz talk politics. This week, Obama's vice-presidential misstep, Clinton supporters for McCain, and the Supreme Court rules on Guantanamo—again

Here are links to some of the articles and other items mentioned in the show:

David Plotz is [Slate's new editor](#).

Jim Johnson, who headed Obama's vice-presidential search committee, [resigned](#) because of a [question of improper home loans](#), as well as his role in providing [lavish compensation](#)

[packages](#) for CEOs while he was a member of corporate compensation committees. David says there are [lots of people](#) who want to be a vice-presidential candidate.

The debate continues about whether supporters of Hillary Clinton [will now vote](#) for John McCain, and, if so, why.

The Bush administration [loses another case](#) involving detainees at Guantanamo.

Hanna Rosin writes about a puzzling [increase in violent crime](#) in the nation's midsize cities in this month's *Atlantic*.

John chatters about the [lack of transparency](#) when it comes to the spending programs being proposed by both Obama and McCain.

Emily recommends two books: [Now the Hell Will Start](#), by *Slate* writer Brendan I. Koerner, and [The Beautiful Struggle](#), by Ta-Nehisi Coates.

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Posted by Dale Willman on June 13 at 11:55 a.m.

**June 6, 2008**

*Listen to the Gabfest for June 6 by clicking the arrow on the audio player below:*

*You can also download the program [here](#), or you can subscribe to the weekly Gabfest podcast feed in iTunes by clicking [here](#).*

Emily Bazelon, John Dickerson, and David Plotz talk politics. This week: Obama claims a sweet victory, what's next for Hillary, and the vice-presidential parlor game begins in earnest.

Here are links to some of the articles and other items mentioned in the show:

Barack Obama [goes over the top](#), so the question becomes—[now what?](#)

Obama moves quickly to decide [what to do with Hillary](#) now that he has won the nomination.

[Where do Hillary and her fans go](#), now that Obama has clinched the nomination?

As the political discussion turns to the vice-presidential parlor game, observers are asking whether there could be an Obama-Clinton "[dream ticket](#)."

Emily, John, and David discussed what the heck a [parlor](#) is, anyway. None of them actually got it right.

As the Democratic presidential nominee, Obama will [once again face all the rumors](#) surrounding his candidacy, including the claim that he is a Muslim.

More on what [LBJ brought to the ticket](#) for John F. Kennedy.

As John McCain and Barack Obama discuss a possible series of town hall debates, the Gabfest lingers for a moment on the [Lincoln-Douglas debates](#) of 1858.

Emily chatters about new findings for [bed-wetters](#) and their sleep patterns.

David recommends the book [Final Salute](#).

John chatters on the [science of sarcasm](#) and how it relates to politics.

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Posted by Dale Willman on June 6 at 12:00 p.m.

**May 30, 2008**

*Listen to the Gabfest for May 30 by clicking the arrow on the audio player below:*

*You can also download the program [here](#), or you can subscribe to the weekly Gabfest podcast feed in iTunes by clicking [here](#).*

Emily Bazelon, John Dickerson, and David Plotz talk politics. This week: Scott McClellan comes clean, Democratic delegates from Michigan and Florida come knocking, and *Sex and the City* comes to the big screen.

Here are links to some of the articles and other items mentioned in the show:

John's take on [Scott McClellan's revelations](#)  
A [Slate V video](#) showing what McClellan said about turncoats before he became one  
[Dana Stevens' review](#) of *Sex and the City*

The e-mail address for the Political Gabfest is [gabfest@slate.com](mailto:gabfest@slate.com). (E-mail may be quoted by name unless the writer stipulates otherwise.)

Posted by Andy Bowers on May 30 at 1:10 p.m.

**May 23, 2008**

*Listen to the Gabfest for May 23 by clicking the arrow on the audio player below:*

*You can also download the program [here](#), or you can subscribe to the weekly Gabfest podcast feed in iTunes by clicking [here](#).*

Emily Bazelon, John Dickerson, and David Plotz talk politics. This week: Speculation about vice-presidential nominees begins, Hillary Clinton is demonized, and Sen. Edward Kennedy is diagnosed with a brain tumor.

Here are links to some of the articles and other items mentioned in the show:

The group owns up to a mistake in last week's podcast involving the [California Supreme Court ruling](#) on gay marriage in that state.

David discusses John's recent [piece in Slate](#) that likens the Democratic race to a problem in quantum physics.

Barack Obama this week declared [that he now has a majority](#) of the pledged delegates and is very close to winning the Democratic nomination.

The Democratic National Committee's rules and bylaws committee [meets in Washington, D.C.](#), at the end of the month to discuss whether delegates from Florida and Michigan should be seated at the national convention.

There is speculation that if Obama becomes president, [he will appoint Hillary Clinton](#) to the Supreme Court.

Both [Obama and John McCain](#) are starting to look for [running mates](#).

The panel reacts to the news of Ted Kennedy's [brain tumor](#).

They talk about the [Democrat Leadership Council](#)'s role in establishing the party's core beliefs.

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Posted at 11:20 a.m. by Dale Willman.

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## gaming

### Keeping It Unreal

Metal Gear Solid 4 reveals the genius of the world's greatest, weirdest video game designer.

By Chris Baker

Tuesday, June 24, 2008, at 3:57 PM ET

The brilliant, idiosyncratic Hideo Kojima is one of the few game designers whose name alone can sell a title. He's the producer of [Metal Gear Solid 4: Guns of the Patriots](#), the latest entry in the long-running Metal Gear franchise. MGS4 is widely regarded as the [best hope to spur sales of the PS3](#), a \$400 disappointment that's currently languishing behind Nintendo's Wii and Microsoft's Xbox 360 in the console wars. That's not a terrible bet: Metal Gear Solid games set new bench marks for visuals on the last two PlayStation consoles, along with introducing major innovations and hundreds of little flourishes that made games seem more real than ever before.

Kojima and his team of 200 designers in Tokyo have worked to make sure their new game comes [as close as possible to photorealism](#). The visuals are matched by multiplex-quality surround sound, with equal attention paid to huge explosions and subtle footfalls. The game doesn't simply justify the purchase of a PS3; it justifies the purchase of a high-def television and 5.1 speaker array. Still, it's hard to recommend the game to people who aren't already familiar with Kojima's work, and it's not quite right to call the game "realistic." I'm loving MGS4, but it might be the most bizarre game I've ever played.

Metal Gear Solid 4 is fundamentally a stealth game—you can usually sneak past enemies instead of fighting them, and the best players can finish the game without killing anyone. (You're outfitted with a space-age camouflage suit that can take on the color and texture of your surroundings.) There is a wealth of lethal and nonlethal weapons—all presented in Tom Clancy-esque lascivious detail—that you can use to dispatch, incapacitate, or simply distract your foes. You can even [drop a copy of Playboy](#) and tiptoe past an enemy while he's absorbed in that John Updike short story. After playing for several days, I got the sense that there are endless ways to reach the game's objectives, and I wanted to try them all just to see what happens.

But along with all the sneaking around, MGS4 also includes interminable monologues on the evils of war and private military contractors. These play out in "cut scenes," cinematic sequences that unfold with minimal input from the player. These scenes sometimes spool out for 45 minutes or more. Seriously. Despite (or because of) those huge dollops of plot, I still find the story utterly incomprehensible. There are double-crosses and triple-crosses and quadruple-crosses. There are satirical live-action TV commercials and news clips shot specifically for the game. There are subliminal flashbacks to events in previous games that will flummox neophytes (and, frequently, me). There are [murderous robots that look like shapely women](#), nanotech mind-control injections, and a monkey in diapers.

How could one of the biggest blockbusters of the year in video games be more surreal than the most obscure art-house film? It's all about Kojima. More than any other game designer, he is an auteur in the hoity-toity cinephile sense, an artist with a distinctive sensibility who plays with the medium and with the expectations of the audience. That doesn't play well with everyone, though. Many dismiss his games as pretentious, slow-paced, and confusing. Meanwhile, pathetic fanboys treat him with reverence, congregating at gamer events to discuss the term papers they've written on his work, gathering on message boards to [dissect the meaning of the plot](#) and explain away all the bizarre twists and logical leaps and self-indulgent in-jokes.

I am one of those pathetic fanboys. I don't care how strange Kojima's games are—they're all worthwhile because they remind you of the untapped potential of the medium. My favorite Kojima game? Probably [Boktai, the Sun Is in Your Hand](#), a vampire-hunting game for the Gameboy Advance portable device. Kojima's innovation was to equip the game cartridge with a photometric light sensor, which needs direct sunlight in order to recharge the solar gun you use to zap bloodsuckers. As I played it in the park on a typically foggy San Francisco day, I got so wrapped up in the game that I stood on a bench with my arms skyward to catch as many rays as I could—a grown man in public holding a Gameboy aloft like [John Cusack with his boombox](#) in *Say Anything*. (Only I was having the opposite effect on the ladies.) That's what Kojima can do. I felt utterly ridiculous, even as I was reminded why I love to play games.

Kojima is a known cinephile who writes obsessively about movies on [his blog](#) and even does reviews for newspapers in Japan. That may explain the game's never-ending narrative cut scenes. Still, he gets the difference between games and movies in a way that many designers never will.

Games offer moments of incredibly deep immersion—the sick feeling in the pit of your stomach when you're not sure if you've nailed a jump, a sense of real anguish when your on-screen self dies—that movies aren't capable of. The nature of the medium, though, means that something is always threatening to pull you out of the world and remind you that you're just playing a game.

There are imperfections in the environment: the fact that only certain objects in the world behave the way their real-life counterparts would, that characters don't behave the way intelligent humans would, that the most "realistic" CG person still doesn't look human. There are also the conventions of gaming: the overlay of information on top of the image, the pop-up messages prompting you to press a button, the need to toggle in and out of menu screens to grab something from your inventory. A game's smooth progression is also continually threatened by your own mistakes—a clumsy button press or a bad decision—or your impulse to try and do something counterintuitive or absurd just to see what happens when you do.

Some game designers expend enormous amounts of energy trying to eliminate anything that might pull you out of a game ... effort that's ultimately futile. I love Kojima because he goes in the exact opposite direction, focusing on how to amplify the medium's strengths rather than fixating on how to cover up its weaknesses. Kojima continually elbows you in the ribs and reminds you that you're playing a game, as well as rewards you for doing something ridiculous. He breaks the fourth wall more frequently than the [Kool-Aid Man](#). For instance, there's a motion sensor in the PS3 controller. During one of the interminable cut scenes, you might discover that shaking the controller makes a female character's breasts jiggle. It's puerile, sexist, and ludicrous, but it makes it hard to take anything about the game for granted.

Another example: MGS4 has a stirring orchestral musical score. But it also gives you an [in-game iPod](#), and you can pre-empt the score by queuing up a song on it, using the joystick the same way you'd use an iPod's scroll wheel. Among the tunes available are tracks from the original 1987 installment of the game, and the tinny 8-bit audio is a hilarious contrast to the hi-def environments you creep through. You can also find podcasts by the people who designed the game and listen to them describe the development process as you play.

Kojima gets that some of the tiny details need to be spot-on to keep you immersed in the game play—like how your hands shake a little when you're zoomed in on someone with a scope sight and the way dust and grime seem to collect on the inside of your TV screen when you're creeping through a parched war zone in the Middle East. He also understands that gaming is exhilarating precisely because it's not a documentary medium—that you can build your own universe rather than simply reanimate somebody else's, and that you can make up your own rules and then go ahead and break them.

Play Metal Gear Solid 4 for just a few minutes, and you'll have no doubt that Kojima is an original. Consider one of the game's tamer bosses, a buxom lady robot called Laughing Octopus. She'll whip you with her giant metallic tentacles, disguise herself as one of your allies in an attempt to lure you in, then laugh hysterically if you die. If you defeat her, her tentacles fall off,

and she gives an insane little speech about how she really does believe that she's a cephalopod before vomiting several gallons of octopus ink and morphing into Laughing Beauty, a gorgeous human-looking siren who tries to get close enough to wrap you in a crushing bear hug. Then things start to get weird ...

It's in these boss battles, a gaming convention lifted from the colorful villains in James Bond movies, that all of Kojima's strengths come into play: his love of cinematic technique and action movie conventions, his unbridled creativity and penchant for the absurd, his knack for tense game-play mechanics, and his eye for detail. Everything combines to create an experience that is completely unreal, in the best sense of the term.

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**gearbox**

## **Finally, a Hybrid for the Country Club Set**

The Lexus GS 450h is greener and more fun than its gas-guzzling cousins.

By Jason Stein

Tuesday, June 24, 2008, at 2:59 PM ET

I've been test-driving cars for about 10 years now, including my share of hybrids: the infamous Toyota Prius; some of the first Ford Escapes; Honda Civics, Accords, and Fits. With hybrids, there have always been excuses to make and myths to bust in response to queries from curious drivers of traditional gas-guzzlers. And so I've compiled what I call the Hybrid Handbook to counter people who think that a) hybrids get 135 miles per gallon (they don't); b) hybrids need to be plugged in at night (they don't); or c) hybrids go only 35 miles per hour (they don't). Still, I confess, I've always believed that d) hybrids come only in small, boring, not-designed-for-hair-raising packages.

At least until my first day with the Lexus GS 450h, the first-ever rear-wheel-drive, front-engine hybrid sedan. Because with hybrids, it's usually all about compromise. Want to get 20 percent better fuel economy than the Lexus 450h's conventional cousin, the GS460? Be prepared to lose 20 percent in torque (that push-you-in-the-seat factor) or horsepower or both. Want to save 200 gallons of fuel per year? Be prepared to feel the extra weight of the battery packs that are tucked in the trunk, and expect to pay more. Want to have fun? Don't buy a hybrid.

Wrong. Wrong. And wrong.

I figured I would be trading improved fuel economy for a torque deficiency and added fuel savings for the annoying extra weight of battery packs. Well, consider me persuaded.

In a world where gas is being treated like dry land in *Waterworld*, the Lexus 450h is an island of its own. For \$55,800—\$2,780 more than the GS460—you will get a car that's just as quick as the 460, with more equipment, greater fuel savings, and, seriously, more fun than the regular Lexus.\* And it does get 20 percent better fuel economy than the GS460 (22 mpg city/25 mpg highway in the hybrid versus 17 mpg city/24 mpg highway in the nonhybrid).

Savings aside, the fun quotient was the biggest X factor for me. My previous experience with gas pedals and hybrids was a lesson in disconnection. Step on the gas, and they don't go. They hesitate, whirl up like a hand-held electric mixer, then sort of go. This was the superfast, deluxe KitchenAid mixer of cars. Step hard with your right foot, and the kilowatt needle (a cool white display that shows the maximum output of electric power) jumps to life, the rear wheels spin, and you are up to speed faster than you can say, "Thank God for Thomas Edison's parents getting together." (Or about 5.55 seconds to 60 mph.)

Stop at a light, and the whole system does its hybrid trick and shuts down. Restart, and you awaken a re-engineered version of Toyota's Hybrid Synergy Drive—the system that made the Prius into the poster child for the green movement and turned every Hollywood actor into an expert on cars. How does it work? The system teams up with three main parts: one electric motor/generator that powers the rear wheels, a second electric motor/generator that acts as a primary generator and starter and controls engine speed, and a direct-injection, 292-horsepower, 3.5-liter V6. At low speeds, the first electric motor moves the car. A battery pack recharges itself with energy recovered from braking. When all systems move as one, it is the equivalent of 340 horsepower. It is all mated to a gearless, continuously variable transmission. Get stuck in four-lane bumper-to-bumper traffic and you are suddenly driving, in terms of your carbon footprint, an ultraluxurious golf cart.

Drawbacks are minimal: The trunk is a shoe box compared with nonhybrid models. That's because you need room to shoehorn a battery pack, controllers, and other mechanical devices. It is about 8 cubic feet, or essentially two small golf bags. And the steering doesn't feel as direct as some German performance sedans that have the ability to combine an anti-roll system, tires that grip, and some good cornering. But we're being picky. The bottom line is that this is a car you can drive to the country club guilt-free. It's a luxury sedan with an environmental heart that tackles turns and breaks new ground.

Somewhere, Al Gore is smiling. But so might be Danica Patrick.

*\*Correction, June 26, 2008: The article originally stated that owners of a Lexus GS 450h living in California could get a Clean Air Vehicle decal that would allow them free metered parking. The car does qualify as a super-low-emission vehicle, but the state of California has given away all 85,000 stickers*

that it allotted, so they are no longer available. ([Return to the corrected paragraph.](#))

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## green room

### A Tick's Life

The first in a series on revolting creatures.

By Constance Casey

Tuesday, June 24, 2008, at 8:04 AM ET

Ticks, which live on blood and nothing but blood, are loathsome to us. We strongly prefer not to share our blood, unless the act is voluntary and we get juice and doughnuts afterward.

It's good that ticks are loathsome, because getting them detached from us as quickly as possible is the best way to avoid being infected by the diseases they carry. Ticks not only extract blood, they ooze pathogens from their salivary glands into the wound they've sliced with their tiny claws and penetrated with their barbed mouthparts. Normal human beings don't sit around and watch with interest for days and days as this process takes place. (Undisturbed, a tick could happily sup for up to a week.)

It's generally known the danger these small creatures pose, particularly the deer tick—*Ixodes scapularis*. This tick's saliva is the medium for delivery of a particular spirochete, or corkscrew-shaped bacterium, called *Borrelia burgdorferi*—famous for causing Lyme disease. I managed to locate Willy Burgdorfer, the scientist who identified the Lyme spirochete in 1982, and asked, "Why did God make ticks?"

"I don't have the answer," Dr. Burgdorfer said. "There are a lot of things we assign to the good Lord and we ask the question, why? All I can advise is to check yourself for ticks and remove them fast."

We know about the tick's danger to us, but we haven't thought much about how the ticks themselves survive life's competitive drama—how they reproduce and how they die.

The tick's life is simple, fairly boring, but urgent. No host, no blood meal, and the tick dies. There's only one blood meal for each of the [three stages of a tick's life](#)—larva, nymph, and adult. At each stage, every one of the tick's behaviors has been honed by evolution to sense a victim and latch on.

Deer ticks don't find the mice, deer, or us by sight; they have no eyes. On the tips of their front legs they have sensors, the Haller's organs, that allow them to detect, from as far away as a few yards, the heat given off by warm-blooded animals and the molecules of carbon dioxide that we mammals exhale. Blow into

a tube of ticks at a lab, and you'll see them begin to wave like excited fans at a Justin Timberlake concert.

Exhale on those other bloodsuckers, fleas, and they jump. The good news about ticks is that they cannot jump or fly. The bad news is that if you find a tick on your scalp, it has probably crawled up your body from about sock-top level. Ominously, the Centers for Disease Control and Prevention advises us to check for ticks between our legs and then in the belly button.

When the "mammal nearby" message is received, a tick's two front legs, equipped with claws that act like grappling hooks, thrust into the air while its three pairs of back legs hold on to a blade of grass, a twig, or a leaf. (Ticks are arachnids, with eight legs, in the family of spiders, scorpions, and mites. Insects have six legs. If you want to impress tick researchers, tell them that you know a tick in larva stage has only six legs.) A host brushes against a tick, and the tick hitches a ride.

He or she [roams for a few hours](#) looking for the right spot to attach. Then the two [claws](#) make the incision, and in goes the [hypostome](#), shaped like a harpoon, with backward-facing barbs.

The tick then secretes a cementlike substance from its mouth, which glues it to the host and dissolves days later when the tick is sated and ready to drop off. Tick saliva also contains an anticoagulant to keep a host's blood flowing.

There they are, imbibing and drooling; it's the drooling that puts us at risk. Perhaps we should sympathize because the tick itself is a host. (We, too, by the way, carry spirochetes—harmless ones, in our mouths.) The parasitic spirochete sits in the tick's midgut until the blood flows in. Then, stimulated by the blood's nutrients and warmth, the newly expanded crowd of spirochetes migrates to the tick's salivary glands.

Entomologists estimate it takes more than 24 hours for the spirochete to move up and out, thus the importance of checking your body for embedded ticks and removing them as soon as possible.

An adult tick isn't as dangerous to us as a nymph, which is [tiny enough](#) to be mistaken for a freckle on light skin. The tiny adolescent is also likely to have fed on a mouse, the most efficient reservoir for the dangerous spirochete. (Though heavily infested with *B. burgdorferi*, mice don't get sick. In any case, no one has heard mice complain of fever, aching joints, fatigue, rash, and mood disorders.)

The male adult tick expands his repertoire to include finding females. He looks, logically enough, on the biggest moving mammalian blood supply around—a deer. Deer are in one way relatively innocent in the Lyme disease story—they have

components in their blood that prevent the spirochetes from surviving. But they are also orgy enablers; if there were fewer deer, there would be fewer ticks, because the ticks would have a harder time finding one another.

Male and female engage in an impressive combination of gourmandise and lust. Maybe not lust exactly; for the female, it's more like being interrupted at breakfast by the UPS guy, with a package of perishables. Here's the setup: The female has her hypostome planted in the deer, imbibing. A long meal is the cue to her body to produce her 2,000 or so eggs. The male approaches from below, then uses his mouthparts to pluck a packet of sperm called a spermatophore from his genital pore. He delivers the packet into his partner's genital pore with his hypostome, the same barbed hollow needle that he sticks into mammals. The male frequently remains attached, mouthparts locked in the female genital aperture, to prevent other males from linking up with his chosen mate. After the female drops to the ground, full of blood and sperm, she lays her eggs, and then the fun is definitely over. She begins to atrophy. Her intestines spill out in a yellow blob. "When does the male die?" I asked Durland Fish, who studies tick-borne pathogens at the Yale University School of Public Health. "When he runs out of energy or sperm, whatever comes first," Dr. Fish replied.

So death for the tick comes from starvation, dehydration, egg-laying, or old age, rather than from predation. We don't seem to have any natural allies in tick control. It's not well known what kind of animal eats ticks, though the larvae are vulnerable to fungi. Dr. Fish scornfully dismissed the guinea hen as a form of pest control—"a Christie Brinkley-ism." (The former model advocates buying a flock of the cackling black-and-white birds to clear your yard of ticks.)

I repeated the question of why God made ticks for Dr. Fish. He responded with a growl to what he took to be my facetious tone: "Nobody makes them. They're just there. Their object, like ours, is to make a living any way they can."

And the tick's place in the great web of life? "They transmit disease. They control population."

"Including us?" I asked.

"Whatever is susceptible to the disease."

*Next installment: Vultures!*

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## hollywoodland Reality Bites

Why the actors' strike won't happen.

By Kim Masters  
Thursday, June 26, 2008, at 1:13 PM ET

**Actors' strike?** We have been reluctant to address the latest labor conflict in Hollywood, but with the Screen Actors Guild contract set to expire Monday, we turn to the subject just long enough to say this about a strike: There's not going to be one.

Not that there's going to be peace and love between the studios and SAG. Things may get ugly, but there will be no strike.

Brief recap: Normally the Screen Actors Guild joins hands with the American Federation of Television and Radio Artists—overcoming mutual dislike and distrust—to negotiate a deal with the studios. Not this time. AFTRA cut its own deal, and members are set to vote on it by July 8. (AFTRA is smaller than SAG, which has jurisdiction over studio films and most scripted prime-time shows.)

SAG is trying to convince members who also belong to AFTRA that they must reject the deal. Lots of actors, including Tom Hanks and Sally Field, support the AFTRA deal. Others, including Jack Nicholson and Sandra Oh, back SAG.

We predict that AFTRA members will approve the contract. Before that can happen, however, SAG's deal expires on June 30. And that creates the potential for a voyage into the twilight zone, with no deal, no bargaining, and no production going forward.

Already, production has slowed way down in Hollywood because no one wants to be caught with the cameras rolling if the actors were to walk. But SAG hasn't even called for strike authorization (which would take three weeks and the approval of 75 percent of those voting). The reason seems obvious: The union wouldn't get it. The economy sucks, and the rank and file simply don't have the appetite for a strike after the Writers Guild walkout earlier this year.

So if (when) the AFTRA deal is approved, SAG seems likely to be left as the lone holdout. At some point, it seems clear that SAG will have to sue for peace. Perhaps the studios will give SAG a fig leaf—allow the union to say it improved on AFTRA's terms in a couple of respects. But entertainment attorney Jonathan Handel, who keeps a watchful eye on Hollywood's labor turmoil, puts it this way: SAG has overplayed a weak hand.

Note that we're not addressing the merits of SAG's arguments that actors deserve an improved deal in new media, more money for DVDs, and a host of other areas. We're just sticking with something that makes a lot of money for industry executives these days even if it kind of sucks: reality. ([link](#))

June 17, 2008

*Correction: This piece raised questions about a photograph of Claus von Stauffenberg that appeared in a United Artists promotional campaign for the movie Valkyrie. The piece pointed out that the photo UA used looked more like Tom Cruise, the star of the film, than a similar-looking AP photo of von Stauffenberg. Because of insufficient photo research by Slate's editors, we failed to discover another archival image of von Stauffenberg, which appears to be the one UA used in its publicity campaign. As a result of this mistake, the question the piece raised—whether the photo had been doctored in an effort to make Claus von Stauffenberg look more like Tom Cruise—was unwarranted.*

### **Tomfoolery:**

It appears that Tom Cruise isn't putting all his eggs into the *Valkyrie* basket. *Valkyrie*, you'll recall, is the Bryan Singer-directed thriller in which Cruise plays a German officer who tried to assassinate Hitler. That project has [hit some bumps](#) on its way to theaters. Meanwhile, Cruise is also making an attempt to go back to his roots. But making that happen isn't simple: It seems that the Cruise camp recently reached out to Paramount about making *Mission: Impossible 4* and got seriously disavowed.

Paramount's response was to ask whether Cruise would like to produce the film—as in, produce but not star in. And, since he's contractually guaranteed the right to produce such a film at this point, it wasn't much of an offer. This tells us not to read too much into that supposed rapprochement between Cruise and Sumner Redstone. And it suggests that the fighting between Cruise and Paramount studio chief Brad Grey over the deal for *M:I3* was a lot more rancorous than we knew at the time.

We don't want to keep you in suspense: Cruise's answer was no. Our source tells us that Paramount met this with a shrug, since in the not-too-distant future the studio expects that it will be free, contractually, to make the movie without involving Cruise's production company. Some film executives say they think Paramount is being foolish, because they believe there is an avid audience for Cruise in this role. After all, the last one grossed about \$400 million worldwide. (Maybe *M:I4* could pair Cruise with Shia LaBeouf as the young successor.) But Paramount seems to think it could relaunch the franchise with a young star and leave Cruise out of the equation.

So back to *Valkyrie*. We've already delved into the drama surrounding this film, in which Cruise plays would-be Hitler assassin Claus von Stauffenberg. Somewhere along the line, someone mentioned that there had been bad press in Germany. Well, of course there was. Tom Cruise is a Scientologist, Germans don't care for Scientology, and the subject of *Valkyrie* is a German hero. But this was different bad press. The rumor

that our source had heard was that there was a kerfuffle because some people believed Cruise's company, United Artists, had tweaked a photo of von Stauffenberg to heighten a postulated resemblance to Cruise.

Indeed, United Artists [released a side-by-side photo comparison some months back](#) in which the resemblance was striking.

Our (not definitive) search didn't turn up any German press about this alleged photo tweaking. When we asked UA, the studio said that tweaking didn't happen. We took a look at an AP photo and then at the image used by UA.\*

And we weren't sure. So we submitted the pictures to our experts at *Slate*.

Jim Festante, a *Slate* designer, wrote: "Look @ the nose, mouth, and chin. Definite (but slight) altering. Also, the head's width is squeezed slightly." And then designer Holly Allen added this: "To me, the nose looks different and definitely the eyebrows. Cheekbones and angle of the chin, too." Finally, as a coup de grace, designer Jacob Berlow overlaid the AP photo of von Stauffenberg with the United Artists version:

Looks like someone tweaked the photo.\* Finding out who may be mission: impossible. ([link](#))

**June 12, 2008**

**Push back:** Following up our [report this week about the new Roman Polanski documentary](#), we take note of a weird statement released Wednesday under the signatures of the prosecutor and the defense attorney in the case.

Recall that both are featured in an HBO documentary, *Roman Polanski: Wanted and Desired*, in which they bemoan the shabby treatment that alleged child rapist Polanski suffered at the hands of the Los Angeles Superior Court in 1977.

As we reported, the documentary originally ended with the assertion that an unnamed judge in 1998 was going to permit Polanski to return to the United States without risking jail time,

but only if he appeared at a court proceeding that would be televised.

Last week, the Los Angeles Superior Court identified that judge as Larry Paul Fidler and vehemently denied that he had ever imposed such a condition. After a pause, HBO said Friday that it would change the end of the film to say that Polanski *feared* the proceeding would be televised, which is quite different from having a judge insist that it had to be.

The altered documentary aired Monday. Yesterday, the film's publicists released a statement signed by the prosecutor in the case, Roger Gunson, as well as defense attorney Douglas Dalton. It contends that at the 1998 hearing, Dalton pressed "for a resolution of the case that would allow for minimal news media." The statement says Dalton "recalled that Judge Fidler would require television coverage," and then adds: "Mr. Gunson recalls television coverage discussed at the meeting."

Talk about lawyer words. There's no further elaboration as to what, if anything, Gunson remembers about that discussion. Presumably, it could have gone like this:

Gunson: "So, your honor, what about television coverage?"

Fidler: "Hate it."

The statement, based on this rather threadbare set of assertions, concludes that both lawyers denounce the court's "false and reprehensible statement" disputing the notion that Fidler demanded television coverage.

No word from HBO on whether the film will be changed again. ([link](#))

**Correction, June 18, 2008:** *Because of an editing error, a promotional headline for this piece on Slate's home page originally referred to von Stauffenberg as a Nazi. He was a German officer but not a member of the Nazi Party.*

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## human guinea pig Diaper Genie

Can I cut it as a day care worker, one of the most exhausting, worst paid, and smelliest jobs in America?

By Emily Yoffe

Wednesday, June 25, 2008, at 6:53 AM ET

Malik, 15 months old, had just been moved up from the Teddy Bears to the Lions, and he was not happy about his promotion.

Seeing him standing alone, hand in mouth, face collapsing in tears, I swept him up and held him. He clung to me and immediately calmed. After 15 minutes, I tried to gently place him back with his classmates, but he reacted as if I were feeding him to the lions, his breath becoming ragged with anxiety. I hoisted him back up, and he leaned his head on my shoulder. It was my second day at the Gap Community Child Care Center in Washington, D.C., which gives high-quality care to children ranging from 6 weeks to 4 years old and where I volunteered for two weeks. If you work in child care, every hour will provide sweet moments of helping a child. Every day will immerse you in the excreta of your profession: tears, saliva, mucous, urine, feces. And every week will bring a paycheck that reminds you that you have one of the worst-paying jobs in America.

For the Human Guinea Pig column, I try jobs and hobbies people are curious about—but not enough to do themselves. So for all of you who've wondered what happens at the day care center when you leave, I stayed behind to swab behinds. The Gap Center has been in business for 25 years, co-founded by Monica Guyot, a remarkably energetic, young-looking 70-year-old who still runs it. It is located on the basement level of a large apartment building, an ant's maze of rooms through which the aromas of Chef Boyardee and disinfectant waft. Its walls are decorated with the Rothko-like color field paintings of the toddler set. The center is open from 7 a.m. to 6 p.m., and most of the 110 children spend eight hours a day there. Their families are mostly poor—more than 90 percent receive financial assistance from the city's Department of Human Services so their kids can go to Gap. The few full-paying customers are charged up to \$275 a week, but subsidized parents pay from zero to \$65 weekly.

I started out with the youngest children, the Red Robins. The eight Robins are overseen by Muluwork Kenea, 31, and Selas Shibeshi, 24. They are immigrants from Ethiopia with a warm and gentle manner, constantly exhorting their charges to new achievements: "Look at you; you are crawling, my man!" "Come on, mama, you can reach that ball!" Kenea and Shibeshi (I am using the workers' real names and giving pseudonyms to the children) are responsible for babies from 6 weeks to 10 months, whom they watch in two adjoining rooms, each ringed with cribs and highchairs. For sanitary purposes, before entering the rooms, you first put paper booties over your shoes and for much of the day pull on and off successive pairs of plastic gloves, the kind worn by people manning the deli slicer.

Every classroom has a posted schedule that divides the day into segments. This reassures parents that each minute of their child's life is purposeful. For the Robins, 9:30 to 10 a.m. is story time, 10 to 10:30 a.m. songs and counting, 11 a.m. to 12 p.m. lunch and bottles. This schedule made me think of the lovely, shapeless days of my daughter's babyhood, when I was an at-home mother. She could stay all morning in the sandbox, or endlessly toss utensils into the kitchen sink, or sit on the lawn

and learn how to blow on dandelions. But that kind of spontaneity is a luxury not possible in a day care setting.

Sometimes the imperatives of caring for a group requires the women who do it (the profession is almost exclusively female) to suppress their own natural impulses. For example, Shibeshi and Kenea had all the children who were able to sit upright play with toys in one part of the room. But Maybelle, 10 months, kept dissolving into tears, uninterested in the balls and oversized keys the women jingled in front of her. "She's teething," Shibeshi explained. When I came over to her, Maybelle held out her arms, the universal sign for "Pick me up." Because I was an extra pair of hands, I could hold Maybelle for as long as she liked.

"This is the hard part," said Shibeshi, looking at me and Maybelle. "She just wants to be held, but we have all these other children to watch." Then Lourdes, who is able to pull herself up, did so and tumbled into a barrier, bumping her lip. She was fine, nothing cut or bleeding, but Kenea wrote a quick note in an enormous notebook—liability is never far from anyone's mind. Like lawyers billing on the quarter hour, the workers must keep meticulous records of food consumed, diapers changed, each little bump and bruise, and every milestone: being able to stand unaided, learning a new word. It is a log more comprehensive than any kept by even the most compulsive mother.

At the Gap Center, the schedule doesn't feel artificial or rigid. One activity just seamlessly flows into the next. During lunchtime with the Robins, the women keep an eye on the crawling children and contain the others in a playpen or bouncy seats while they heat up the individual lunches the parents bring. Each woman feeds children in highchairs, two at a time. At mealtime they are like waitresses at some outlandish restaurant where you not only have to spoon the food into the patrons' mouths, but wipe their bottoms afterward. I gave the babies bottles, and one by one they conked out in my arms, and I placed them in their cribs. At 1 p.m. the women lowered the shades, and all the Robins were asleep.

A [recent science column in the Wall Street Journal](#) described a study that found that you don't even have to like kids to have your brain's fusiform gyrus produce instantaneous good feelings when you see a baby's face. Standing in the darkened Robins' room, listening to their deep breathing, their sighs, their occasional snurtles, I felt a profound sense of peace. I'm sure some gyrus in my brain was telling me there is no better sound than a roomful of sleeping babies.

The caretakers work in two shifts: 7 a.m. to 4 p.m. or 9 a.m. to 6 p.m. On their hourlong lunch break, they gather in a small room where *Family Feud* plays loudly from a television perched on the dining table. About two-thirds of the Gap's workers are foreign-born, and in the lunchroom conversations take place in English, Amharic, and Spanish.

According to the Bureau of Labor Statistics, there are about 1.4 million child care workers, and is it an occupation in high demand. The BLS says child care workers must be "mature, patient, understanding, and articulate and have energy and physical stamina." In exchange, the median national salary is \$17,630. (At Gap, the average worker makes about \$22,000.) The advocacy group Center for the Child Care Workforce points out that only a handful of the more than 800 occupations surveyed by the BLS have lower wages—these include parking lot attendants and dishwashers.

The BLS says child care workers attend to their charges' "basic needs," and there is none more basic than a poopy diaper. Since I'm a mother, I've changed 1,000 or so in my time, and I discovered it wasn't necessary to have an emotional attachment to the source of the dirty diapers to make changing them bearable. Noses were a more pervasive problem. I had never noticed that all young nostrils are spigots permanently set to "on." The workers who tend the youngest kids have rolls of toilet paper strategically stashed around the room. They endlessly rip off wads and wipe little philtrums, like rescue workers mopping off seabirds after an oil spill.

Because of the long hours the children spend, the workers are a primary civilizing influence. They're the ones who do the heavy wiping in toilet-training these children; they're the ones who teach them to set the table before they eat; they're the ones who remind them committing assault is not the way to get a toy. Whenever possible, information is conveyed via ditty: "This is the way we start the day, start the day, start the day. This is the way we start the day so early Monday morning." "Clean up, clean up, everybody, everywhere. Clean up, clean up, everybody do your share." It may be an effective pedagogical tool, but after days of hearing these endless little tunes, they became the aural equivalent of poison ivy.

My second classroom was the Bluebirds—12 toddlers, ages 18 months to 2 years. When I appeared, I received the goggle-eyed, mouth-agape, pointed-finger greeting that must have made life as a leper in the Middle Ages so pleasant. I sat quietly and let the children come to me, and in about 15 minutes I went from pariah to Pied Piper. It was free-play time, and Antonia took me by the hand and had me bang on the toy piano with her. Then she picked up a plastic waffle and showed me how to use it as a cell phone. Tiny Felicia tapped me on the shoulder, plopped herself in my lap, took each of my wrists and wrapped my arms around her. I made the novice's mistake during dance time of picking up one of the kids. This got another one tugging on my shirt, so I lifted her up, too. The real workers looked at me, managing not to smirk, as the rest of the class gathered around me, jumping as if standing on hot coals and attempting to pull their classmates out of my arms so they could get their turn.

The Owls, 2 and a half to 3 years old, are fully articulate and have the bluntness that is a requirement for being a radio talk

show host. Tanya immediately came up to me, asked my name then announced: "You're scaring me. You are not my teacher. You go to the office!" I stayed, and soon she was escorting me around the room, pointing things out and telling me their colors. Then she noticed the prominent, blue veins on the back of my hands. "What happened to you? What is it?" she asked, alarmed. Another Owl came over with her own question, "Are you a grandma?"

I could feel just how long a day at day care is for everyone when it was afternoon outdoor time for the Owls. (There is a small enclosed play area outside the back door.) At 4:15 p.m., everyone had already done circle time, lunch, naps, Spanish lessons, and now, after yet another trip to the bathroom (the children go in the stall by themselves! they wash their own hands!), the day still isn't over. This late-afternoon period of childhood, when it's not time for dinner, when bedtime seems an eon away, is often called the arsenic hour. I helped the workers disentangle melting-down children from each other and played a long game in which each Owl handed me an imaginary piece of blue broccoli to eat. As I tried to keep up my interest and good cheer I kept thinking, "This is the reason television and cocktails were invented."

In [Standardized Childhood](#) sociologist Bruce Fuller describes how in the last 40 years, increasingly desperate working parents have turned to formal institutions to care for the youngest of children—in 1970 about 25 percent of 4-year-olds were in preschool; by 2000 more than 60 percent were. He describes America as having a "ragged non-system of child care" with the most recent statistics showing there are 113,000 nonprofit preschools across the country "situated in YWCAs, church basements, even licensed homes where women take in small gaggles of children."

Over the decades, policy debates have raged and quieted over the need for and the benefits of universal preschool. (We're currently in a quiet period.) But no one has resolved the tension between parents' desire for day care that is high-quality and low-cost. Low-cost means low pay for the workers, which means high turnover, which means lower quality. But after two weeks on the job, I wasn't surprised by the lack of success the [Center for the Child Care Workforce](#) has had in raising workers' salaries. It must be very hard to organize people who are so weary at the end of the day.

The job is like plate spinning—it requires relentless focus. Maura Baruetta, 44, who works with the Bluebirds, says, "I don't think about another thing, only the children. I forget everything else. I only concentrate on the children." Jame Foster, 31, who takes care of the Lions—she assured me that after a couple of days, Malik would fit in with his new classmates—and goes home to her own 4-year-old, says: "I'm tired when I leave. I get home and think, 'Oh, gosh.'"

So the pay is lousy, it's exhausting, but still the job comes with satisfactions no parking lot attendant receives. A week after Malik's transfer to the Lions, I went to check and see how he was doing. When I called his name, he emerged from amidst his classmates and ran to me and gave me a hug. Then he picked up a ball and said, "Ball, ball!" (who knew he could speak?) and threw it, which caused him to fall down, which caused him to laugh hysterically. Malik was happy now, and I was happy for him.

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## human nature

### Dr. Jekyll and Mr. Orgy

Sexual hypocrisy and the Internet.

By William Saletan

Friday, June 27, 2008, at 8:06 AM ET

Which are your sexual morals: the ones you preach in public, or the ones you practice in private?

Thanks to Internet search monitoring, we can now investigate private morals. If we can't do it household by household, we can do it community by community. This has a direct bearing on obscenity law. It's turning hypocrisy into a verifiable legal issue.

A case scheduled for trial next week shows how. The defendant is accused of purveying obscene material from a Florida Web site. To be judged obscene, the material has to be found patently offensive or prurient by "contemporary community standards." According to Matt Richtel of the *New York Times*, the defense attorney in the case, Lawrence Walters, will use [Google Trends](#) to argue that the community's standards are [lower than advertised](#). Walters "plans to show that residents of Pensacola are more likely to use Google to search for terms like 'orgy' than for 'apple pie' or 'watermelon,'" Richtel reports. (Evidence [here](#).) The point is "to demonstrate that interest in the sexual subjects exceeds that of more mainstream topics—and that by extension, the sexual material distributed by his client is not outside the norm."

It's a clever argument. But it assumes that morality is what people do, not what they say. "Time and time again you'll have jurors sitting on a jury panel who will condemn material that they routinely consume in private," Walters tells the *Times*. Thanks to Google, "we can show how people really think and feel and act in their own homes."

The prosecutor in the case rejects this definition of morality. According to Richtel, he thinks online searches are "not necessarily an indication of, or proxy for, a community's values." In the prosecutor's words, "How many times you do something doesn't necessarily speak to standards and values."

That's a fair point, too. We're all hypocrites. We want our kids to avoid the mistakes we've made and to become better people than we are. We also want improvement from ourselves. Morality's purpose is to prescribe, not describe. It aspires to something better than our current behavior.

Human reality is complicated. There's no single you. There's the you that searches Google for "orgy," and then there's the you that condemns Eliot Spitzer. You don't want adultery and prostitution overrunning your community, even if you like to look at them online.

That's why the Florida case is more than a titillating gimmick. It's an early attempt to think through human duality in the age of the Internet. In the old days, there was a private you that lived in your head, a semi-private you that lived in your house, and a public you that lived in your community. You could commit adultery in your fantasies, try bondage with your spouse in the bedroom, and sing about purity in church. The Internet has confused these distinctions. Now the private you can sneak around the semi-private you and become semi-public. (I doubt those folks in Pensacola have talked to their spouses about orgies.) Your fantasies are no longer confined to your head. They're visible, in the aggregate, on Google Trends.

Which is the real you? Two years ago, when Rep. Mark Foley (also of Florida—what's with that state?) was forced out of Congress for soliciting [teenage boys](#) online, I argued against prosecuting cybersex as though it were "[the real thing](#)." Now I think reality is a bit more complicated. The online world has its own kind of reality, somewhere between private and public. Typing "orgy" into a search engine is less than doing. But it's more than thinking.

The various levels of activity—the various versions of you—are connected. Picture the guy in Pensacola typing "orgy." What's his next step? Does he click on one of the sites that come up? Does he touch himself? Does he find a forum and start chatting? Does he make friends? Does he pick up the phone? From a culture and policy standpoint, it's sensible to worry that one kind of activity will lead to another. In some cases, that may be a good argument for surveillance. But for prosecution?

Here's my advice to the courts: The Internet has fundamentally altered the meaning of community. The guy in Pensacola visits international Web sites and belongs to interstate online forums. He lives in multiple communities and follows different standards in each. Maybe he says things in forums that he'd never do in the flesh. Maybe he looks at pictures of things he'd never talk about in forums. Maybe he imagines things in his head that he'd never look for in pictures.

Respect these differences. Don't equate [fake child pornography](#) with the actual use of children. Don't condemn a judge for "[unacceptable behavior](#)" because somebody peeked into his

family's file share and found a few dirty pictures. And don't judge a porn site operator by the open-air standards of his geographic community. That's not where he peddles his smut. He peddles it online, where the standards, as we now know from Google, are different.

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## human nature

# Sexual Antagonism

A genetic theory of homosexuality.

By William Saletan

Wednesday, June 25, 2008, at 8:04 AM ET

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Gay couples can't have biological kids together. So if homosexuality is genetic, why hasn't it died out?

A study published last week in *PLoS One* tackles the question. It starts with four curious patterns. First, male homosexuality occurs at a low but stable frequency in a wide range of societies. Second, the female relatives of gay men produce children at a higher rate than other women do. Third, among these female relatives, those related to the gay man's mother produce children at a higher rate than do those related to his father. Fourth, among the man's male relatives, homosexuality is more common in those related to his mother than in those related to his father.

Can genes account for these patterns? To find out, the authors posit several possible mechanisms and compute their effects over time. They conclude that only one theory fits the data. The theory is called "sexually antagonistic selection." It holds that a gene can be reproductively harmful to one sex as long as it's helpful to the other. The gene for male homosexuality persists because it promotes—and is passed down through—high rates of procreation among gay men's mothers, sisters, and aunts.

This theory doesn't account for female homosexuality, which another new study (reviewed in Human Nature [last week](#)) attributes to [nongenetic](#) factors. It also doesn't account for environmental or prenatal chemical factors in male homosexuality, such as the correlation between a man's probability of homosexuality and the number of boys [previously gestated in his mother's womb](#). But it does explain the high similarity of sexual orientation between identical twins, as well as patterns of homosexuality in families. It's also plausible because sexually antagonistic selection has been found in other species. And many scientists who think environmental and prenatal factors influence homosexuality [also believe](#) that genes play a role.

The authors note that according to their computations, the theory implies some testable predictions. One such prediction can be checked against existing data. The prediction is that on average, if you're a straight man, the reproductive pattern among your aunts will reverse the pattern seen among aunts of gay men. That is, your paternal aunts will produce children at a higher rate than your maternal aunts will. The authors check this prediction against the available data. Sure enough, it holds up.

I don't know to what extent this theory will end up explaining male homosexuality. But its emergence threatens to change our thinking about gay men in several important ways.

First, it implies natural limits to homosexuality. You don't need to worry that gay teachers or television characters will "convert" hordes of boys. Sexually antagonistic selection is self-limiting and impervious to postnatal cultural factors. The authors' computations show no scenario in which male homosexuality spreads throughout a population.

Second, by the same token, you can't culturally eradicate the gay minority. It's sustained by genetics and natural selection.

Third, if the authors are correct, we're not really talking about genes for homosexuality. We're talking about genes for "androphilia," i.e., attraction to men. The importance of the genes lies in what they do not to men but to women, by increasing reproductive output so powerfully that these women compensate for the reduced output among their male relatives. You can't isolate gay men as a puzzle or problem anymore. You have to see them as part of a bigger, stronger, enduring phenomenon.

Fourth, this larger phenomenon can't be dismissed as a disorder. The study's press release [concludes](#) that "homosexuality should not be viewed as a detrimental trait (due to the reduced male fecundity it entails), but, rather, should be considered within the wider evolutionary framework of a characteristic with gender-specific benefits."

Fifth, the benefits aren't really confined to women. They protect society as a whole. The authors' computations indicate that as a society's birthrate falls, female carriers of androphilic genes account for a larger share of the output. In short, the genes provide a "buffer effect" against extinction.

The study's lead author, [Andrea Camperio Ciani](#) of the University of Padova, sees these ramifications as a happy ending. "This is an example where the results of scientific research can have important social implications," he tells *LiveScience*. "You have all this antagonism against homosexuality because they say it's against nature because it doesn't lead to reproduction. We found out this is not true

because homosexuality is just one of the consequences of strategies for making females more fecund."

But the word *consequence* suggests a sixth, less happy implication: How would gay men see themselves and be regarded in a society that understood their condition as a side effect of female evolution? Would male androphilia be treated like sickle-cell anemia—the unfortunate cost of a genetic mutation that's [beneficial in other people](#)? We [medicate](#) sickle-cell anemia. Would we medicate homosexuality?

I don't know, and neither does Dr. Camperio Ciani. Science, like culture and politics, has its happy moments. But don't mistake them for endings.

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## jurisprudence

### Five Myths About the New Wiretapping Law

Why it's a lot worse than you think.

By Patrick Radden Keefe

Wednesday, June 25, 2008, at 3:12 PM ET

Sometime today, the Senate is likely to approve the most comprehensive overhaul of American surveillance law since the Watergate era. Unless you're a government lawyer, a legal scholar, a masochist, or an insomniac, chances are you haven't read the 114-page [bill](#). Don't beat yourself up: Neither have most of the 293 House members who [voted](#) for it last week. Ditto the mainstream press, who seem to have relied chiefly on summaries provided by the same lawmakers who hadn't read it.

To be fair, wiretapping is so classified, and the language of the bill so opaque, that no one without a "top secret" clearance can say with any authority just how much surveillance the proposal will authorize the government to do. (The best [assessment](#) yet comes from former Justice Department official David Kris, who deems the legislation "so intricate" that it risks confusing even "the government officials who must apply it.")

Out of the echo chamber of ignorance and self-serving political cant, a number of myths have begun to emerge. We may never know for sure everything that this new legislation entails. But here are a few things that it most certainly doesn't.

**Myth No. 1: This bill is a compromise.**

The House bill "is the result of a compromise," one of its architects, Steny Hoyer, D-Md., maintained the other day. But in truth, Hoyer and his colleagues gave the White House most of what it asked for, dramatically expanding the government's surveillance capabilities without demanding any serious concessions in exchange. Sen. Russ Feingold, D-Wis., calls the deal "a capitulation," and he's right. Why else would the White House express its approval so quickly, after a full year in which President Bush petulantly vowed not to sign any legislation that obliged him to concede too much? Sen. Kit Bond, R-Mo., offered an honest appraisal: "I think the White House got a better deal than even they had hoped."

**Myth No. 2: We need the bill to intercept our enemies abroad.**

One frequent refrain in favor of the new legislation is that without it, America's intelligence capabilities will dry up, leaving the country vulnerable to attack. The National Security Agency wants to intercept communications that pass through routers in the United States, even when both parties to the communication are abroad. The administration has argued that the NSA should not have to obtain a court order to intercept those communications. Seems reasonable, right?

Of course it's reasonable. So reasonable, in fact, that House Democrats proposed to [fix the problem](#) a year ago. They were rebuffed. Why? Because their plan contained too much judicial oversight. (They [ended up folding](#), just as they have this time around.) So when people say that this legislation is all about exempting foreign-to-foreign communications that happen to pass through the United States from the warrant requirement, don't buy it.

You see, the new law goes *a lot* further, basically doing away with warrants altogether in the domestic-to-international context. Under the proposal, the NSA can engage in what David Kris calls "vacuum cleaner surveillance" of phone calls and e-mails entering and leaving the United States through our nation's telecom switches. Provided that the "target" of the surveillance is reasonably believed to be abroad, the NSA can intercept a massive volume of communications, which might, however incidentally, include yours. When authorities want to target purely domestic communications, they still have to apply for a warrant from the FISA court (albeit only after a weeklong grace period of warrantless surveillance). But where communications between the United States and another country are concerned, the secret court is relegated to a vestigial role, consulted on the soundness of the "targeting procedures," but not on the legitimacy of the targets themselves.

This is a huge departure from FISA. As Glenn Greenwald [argues](#) in Salon, the underlying suggestion of the new proposal is "not that the FISA law is obsolete, but rather, that the key instrument

imposed by the Founders to preserve basic liberty—warrants—is something that we must now abolish."

### **Myth No. 3: The courts will still review the telecom cases.**

Perhaps most controversially, the bill effectively pardons the telecom giants that assisted the Bush administration in the warrantless wiretapping program. They will now be shielded from dozens of civil lawsuits brought against them after their involvement was exposed. House Democrats insist that the telecoms are not *automatically* getting off the hook. Instead, the companies must go before a federal judge. But here's the catch: For the suits against them to be "promptly dismissed," they must demonstrate to the judge not that what they did was legal but only that the White House told them to do it.

This is another bit of face-saving window dressing, and its essence is best captured in a breathtaking remark from Sen. Bond: "I'm not here to say that the government is always right. But when the government tells you to do something, I'm sure you would all agree ... that is something you need to do." That more or less sums it up—one part Nuremberg defense, the other part Nixon.

### **Myth No. 4: The Democrats must fold because of the November election.**

It's no secret that congressional Democrats wanted to resolve the FISA debate before the August convention in order to avoid the perennial charge that they're softies. After the House vote last week, Barack Obama issued a [statement](#) backing off his earlier tough stance on telecom immunity. The calculus seemed clear: McCain had just [reversed](#) his own position on illegal wiretapping and was spoiling for a fight, arguing that "House Democrats, the ACLU, and the trial lawyers have held up legislation to modernize our nation's terrorist surveillance laws." You can't stand with the trial lawyers and the ACLU if you want to win a general election.

But does it really make sense to stand with AT&T and George W. Bush instead? As the Anonymous Liberal blogger [pointed out](#), you could hardly ask for a more disreputable opposing team than a president with historic-low popularity and a bunch of corporate fat cats. And by reneging on his earlier position, Obama put himself in a box: If he lets the bill sail through the Senate, he will alienate his base. But if he attempts a [filibuster](#) or an amendment now, he will appear to be pandering to the [objections](#) of Moveon.org and other groups. It would have made more sense for the party leadership and the nominee to stick to their guns.

### **Myth No. 5: The law will be the "exclusive means" for surveillance.**

The Democrats' most pathetic bit of self-deluded posturing involves the inclusion of a clause suggesting that the new law represents the "exclusive means" by which "electronic surveillance and interception of certain communications may be conducted." According to House Speaker Nancy Pelosi, D-Calif., this means "the law is the exclusive authority and not the whim of the president." But, then, FISA *always* said that *it* was the "exclusive means." And in 2001, pretty much on a whim, the president set it aside. So for those of you keeping score back home, the Democratic leadership is patting itself on the back for including in the new law a provision that was already in the old law—and which the Bush White House chose to ignore.

Here, then, is the bitter joke of the new legislation: From 2001 to 2007, the NSA engaged in a secret program that was a straightforward violation of America's wiretapping laws. Since the program was revealed, the administration has succeeded in preventing the judiciary from making a definitive declaration that the wiretapping was a crime. Suits against the government get dismissed on [state-secrets](#) grounds, because while the program may have been illegal, it was also so highly classified that its legality can never be litigated in open court. And now suits against the telecoms will be dismissed en masse as well. Meanwhile, the new law moves the goal posts, taking illegal things the administration was doing and making them legal.

Whatever Hoyer and Pelosi—and even Obama—say, this amounts to a retroactive blessing of the illegal program, and historically it means that the country will probably be deprived of any rigorous assessment of what precisely the administration did between 2001 and 2007. No judge will have an opportunity to call the president's willful violation of a federal statute a crime, and no landmark ruling by the courts can serve as a warning for future generations about government excesses in dangerous times. What's more, because the proposal so completely plays into the Bush conception of executive power, it renders meaningless any of its own provisions. After all, if the main lesson of the wiretapping scandal is that we need more surveillance power for the government, what is to stop President Bush—or President Obama or President McCain—from one day choosing to set this new law aside, too? "How will we be judged?" Sen. Chris Dodd, D-Conn., asked in a [stirring speech](#) deploring the legislation yesterday. "The technical argument obscures the defining question: the rule of law, or the rule of men?"

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## **jurisprudence**

### **20 Questions for David Addington**

A proposed script for the vice president's chief of staff.

By Dan Froomkin

Tuesday, June 24, 2008, at 12:56 PM ET

David S. Addington, Vice President Cheney's formidable and reclusive chief of staff, is scheduled to appear before the House judiciary committee Thursday for a hearing on how the Bush administration developed its interrogation policies. Signs are that he actually [intends to show up](#).

It's essential that members of the committee not blow the best chance the public has yet had to understand how the United States came to adopt torture as an acceptable interrogation technique and, in so doing, found itself among the world's pariah nations. A compelling and well-supported (if partly circumstantial) narrative casts Addington as the dominant figure in the interagency push to step up the pressure on terror suspects. This is not surprising, as Addington is thought to have been at the red-hot center of pretty much every one of President Bush's most extreme assertions of unfettered executive power. The 51-year-old lawyer is Cheney's most able and devoted henchman, his sharpest knife, his lead loyalist among the legion salted throughout the executive branch. Indeed, he is widely thought to have ghost-written memos and public statements ascribed to better-known figures such as Alberto Gonzales, John Yoo, and William Haynes.

It's not exactly a fluke that Addington got his current chief-of-staff job—he initially served Cheney solely as legal counsel—when his predecessor, Scooter Libby, was indicted on obstruction of justice and perjury charges. (For more on Addington, see [Jane Mayer](#) in *The New Yorker*, [Chitra Ragavan](#) in *U.S. News and World Report*, [Jeffrey Rosen](#) in the *New York Times Magazine*, [Barton Gellman and Jo Becker](#) in the *Washington Post*, and my [Sept. 5 column](#) for [washingtonpost.com](#).) Addington has never testified on the Hill before. He never talks to reporters, at least not for attribution. It's a mystery that he agreed to honor the judiciary committee's [subpoena](#) and show up on Thursday at all, especially after his own office initially asserted that the vice president and his entire staff are [completely immune](#) from any congressional oversight. But one explanation for Addington's readiness to appear is his confidence that the 40-member judiciary committee (specifically, its 23 Democrats) won't lay a glove on him. He has ample reason to think so.

If the entire committee shows up, each member will have a total of about nine minutes of question time, and Addington is not the day's only witness, as torture-memo author John Yoo will be present as well. How hard will it be for someone as sharp as Addington to filibuster a bunch of members of Congress for nine minutes each? Especially if they squander time grandstanding, pursuing conflicting goals, and chasing down tangents? What Addington knows is important, and getting it on the public record is so critical that the judiciary committee members should take extraordinary pre-emptive action. Rather than risk firing random, glancing shots at Addington, they should concentrate their fire. First, interested members and their staffs should get together ahead of time to lay out a detailed game plan. Then,

Democratic members of the committee need to do something I don't believe they have done before: They need to collectively cede their time to one or two members, ideally the former prosecutors, to subject Addington to a sustained and well-planned examination. I nominate Artur Davis—a former assistant U.S. attorney from Alabama—and William Delahunt—a former district attorney in Massachusetts. But others might be up to the task as well.

There's not much point in asking Yoo anything—why waste time with Charlie McCarthy when Edgar Bergen is sitting right next to him? Yoo can be brought back later anyway.

The judiciary committee's sole aim on Thursday should be to keep Addington at the table until he provides answers to some essential questions. Here's a draft script to that end:

**Q.** When was the decision made that traditional interrogation methods weren't sufficient for the challenge of information-gathering? Who made that decision?

**Q.** What precipitated the decision?

**Q.** Was there any opposition?

**Q.** What happened to the opposition?

**Q.** What made you so sure you were right?

**Q.** Are we correct in assuming that the operating principle behind these decisions was that Sept. 11 changed everything? How would you say it changed everything?

**Q.** Do you consider this a permanent change?

**Q.** If not, what in your mind needs to happen before we return to normalcy?

**Q.** How much guidance did you personally give Yoo? How much of the memos attributed to Yoo, Jay Bybee, and Gonzales did you write yourself?

**Q.** Were you satisfied with the quality of Yoo's legal arguments? Are you now, in retrospect?

**Q.** Do you recognize any limits to the president's power over detainees captured in the war on terror? If so, what are they?

**Q.** How did the vice president's office in general, and you in particular, become such a pivotal player in this drama?

**Q.** Did you ever feel you might be a little out front of the president?

**Q.** How closely did you keep him informed?

**Q.** History suggests traditional interrogation tactics are highly effective. Why didn't you have faith in those tactics?

**Q.** Did you consider that your tactics might elicit false confessions?

**Q.** Why did you not think there was any need for a congressional role in these decisions? Did you ever consult with members of Congress about these tactics? Did you inform them of these tactics?

**Q.** Were you angry at these terror suspects? Did your anger have any role in your thinking?

**Q.** Were any tactics specifically considered out of bounds? Why was water-boarding OK, but, say, electric shocks to the testicles not? (Or were they? Can you rule out any tactics at all?)

**Q.** Do you consider the tactics approved for use by the CIA and in Guantanamo to be humane? If not, what makes it OK for us to use them on humans?

**Q.** Isn't that in clear violation of Geneva's Common Article III?

**Q.** What in your mind makes someone eligible for what you called "enhanced interrogation"? What level of proof do you require, and of what degree of crime or knowledge?

**Q.** Do you see any conflict between our use of these tactics and our country's historic dedication to human dignity?

**Q.** Do you believe any of these "enhanced" tactics could be legitimately used on American citizens by foreign powers, under any circumstances?

**Q.** Can you provide any examples of information gathered through what you call "enhanced interrogation" that saved American lives and that you are confident would not have been elicited by normal means?

**Q.** As you look back on your involvement in the establishment of U.S. interrogation policy, do you feel proud? Do you feel you accomplished what you set out to accomplish?

And here are just a few of the many specific questions Addington should be confronted with as well:

**Q.** What precipitated your visit to Guantanamo Bay in September 2002, accompanied by Alberto Gonzales, William Haynes, and others? Did you discuss specific interrogation techniques? A participant in some of your meetings, Lt. Col.

Diane Beaver, the staff judge advocate at Guantanamo, told author [Philippe Sands](#) that the message she took from you as visitors was to do "whatever needed to be done." Was that the message you intended to deliver?

**Q.** Former Office of Legal Counsel head [Jack Goldsmith](#) writes in his book that when he presented his view that the [Fourth Geneva Convention](#), which describes protections that cover civilians in war zones like Iraq, also covered insurgents and terrorists, you became livid. "The president has already decided that terrorists do not receive Geneva Convention protections," you replied angrily, according to Goldsmith. "You cannot question his decision." Does that accurately reflect your views at the time—and your temperament?

**Q.** How many [meetings](#) did you participate in with CIA officials during which there was discussion about videotapes of CIA interrogation of terror suspects? Did you indicate in any way to the CIA that destroying these tapes would be acceptable or even preferable? Did you do so based on instructions from the vice president? Do you think destroying them was the right thing to do?

**Q.** Were you involved in any way with the [signing statement](#) President Bush appended to the 2006 emergency supplemental? The president said he would construe provisions of that bill outlawing the torture of detainees "in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power, which will assist in achieving the shared objective of the Congress and the President ... of protecting the American people from further terrorist attacks." What did the president mean by that? Did he mean he didn't intend to heed the anti-torture provisions?

Finally, to put Addington's answers in some context:

**Q.** What is your response to those like former Navy general counsel [Alberto Mora](#), who says that these tactics, by inspiring opposition and alienating our allies, were hugely costly to our country on a national-security basis?

**Q.** What is your response to those like retired two-star Gen. [Anthony Taguba](#), who recently wrote: "After years of disclosures by government investigations, media accounts, and reports from human rights organizations, there is no longer any doubt as to whether the current administration has committed war crimes. The only question that remains to be answered is whether those who ordered the use of torture will be held to account."

**Q.** What is your response to those like Colin Powell's former chief of staff, [Larry Wilkerson](#), who have long argued "that the

Office of the Vice President bears responsibility for creating an environment conducive to the acts of torture and murder committed by U.S. forces in the war on terror"?

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## jurisprudence

### Taste-Testing Nutraloaf

The prison food that just might be unconstitutionally bad.

By Arin Greenwood

Tuesday, June 24, 2008, at 8:07 AM ET

Nobody thinks prison food is haute cuisine, but could it be so bad it's unconstitutional? The question comes up more often than you might think, and there's one dish in particular that so offends the palates of America's prisoners that it's repeatedly been the subject of lawsuits: Nutraloaf.

Nutraloaf (sometimes called Nutri-loaf, sometimes just "the loaf") is served in state prisons around the country. It's not part of the regular menu but is prescribed for inmates who have misbehaved in various ways—usually by proving untrustworthy with their utensils. The loaf provides a full day's nutrients, and it's finger food—no fork necessary.

Prisoners sue over Nutraloaf with some regularity, usually arguing either that their due process rights have been violated (because they are served the punitive loaves without a hearing) or that the dish is so disgusting as to make it cruel and unusual and thus a violation of the Eighth Amendment. Typical of these suits is the 1992 case *LeMaire v. Maass*. Samuel LeMaire slit a man's throat before going to state prison and attacked his prison guards and fellow prisoners with sharpened poles, feces, and a homemade knife once inside. LeMaire was then put in a Nutraloaf-serving disciplinary unit. Among other complaints about the accommodations there, LeMaire argued that Nutraloaf was cruel and unusual and thus violated his 8<sup>th</sup> Amendment rights.

A lower court agreed with LeMaire and ordered the prison to serve him something more delicious. The 9<sup>th</sup> Circuit, however, overturned the lower court's decision, holding that while Nutraloaf may be unappetizing, "The Eighth Amendment requires only that prisoners receive food that is adequate to maintain health; it need not be tasty or aesthetically pleasing."

Prisoners in [Illinois](#), [Maryland](#), [Nebraska](#), New York, Pennsylvania, Washington, and [West Virginia](#), among other states, have sued over Nutraloaf or its equivalent. The latest court to hear a Nutraloaf case is the Vermont Supreme Court, where prisoners argued that Vermont's use of the loaf violated their due process rights. (In Vermont, the punishment is one loaf,

served at normal meal times, for up to a week.) [Oral arguments](#) (MP3) were heard in March, and a decision is expected to come down by the end of the year. But it doesn't look good for the prisoners. The lawyer representing the prisoners noted that "Nutraloaf has been found to be uniformly unappetizing to everyone who has been served it." To which one justice replied: "Counsel, I've eaten Nutraloaf. And it isn't tasty. But many things I've eaten aren't tasty."

Even unsympathetic courts seem willing to concede that Nutraloaf is pretty disgusting, but after reading through the court filings in these cases, I couldn't shake a nagging question—just how bad is it? Nutraloaf is made differently in different prisons. Vermont's penal cookbook calls for a combination of vegetables, beans, bread, cheese, and raisins. I recently spent \$15 on a nearly identical dish at a vegan cafe in New York—and it didn't even have raisins. In a spirit of legal and culinary adventurousness, I decided to make some Nutraloaf of my own.

I chose three test recipes that seemed representative of the various loaves served in prisons across the land: a vegan Nutraloaf [from Illinois](#) that is heavy on processed ingredients (and has been the subject of lawsuits); a meat recipe from California that favors fresh, natural ingredients (which has not been challenged in court); and the Nutraloaf from Vermont, the one most recently at issue before a court.

I started with Illinois. I mixed canned spinach in with baked beans, tomato paste, margarine, applesauce, bread crumbs, and garlic powder. Together the ingredients became a thick, odorous, brown paste, which I spread into a loaf pan and put in the oven. After 40 minutes, I took the loaf out of the oven and sliced some off. It was dense and dry and tasted like falafel gone wrong. But instead of it making me feel pleasantly sated like falafel does, even the small test slice I sampled gave me a stomachache.

I cooked up Vermont next, wondering what I'd gotten myself into. Vermont was like Illinois but with raisins and nondairy cheese. I'm a vegetarian, so my sister-in-law Lori volunteered to cook the California loaf, which includes ground beef. As she mixed up the chopped cabbage, diced carrots, cubed potatoes, whole wheat flour, and beans, I realized that what she was making looked delicious, at least compared with the first two loaves. Lori kindly offered to make two California loaves—one with meat and one without, our only deviation from the Nutraloaf recipes.

To test the loaves, I invited friends and relatives over for what I promised would be an educational dinner party. This being Washington, D.C., more than half the adults were lawyers, which I thought gave our experiment a nice jurisprudential twist. To keep the Nutraloaf test authentic, I mandated that my guests eat with their hands; plus, after sneaking in that taste of Illinois earlier in the day, I was worried someone might stab *me* if I let them use utensils.

I thought I'd start out easy with the loaf that hasn't inspired a lawsuit—yet. California looked nice on the plate, though it didn't quite hold together as a loaf. I picked some off my plate with my fingers. It tasted a bit like vegetarian chili. Not bad. My cousin Steve, a mortgage broker who had sampled the California loaf with meat, disagreed. "It's what you imagine Alpo tastes like," he said. Lori said she liked it and said she'd even consider making it again, though she'd use more spices. Lee, a lawyer and her husband, asked her not to.

Next came Illinois. I couldn't bear to try another piece; the others were divided about whether it was cruel or merely unusual. Lee described Illinois as "absolutely detestable." David, a lawyer, liked it and willingly ate a second piece. Steve summed up Illinois generously: "I think if you like baked beans, you like Illinois. I like baked beans. I wouldn't think it's fair to sue anyone over it."

Last came Vermont. It looked the best of the three—it was moist—and the nondairy cheese and canned carrots gave it a fetching orange color. But it tasted terrible. Mike, a computer guy at NASA, said the raisins were disconcerting; you couldn't tell if they were supposed to be in there or not. Steve said he hated it, but it wasn't the worst thing he'd ever eaten. I asked him what was the worst thing he'd ever eaten. "Cat," he said. "But I didn't know it was cat." David, meanwhile, helped himself to another slice of Illinois, a decision he later came to regret. "The third slice sits a little heavy," he said.

As the night went on, and wine washed away the taste of loaves, we discussed the Eighth Amendment and how bad food would actually have to be in order to be unconstitutional. Kim, a lawyer who works in asylum law and knows a human rights violation when she sees one, said the loaves would have to be extremely bad—considerably worse than any of the food we'd just eaten. Courts have nearly all found that prison food can be unappetizing, cold, and even [contain foreign objects](#), and still not be unconstitutional.

Inmates hoping for relief from the courts for their Nutraloaf punishments aren't likely to get it from the courts. They won't likely get it from the prison cooks, either. When the Vermont prison's lawyer was asked during oral arguments why Nutraloaf couldn't be made more appetizing, he answered that if it were tastier, then prisoners would act up for the privilege of getting Nutraloaf. Hardly a ringing endorsement for the rest of the prison menu.

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## jurisprudence

### The Supreme Court: A User Guide

The Supreme Court matters next election. Seriously.

By Dahlia Lithwick

Saturday, June 21, 2008, at 9:14 AM ET

This week, the Supreme Court will hand down its final opinions for the 2007-08 term, and some of you will be really angry about guns, and some of you will be angry about Guantanamo. But then the justices will take off for Europe (or New Hampshire) and you will take off for the pool (or New Hampshire), and then I fear nobody will think much about the court again until next June.

The composition of the high court is one of the most important issues at stake in the November election. While the justices cannot bring down gas prices or bring home the troops, their decisions in the coming years will affect just about everything else: your rights regarding privacy, reproduction, speech and religion; how to count your vote and where your kids go to school; as well as your occupational and environmental protections. You name it, they'll decide it. Or they'll decide not to decide it (which may be even worse).

It's easy to convince yourself that who sits on that bench is irrelevant to you because the cases are too complicated to comprehend or too remote to affect your life. But the next president may have the chance to appoint as many as three justices—the constitutional equivalent of a royal flush. Herein, a user's guide to the Supreme Court for you to print out and take to the voting booth (or read at the pool).

**The basics:** The court is the highest judicial body in the country, made up of nine justices appointed by the president and confirmed by the Senate. Justices serve for life so long as they exhibit "good behavior," which is meticulously calibrated as someplace between the possession of a heartbeat and the capacity to draw breath. The justices decide cases from October through June of each year, for which they have a total of about three dozen wee, elfin creatures called clerks to assist them. This term they will decide fewer than 70 cases—the smallest docket in modern history. A traffic judge hears that many cases on a slow day.

**The job description:** Since *Marbury v. Madison*, decided in 1803, the justices have had the power of "judicial review," which means (at least in theory) that the court can strike down any law it deems unconstitutional. This may sound somewhat elitist and undemocratic, because these unelected justices have the power to throw out a law even if it is a) popular and b) properly passed by a legislature. Why? Because sometimes duly elected legislatures pass popular but unconstitutional laws. Not everyone currently seated on the bench, though, believes in deploying this constitutional superpower. They would rather have the justices sit at the constitutional kids' table and eat mac and cheese. According to some of these more conservative jurists, judges should refrain from second-guessing the other branches of

government in all matters of national security, employment discrimination, health policy, the separation of church and state, free speech, and environmental protection. Never fear. This still leaves the court front and center on critical jurisprudential questions of admiralty law and who gets to sit in the front seat when someone yells "shotgun."

**The justices:** Anybody who believes the current Supreme Court looks like America needs to take a few more trips on a Greyhound bus. Justice John Paul Stevens is 88, and Ruth Bader Ginsburg is 75. David Souter is 68, and it's widely rumored in legal circles that he wants out (see, New Hampshire, above). All three of these jurists recently voted against the proposition that the government can call you an enemy combatant based on your last name or area code, then hold you without charges for six years at Guantanamo Bay, on the promise that you're either a bad guy, or will very likely become one after being held for six years without charges at Guantanamo Bay. If just one of these three were to retire, we could easily return to a world in which decisions about who is or isn't a so-called "enemy combatant" are made by the military, in secret, and with roughly the same sophistication that seventh-grade girls use to decide who's "popular."

**The candidates:** For reasons that are not wholly clear, presidential hopeful John McCain has been treating the entire federal judiciary as a punching bag, regularly blasting "judicial activists" who "abuse" the courts, evidently by deciding cases in ways that he dislikes. (Never mind that most of them were appointed by Republican presidents.) Barack Obama, for his part, seeks jurists with "the heart, the empathy, to recognize what it's like to be a young teenage mom." (If both sides sound like they are talking in code about the possibility of reversing *Roe v. Wade*, that's because they are.) But as important as abortion is, it's only a part of why the composition of the court is critically important to America. Recently, in a fit of pique, McCain called the court's ruling in the enemy combatants' case "one of the worst decisions in the history of this country," warning of the "flood" of cases it will unloose upon the courts. Time and again McCain has railed against "lawsuits," which are still—if one believes one has been wronged—a better solution than a fifth of vodka and a shotgun. In sum, McCain apparently wishes to appoint legal eunuchs to the high court; Obama evidently wants someone capable of channeling Ashlee Simpson.

**The stakes:** Very high. The conventional wisdom that the Supreme Court is precariously balanced on a knife's edge—with four liberals and four conservatives battling for the heart and mind of swing Justice Anthony Kennedy—may be slightly too simplistic. The current term has now seen enough unanimous and near-unanimous decisions to suggest that last year's narrative of a dug-in 5-4 court is dramatic but probably not quite the whole story. That said, it's clear there are four justices on the bench who mistrust the judiciary in the manner of a Rockette who doesn't much care for dancing. Dissenting in this month's

enemy combatants case, Justice Antonin Scalia predicted that judicial overreaching "will almost certainly cause more Americans to be killed." Chief Justice John Roberts added that "unelected, politically unaccountable judges" should not shape detention policy. It's not just bad judges who should not be deciding these claims in their view. Better that *no* judges oversee them. One more seat at the high court filled by someone who generally believes that jurists cannot be trusted to do much more than wear ascots, will spell the difference between a coequal branch of government and a court that cheers from the bleachers. In ascots.

At the heart of the high court's biggest debates to come—questions about the scope of privacy and claims about presidential secrecy and power—there is a deeper question about the role of courts in this country. So, when you go to the voting booth on Nov. 4, don't think just in terms of which candidate will appoint judges who are "good for women" or "good for property rights." That's terribly important, but it's half the story. For eight years the Bush administration has treated the courts almost like an enemy: meddlers and elitists who cannot understand what it means to be at war. As a consequence, we find ourselves in a country where the rule of law is reduced to an occasional luxury, like heated seats. As you contemplate what you want your next Supreme Court to look like, ask yourself what happens when judges are sidelined—or when they're chosen for their inclination to sideline themselves. If we really want to restore the rule of law in America, and the reputation of the United States as a land in which laws matter, we need to vote for a president who believes that we still call it a *Supreme* Court for a reason.

*A version of this piece appears in Newsweek.*

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## map the candidates Together Again

Obama is in Unity, New Hampshire with Hillary Clinton. McCain is in Ohio.  
By E.J. Kalafarski and Chadwick Matlin  
Friday, June 27, 2008, at 11:37 AM ET

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## moneybox Wage Against the Machine

If Costco's worker generosity is so great, why doesn't Wal-Mart imitate it?  
By Liza Featherstone  
Friday, June 27, 2008, at 7:29 AM ET

Nearly everyone who's looked at Wal-Mart's practices as an employer—its union busting, sex discrimination, low wages, and minimal benefits—has concluded that it's America's retail bad

guy. By contrast, many who've examined the practices of Wal-Mart's competitor Costco—including *New York Times* labor reporter Steven Greenhouse in his recent book *The Big Squeeze: Tough Times for the American Worker*—conclude that it's the good guy. Costco CEO and founder Jim Sinegal repeatedly insists to Greenhouse that treating employees well is "good business."

\$11 an hour, doesn't start out much better, but after four and a half years she makes \$19.50 an hour. In addition to this, she receives something called an "extra check"—a bonus of more than \$2,000 every six months. A cashier at Costco, after five years, makes about \$40,000 a year. Health benefits are among the best in the industry, with workers paying only about 12 percent of their premiums out-of-pocket while Wal-Mart workers pay more than 40 percent.

Some proponents of corporate generosity argue that better-paid workers are more productive. That may be the case here, since Costco's revenues per employee are about five times as high as Wal-Mart's. (No separate financials are available for Sam's Club.) Then again, it's also the case that Costco sells more expensive stuff—high-end French wine, triple-cream brie, and Cartier watches, all of which presumably have high margins—along with the cheap toilet tissue. Take a look at the two retailers' summer offerings: While Wal-Mart sells a [\\$199 swing set](#), at Costco we find a ["summer fortress play system" for \\$1,499.99](#). A set of patio furniture at Wal-Mart was \$199 in early summer; [a patio heater at Costco](#) is the same price. Costco's Web site promotes a [\\$5,000 hot tub with a stereo](#). On Wal-Mart's site last week, the most prominent item was a \$48 bike—after all, its impoverished customers can't afford gas these days.

Another theoretical benefit is that Costco employees, being better paid, are less likely to leave the company. Again, some data back that up: Greenhouse points to Costco's low turnover rate, which is 20 percent and, among employees who stay at least a year, 6 percent. Wal-Mart's is about 50 percent. But is this a business advantage for Costco? While Greenhouse points to the costs of training and hiring new employees, a widely [leaked 2005 memo](#) from Wal-Mart offers a different perspective. In it, Wal-Mart's senior vice president of benefits argued that the company's turnover rate was *too low*. After all, she explains, long-term employees are more expensive and not necessarily any more productive. Such reasoning—though sinister—may actually help explain why Wal-Mart's profit margins are twice as high as Costco's (3.36 percent compared with 1.75 percent).

That makes a pleasing sound bite, and assume for a moment that Sinegal's assertion is true. Why, then, wouldn't Wal-Mart do everything it could to make itself more like Costco? Now assume that Sinegal's assertion is false. Why, then, does Costco treat employees better if that's against the company's financial interests?

It's not hard to make a case that Costco pays employees more. The most relevant comparison is between Costco and Sam's Club, Wal-Mart's membership warehouse, since both business models rely on membership fees for a large percentage of revenues. A Sam's Club employee starts at \$10 and makes \$12.50 after four and a half years. A new Costco employee, at

In an interview, Costco CFO Richard Galanti told me that by offering higher pay, Costco can hire "better-quality employees." To Galanti, workers are a retailer's "ambassadors" to the public. Costco may be able to attract people with more experience, education, or a better "attitude" (e.g., a more obliging smile or the realization that it's better not to chew gum or file your nails on the job). All of that's probably true, though tough to quantify—and tougher still to measure the effects of such worker quality on Costco's business.

Even so, investors in recent years have rewarded Costco significantly more than Wal-Mart, which may suggest that Wal-Mart's public black eyes scare Wall Street to some degree. Probably the worst publicity Wal-Mart has received for its

employment practices was in 2004 and 2005. During these two years, developments in the sex-discrimination suit drew attention to its plaintiffs' charges; numerous communities blocked Wal-Mart from expanding stores; many news stories exposed child labor, overtime abuses, and exploitation of undocumented immigrants; labor and community groups were constantly picketing the retailer; and two well-funded national organizations formed with the express purpose of publicizing Wal-Mart's crimes against its workforce. All of this may have had some effect: From Jan. 1, 2004, to Jan. 1, 2006, Wal-Mart's stock was down 9.7 percent. Costco's went up an impressive 37 percent during this time. (The S&P went up 14.5 percent.)

In the subsequent two years, the discrepancy has only deepened, tending to confirm Galanti's argument that in the long term, higher wages are "a great model." Indeed, analysts' consensus on Costco's long-term growth expectations is better than their consensus on Wal-Mart: 13.3 percent as opposed to 11.7 percent, respectively. That's intriguing because Wal-Mart is more profitable and has demonstrated better earnings growth (12.47 percent five-year earnings-per-share growth as opposed to 9.8 percent for Costco). Employee relations may be part of the picture, but Galanti points out there are many other reasons for analysts' confidence in Costco. "Seventy percent of our earnings come from membership fees," he says. "We'd really have to screw up to lose that!" Costco may also be more recession-proof than other discount retailers, because its customers are richer and because it sells so much food relative to other goods. "Even in an economic downturn," Galanti says, "people still have to eat."

So why does Costco bother being nice to workers, given that it is so difficult to calculate a clear payoff for decency? One reason is old-school: a union. About 11 percent of Costco's 127,000 employees are represented by the Teamsters Union, while not one Wal-Mart employee is a union member. Not that Costco is a Swedish paradise of labor-management cooperation. "We wish they [the union] weren't there," Galanti admits, "because we don't feel we need a third party to talk to our employees." Yet the relationship shows that even a lackluster union like the Teamsters can help make life better for employees.

Another factor is the personality of the CEO. In my interview with Galanti, he mentioned Jim Sinegal every couple of minutes, attributing the company's high wages to the CEO's personal values. CFO Galanti acknowledged having at times argued with his boss, urging him to curb Costco's generosity on health care. (Sinegal eventually agreed with him, reluctantly, in 2003 but insisted that care remain affordable to employees.)

Sinegal's kindness is impressive, but he's also 72 years old and thus won't be around forever. Perhaps he's created a corporate culture strong enough to outlast him, but that's impossible to predict. And until Costco boosters can make a concrete case that the company's generosity—however welcome—has a duplicable effect on the company's bottom line, it seems unlikely that a

crowd of Jim Sinegals is going to emerge in the nation's executive suites.

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## moneybox Barrel Fever

Does anyone know how much oil there is in the world?

By Yves Smith

Wednesday, June 25, 2008, at 6:54 AM ET

What is the "right" price for a barrel of oil? Japan's oil minister said, based on fundamentals, the price of crude should be [\\$60 a barrel](#), not the \$130 to \$140 we see today. During congressional testimony, five oil-industry CEOs each [gave estimates](#) of where oil "ought" to be, with results ranging from \$35 to \$65 a barrel to \$90. Even the implacable Saudis are [reportedly](#) about to increase production by half a million barrels a day, a sign that they are concerned that the current price is too high. Yet BP's chief recently said [current price levels are warranted](#), and the oil bulls at Goldman forecast a "[super spike](#)" to \$150 to \$200 a barrel.

How can presumed experts be so divided? Because the data on oil stink.

Think of the host of financial and economic statistics you see every day: stock prices, unemployment data, company results, foreign exchange prices, GDP growth rates. Market information is precise. Government statistics, while a little fuzzier, are compiled and computed in a generally consistent fashion.

But oil is in a completely different category: It's a strategic resource bought and sold internationally. Many countries, either by indifference or design, simply don't provide reliable information.

Price is a result of demand and supply; the *Wall Street Journal* recently explained [why it's difficult to get a handle on demand](#) (subscription required). The supply side is just as tricky.

The International Energy Agency, a premiere source of oil-related information, was caught off guard by the surge in oil prices, so it decided it needed to get a better grip on capacity. The IEA is only partway through a survey of the world's biggest oil fields, yet says it [expects to show a significant reduction in estimated reserves](#).

But even when concluded, this project will be far from reliable. For starters, take OPEC, which is [estimated to control two-thirds of the oil reserves and to provide 36 percent of oil production](#) and is largely unresponsive with IEA inquiries. And cooperation doesn't always translate into insight. For instance, Iraq recently

claimed it has as much as 350 billion barrels of oil, [triple its proven reserves](#) and more than even oil kingpin Saudi Arabia has. Is this claim completely crazy? No one knows for sure; [Iraq is underexplored](#), with only 2,000 oil wells versus more than 1 million in Texas.

Here's how arcane the oil guessing game can get. Saudi's Ghawar oil field is the world's largest; it's been pumping out oil since 1951 and holds 7 percent of the world's proven reserves. Overall Saudi production [has been falling](#) since 2005, yet the number of rigs in use [has tripled since 2004](#). Why is that? Some analysts believe the increased rigs are intended to compensate for declining production from Ghawar. Others argue that the Saudis are operating strategically, shutting their most productive wells as prices rose and opening smaller wells to better manage supply.

Experts have tried to come up with more independent and definitive answers. The Saudis use water injection to increase oil recovery. Some [analyses of the water content](#) from the northern part of Ghawar conclude that the water content has risen from 20 percent in the 1940s to 50 percent now, supposedly a sign that yields are about to fall dramatically.

Seeking to resolve this debate, investment research firm Sanford Bernstein [performed a satellite analysis](#) of the oil field, reviewing high-resolution images dating back to 2001. The water-injection methods used by the Saudis produce surface depressions when oil reservoirs become depleted. Bernstein found no signs of surface collapse. Instead, it found some areas slightly elevated, which might indicate use of high-pressure recovery, an advanced extraction technique. They concluded that only one of the oldest sections was in decline. That report was dismissed as "junk science" by industry analyst and [peak-oil theorist](#) Matthew Simmonds.

Indeed, some old oil hands argue that the entire method for computing reserves is fundamentally flawed. [Richard Pike](#), president of the Royal Society of Chemistry, who spent 25 years in the petrochemical industry, contends in an article in the *Petroleum Review* that published estimates are less than 50 percent of their actual level. As the *Independent* [summarized](#) his argument:

Companies add the estimated capacity of oil fields in a simple arithmetic manner to get proven oil reserves. ... However, mathematically it is more accurate to add the proven oil capacity of individual fields in a probabilistic manner based on the bell-shaped statistical curve used to estimate the proven, probable and possible reserves of each field. This way, the final capacity is typically more than twice that of simple, arithmetic addition.

Pike is no oil-industry shill and contends that producers understand this issue but prefer show lower totals, *to help support high oil prices*.

Economists think they can cut the Gordian knot of the oil supply/demand debate. [Paul Krugman \(along with others\) has argued](#) that if the spot-market price exceeds the level at which production meets end-user demand, inventories will rise—a far easier measurement to track than trying to estimate world demand and supply.

Yet 2008 oil supplies remain within recent historical ranges, which would mean that current prices reflect fundamental forces.

Ah, but there's a flaw in the analysis, as floor trader and columnist Daniel Dicker [noted](#):

[O]il storage has been historically inelastic, no matter the price. ... [O]ver the last 4 years (and for most of my trading life) forward [supplies] have always hovered between 50 and 55 days—storage is expensive and limited, and just not efficacious.

This is why ... supply arguments are often overblown ... supplies remain closely aligned to demand and rarely overrun—as OPEC members have time and again explained but are ignored.

In other words, if prices are excessive, oil gets inventoried, all right, but in the ground. Which explains the keen interest in finding out how much is really there. Just don't hold your breath waiting for a precise answer.

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## moneybox Hey, Fat Spender

Is America's obesity linked to its decline in saving?

By Rob Cyran

Tuesday, June 24, 2008, at 4:51 PM ET

It's well-established that Americans have been getting fatter for decades. Obesity rates skyrocketed from 1980 to 2003: More than a third of Americans are now obese, according to the Centers for Disease Control, which is more than twice the proportion of a generation ago. Medical authorities debate the particular causes—inactive lifestyle, changes in diet—but some of the explanation may be economic.

Consider: During the same period, the U.S. savings rate plummeted and consumption as a percentage of the country's gross domestic product rose. Now, all three trends appear to be moderating. This suggests that the market may be applying a bit of discipline to America's waistline. If so, it would break a five-decade trend and affect industries ranging from health care to restaurants to insurance.

Obesity rates grew after World War II but really took off around 1980. The culprits? Taxes, higher wages for women, and portion sizes at restaurants, [according to two economists](#) at the University of Miami.

Increases in take-home pay turned eating out from a luxury to an everyday occurrence. And as women's wages grew and more women worked outside the home, more families found themselves eating takeout or in restaurants. Per capita spending on groceries fell, while the amount spent outside the home on food rose sharply.

Here's where it gets interesting. Restaurant portions are bigger than those typically eaten at home. And they've gotten larger over time. Gargantuan sizes have even become a common selling point. The number of new products introduced in restaurants bragging of huge portions increased sevenfold during the '80s and '90s, [according to researchers](#) from New York University.

The reason for larger portions is simple. Sixteen ounces of soda will set you back about \$1.10 at a 7-Eleven in New York. A Double Big Gulp contains four times as much soda (and calories) but costs only 50 cents more. Everybody seems to win—the cost of the extra soda is a few pennies, and the customer gets a bargain. And businesses that cut back on portion sizes, or don't keep up, look stingy in comparison to competitors.

For all that soda-chugging, there may be a break in the obesity trend. The percentage of Americans who are obese has not increased significantly since 2003. A study [published](#) in late May also indicated that childhood obesity may have hit a plateau. Of course, the issue has received tons of attention in recent years, so consumers may have changed their eating habits in response. But there is another possible explanation: Consumers are unwilling to go further into hock to eat out.

The graphs of America's savings rate and consumption as a percentage of GDP display suspiciously similar patterns. Savings declined steadily from around 10 percent of annual family incomes in 1980 and have hovered at zero or slightly below in recent years. How much of this went into unsustainable consumption—for instance, buying double Frappuccinos—is

unclear. But stabilizing waistlines could be a sign that consumers are repairing their balance sheets.

This trend could mean trouble for some companies. A decline in eating out would hit restaurants. Sales of insulin and other drugs used by the obese would see their high growth rates slow—as would hip and knee replacements. Others would benefit. Health insurance premiums could fall. And more people would live to retirement, helping companies ranging from nursing homes to colostomy-bag manufacturers.

Unfortunately, this doesn't mean you're going to get a seat on the subway soon—or perhaps ever again. The number of obese Americans isn't growing as quickly, but those who are fat are continuing to put on weight—sort of a big-tail effect. And come the next economic boom, the busily employed may once again crowd restaurants in search of the next great boom in portion sizes.

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## moneybox

### Houston, We Have No Problems

In the midst of a stagnant economy, an oil star shines in Texas.

By Daniel Gross

Saturday, June 21, 2008, at 9:13 AM ET

To find a hot spot where soaring oil and commodity prices and the booming economies of the developing world are keeping cash registers ringing and construction crews fully employed, you don't have to trek to [Dubai](#) or [Moscow](#). You need travel only as far as Houston. In May, the unemployment rate in the nation's sixth-largest metropolitan area was a measly 3.8 percent. In the past year, Houston-based companies, which include [26 Fortune 500 firms](#), added 71,000 jobs to their payrolls. The local United Way closed out its fiscal year with a record \$76.1 million in donations. At the Galleria, a high-end shopping oasis, Bridgette Bottone, manager of the De Beers store, notes, "We're still selling the big guys": [three-carat-plus diamonds](#) that retail for more than \$50,000. Pessimists are as rare as Birkenstock sandals or Obama '08 stickers in ExxonMobil's parking garage.

Houston's good fortune is largely a function of [the current oil boom](#). But this isn't the type of gusher that led to busts in 1981 and 1986. Instead, Houston is experiencing a 21<sup>st</sup>-century boom fueled by a weak dollar and global growth. "Three things affect Houston's economy," says Patrick Jankowski, vice president of research at the [Greater Houston Partnership](#). "The price of energy, the value of the dollar, and the strength of the U.S. economy at large." As Meatloaf said, two out of three ain't bad.

Houston's economy doesn't run on oil alone. "We're really diversified," says Mike Ballases, chairman of the Houston region for JPMorgan Chase, tongue partially in cheek. "We're only 50 percent dependent on energy." (The city's biggest employer: the [Texas Medical Center](#), the nonprofit megaplex that runs two medical schools and 14 hospitals.) At Houston's port, the second busiest in America, cranes are loading ships with industrial equipment. Exports rose 25 percent in 2007 to \$72 billion.

Exports are rising because Houston has become a sort of Silicon Valley for the global energy industry. "There's hardly any oil and gas production in a 40-mile radius of Houston," says Mayor Bill White, a former energy executive, as he held court in the city's charming Art Deco city hall. (Think of a much smaller Rockefeller Center but without the tourists.) "It's the knowledge that has concentrated here that is driving things." In 1981, the oil and gas industry was a domestic, blue-collar one. Today it's an international, white-collar one. Oil companies, wind-energy startups, consulting geologists, and software developers comprise what John Hofmeister, who is retiring in July as president of Shell Oil Co., calls "this mass aggregation of people who know what they're doing in the energy world."

Urban cowboy? Think suburban geek. Houston has 70,000 engineers and architects (a concentration 60 percent higher than is typical for the United States). The oil boom and weak dollar are boosting demand for their services, and engineering and construction firms like [KBR](#) and [Fluor](#) are applying their expertise to power plants and sewage facilities around the world.

In Midtown New York eateries, suddenly strapped investment bankers are limiting themselves to *prix fixe* lunches. But at noon last week, the 130 seats at [The Grove](#), an expense-account jewel box that overlooks Discovery Green—a downtown parking lot made into a 13-acre park—were filled with jovial diners. As we tucked into our skirt steaks (so big they should have been dress steaks) and a side of French fries smothered in shredded short ribs and cheese, UBS executive [Stephen Trauber](#) ticked off a series of recent deals his team worked on that would make his [New York counterparts](#) weep: a \$3.5 billion oil-field-services acquisition, a giant initial public offering of a [Brazilian oil company](#), several [stock offerings](#).

With the mercury hitting 95 in the morning, the people in Houston might be overheating (climate change here means cranking up the air conditioning), but the real-estate market never did. The excess office space disgorged onto the market after Enron's bust was quickly absorbed. Chevron took over both Enron's old headquarters and the new building it was constructing. The residential market, which avoided a bubbly run-up—thanks to endless supplies of land and a lack of zoning laws—has remained buoyant. Development is rampant, from \$200,000 single-family homes in suburban planned communities to \$1.4 million town houses that have replaced student apartment buildings near Rice University. In 2001, when Enron imploded,

100 of the 1,600 homes in River Oaks, a tree-lined haven where old and new money coexist, were on the market, says Tim Surratt, a broker with Greenwood King. Today there are only 30 brick mansions for sale in River Oaks. In May, the number of homes sold in Houston fell 15.3 percent from May 2007, but the median price (\$155,000, about what a parking space in a new Brooklyn condo development goes for) was unchanged.

Houstonian boosters (a redundancy, I know) think there's more of the same to come. "One million people are coming here in this next decade," says Jeff Moseley, chairman of the Greater Houston Partnership. "That's the entire population of San Antonio."

Such projections of endless growth are characteristic of bubbles that are about to pop. But they're also characteristic of an area that finds itself uniquely situated to capitalize on the longstanding megatrends that are transforming the global economy. For now, Houston does not have a problem.

*A version of this article also appears in this week's issue of Newsweek.*

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## movies

### Robot Wisdom

*Wall-E* reviewed.

By Dana Stevens

Thursday, June 26, 2008, at 6:44 PM ET

*Wall-E* (Disney) pushes the purist aesthetic of Pixar animation to the borders of the avant-garde. It's a largely dialogue-free story set on a planet Earth nearly devoid of organic life, and its view of humanity's future is about as dark as dystopias get. Yet *Wall-E* is an improbable delight, a G-rated crowd-pleaser that seems poised to pack theaters as efficiently as the titular robot crams his chest cavity with rubble.

Wall-E (whose clicks and beeps were created by sound designer Ben Burt) is a Waste Allocation Load Lifter Earth-Class, the last functioning robot left on a planet abandoned by humans 700 years ago. He spends his days scooting around the ruins of a devastated city, compacting cubes of trash in his boxy middle and stacking them into piles as high as skyscrapers. His only companion is a mute and nameless cockroach who lives with him in a bunker filled with treasures that Wall-E culls over the course of long, garbage-gathering days: a rusted spork, a light bulb, and a videocassette of *Hello, Dolly!* that he watches, rapt, each night.

The opening scenes establish Wall-E and the roach's world with such economy and wit that it's almost a letdown when a third party shows up to complicate things. Eve (Elissa Knight) is an Extraterrestrial Vegetation Evaluator, an elegant white robot—she looks like a cross between an iPod and an egg—who's been dispatched to Earth to find any evidence of returning plant life. Though they can communicate at first only by speaking their own names, Eve and Wall-E begin an unlikely courtship. This idyll is lost when a smitten Wall-E shows her his latest find—a tiny plant that he's transplanted into an old boot—and Eve's prime directive is activated. She snatches the sprig away, stows it in her storage compartment, and blasts off for the Axiom, a kind of floating resort in space that houses the remnants of humanity.

When Eve arrives at the Axiom with Wall-E in tow, the movie shifts gears from a minimalist robot romance to a richly detailed satire of contemporary humankind. After seven centuries in a corporate-controlled pleasure dome in space, all earthlings have become obese, infantile consumers who spend their days immobile in hovering lounge chairs, staring at ads on computer screens—in other words, Americans. Confronted with Eve's evidence of plant life on Earth, the ship's tubby, unmotivated captain (voiced by Jeff Garlin) at first refuses to believe that Earth is ready for recolonization. But when the ship's mainframe computer (voiced by Sigourney Weaver) decides, *2001*-style, to abort the Axiom's trip home, a human and robot rebellion ensues.

You shouldn't go into *Wall-E* knowing much more than that, the better to be surprised by the visual, verbal, and conceptual treats the movie has to offer. Every detail of the design, from the contents of Wall-E's revolving shelf of knickknacks to the layout and function of the Axiom's central "Lido Deck," has been thought through with the compulsive perfectionism that must make Pixar Studios an insane place to work. *Wall-E* generously dispenses one sight gag after another, but it also expects a lot of its audience. Space out for a moment, and you'll miss a laugh. The story is unmistakably an ecological fable, though its tone is more wistful than preachy, more *The Lorax* than *An Inconvenient Truth*.

Directed and co-written by Andrew Stanton, a longtime Pixar collaborator who also directed the Oscar-winning *Finding Nemo* in 2003, *Wall-E* isn't quite as transcendent as last year's *Ratatouille*, but it's more formally innovative. Some of the lesser characters, particularly the misfit bots who help Wall-E stow away on the Axiom, could have been better fleshed out (if one can say that of a robot). But the central couple—forlorn, googly-eyed, stubbornly loyal Wall-E and sleek, directive-obsessed, but ultimately tenderhearted Eve—are triumphs of the animator's art, as their characters are established almost entirely through movement and gesture (though Burtt, who also provided the "voice" for *Star Wars*' R2-D2, is an expert clicker and beeper). Despite the virtuosity of its technical execution, *Wall-E* never

feels like a soulless, well-oiled entertainment machine. Rather, the movie resembles its resilient, square-shaped hero: a built-to-last contraption with a disproportionately big heart.

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## music box

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Why do bands give themselves unprintable names?

By Hua Hsu

Monday, June 23, 2008, at 11:02 AM ET

There are things we can and cannot say in public, and we generally accept this without worry or serious regard. Hate speech, for example, is self-evidently bad: Its injury can be violent, sloppy, and incommensurably cruel. It's inadvisable to warn of a fire that's only figurative or to mock religious icons. But what about the simple gesture of naming your band [Fucked Up](#)? Last November, the *New York Times* reviewed a Brooklyn performance by this prolific and perfectly christened Toronto hard-core punk act. The problem was that the newspaper [could not print the band's name](#). As writer Kelefa Sanneh slyly noted, the offending past-tense verb could be printed only in the pages of the *Times* if it was uttered by an "American president, or someone similar," and so the paper printed eight asterisks and directed readers right off the page, to the [band's Web site](#), on the Internet, where such things don't matter quite as much.

[Asterisks](#), as Kurt Vonnegut suggested, might very well be more visually disturbing than the letters that conjoin as "a-s-s-h-o-l-e." But our concern today is with what asterisks obscure, the choices they blot out, not what they themselves resemble. At first blush, it seems that Fucked Up's unprintable name is doing its own excellent music a disservice. The pragmatist wonders: Does a band with this profane a name even *hope* to be successful?

The question applies to a glut of acts with similarly FCC-unfriendly names like [Holy Fuck](#), the [Fuck Buttons](#), the [Fucking Ocean](#), [Shit Robot](#), [Shitdisco](#), [Holy Shit](#), and [Psychedelic Horseshit](#), all of whom have released very good records in the past two years, and some of whom are aptly named. At least [two bands](#) lay claim to one of the great movie band names, the profanely sacrilegious [Shitty Beatles](#). (The movie is *Wayne's World*.) These names aren't controversial, per se, and few of these artists traffic in sounds that should truly offend. But they do raise a question: Does it matter anymore what you call yourself if you no longer rely on regulated forms of broadcast or mainstream media to get your name out there?

Profanity is the rare instance in which the [worn coin](#) of language resounds with too much power and volume, when society recoils at the very thought of the [youth's corrupted tongue](#). But

protections against indecency like the FCC's fine spree of the 1990s and early 2000s assume a world in which the producers of culture are the elites, or at least subject to the whims of elites, a world before conversations across the community were spontaneous, omnipresent, and impossible to  [earmuff](#). It is yet another sign of the weakening of traditional forms of broadcast and media that there are so many more points of contact between artists and consumers free from regulation. It no longer matters if a major magazine, newspaper, or radio station—prudes compared with the free expanse of the Internet—promotes a modest-sized band with a review. It only matters if those bands possess the know-how to construct a blog, a MySpace page, or a Web site—and somehow get an audience.

This isn't to say that our mainstream cultural outlets should begin dropping f-bombs. But maybe our vigilance with regard to dirty words is misplaced—it distracts from what truly disturb us. Profanity reminds us of our capacity to be shocked, even if our sensitivity to language has dulled over time. While the Internet hasn't quite absolved us of all concerns over decorum, it does provide a space of cultural exchange where our most impolite instincts may circulate freely. It has so thoroughly decentralized and complicated how we communicate, that concern over profanity seems quaint, even outdated. But the fact that such concerns persist only draws attention to how flimsy our notions of public decency seem today, when showy bleeps or unsightly asterisks only remind us that there is a much wider swath of culture out there that is unregulated and open.

What better way to poke fun at flimsy notions of official morality than to adopt a blunt, post-FCC band name? For others, though, the attempt at provocative humor can go awry. Names like  [AIDS Wolf](#)—a noisy, abrasive Montreal band—and  [Jay Reatard](#)—a shockingly talented young Memphis garage-punk, one-man act—aren't literally profane, but both flirt with a sophomoric crudeness. Not that many people are complaining, although Los Angeles-based artist and musician  [Brendan Fowler](#) was deeply disturbed. Fowler considered these names  [socially irresponsible](#) and created  [an exhibition](#) around his refusal to share a stage with them, to the  [bafflement of some](#). Fowler's intervention is clumsy but also useful: Is our relativism so great as to justify *any* act of speech? That would be kind of fucked up.

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## Obamamania Baracktose Intolerant

The latest addition to *Slate's* dictionary of Obamaisms.  
By Chris Wilson  
Friday, June 27, 2008, at 11:49 AM ET

### Today's Obamaism:

**Baracktose intolerant** (buh-RAK-tohs in-TOL-er-uhnt) *adj.* An increasingly common medical condition in which the affected person becomes violently sick in the stomach when exposed to adulation and deification of Barack Obama.

*Example: Though he was originally quite fond of Barack Obama, the weekly meetings of the University Democrats made Tom increasingly Baracktose intolerant.*

Since *Slate* first launched its  [Encyclopedia Baracktannica](#) in February, more than 800 readers have written in with their own Obamaisms, from "Barack Ness Monster" to "Post-Baracalyptic." The best of these entries, along with *Slate's* original Obama neologisms, are collected in a new book:  [Obamamania! The English Language, Barackafied](#), available June 24.

In conjunction with the publication of the book, we will be publishing a new Obamaism every morning and adding it to the Obamamania widget below, which you can add to your Facebook or MySpace profile or Web site.

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## Obamamania Barachmaninoff

The latest addition to *Slate's* dictionary of Obamaisms.  
By Chris Wilson  
Thursday, June 26, 2008, at 10:41 AM ET

### Today's Obamaism:

**Barachmaninoff** (buh-rahkh-MAH-nuh-nawf) *n.* A celebrated Russian composer hired by Obama to pen expansive, masterful campaign songs.

*Example: Although critically acclaimed, Barachmaninoff's first concerto struck many Americans as unnecessarily complex and inaccessible.*

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## Obamamania Monobamatic

The latest addition to *Slate's* dictionary of Obamaisms.

By Chris Wilson

Wednesday, June 25, 2008, at 10:57 AM ET

### Today's Obamaism:

**Monobamatic** (mon-uh-boh-MAT-ik) *adj.* About or pertaining to Barack Obama only.

*Example: While the forum was billed as a general discussion of politics in the era of Web 2.0, the conversation quickly became monobamatic.*

Since *Slate* first launched its [Encyclopedia Baracktannica](#) in February, more than 800 readers have written in with their own Obamaisms, from "Barack Ness Monster" to "Post-Baracalyptic." The best of these entries, along with *Slate's* original Obama neologisms, are collected in a new book: [Obamamania! The English Language, Barackafied](#), available June 24.

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## Obamamania Post-Baratic Stress Disorder

The latest addition to *Slate's* dictionary of Obamaisms.

By Chris Wilson

Tuesday, June 24, 2008, at 8:03 AM ET

### Today's Obamaism:

**Post-Baratic stress disorder** (pohst buh-RAT-ik stres sin-droh) *n.* A sporadic recurrence of giddiness typically displayed by those who have recently returned from an Obama rally.

*Example: After she returned from Iowa, Shelley's co-workers learned to tolerate her outbreaks of post-Baratic stress disorder, which they agreed were beyond her control.*

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## Obamamania Barocrates

The latest addition to *Slate's* dictionary of Obamaisms.

By Chris Wilson

Monday, June 23, 2008, at 8:06 AM ET

### Today's Obamaism:

**Barocrates** (buh-ROK-ruh-teez) *n.* An obscure Greek philosopher who pioneered a method of teaching in which sensitive topics are first posed as questions and then evaded.

*Example: While Obama is well-trained in the Barocratic method, many less-capable politicians have had mixed success with the technique.*

Since *Slate* first launched its [Encyclopedia Baracktannica](#) in February, more than 800 readers have written in with their own Obamaisms, from "Barack Ness Monster" to "Post-Baracalyptic." The best of these entries, along with *Slate's* original Obama neologisms, are collected in a new book: [Obamamania! The English Language, Barackafied](#), available June 24.

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## other magazines

### How To Speak Bubba

The *Weekly Standard* on wooing rural voters.

By Morgan Smith

Tuesday, June 24, 2008, at 5:35 PM ET

#### *Weekly Standard*, June 30

The [cover story](#) describes the tactics of colorful Democratic strategist Dave "Mudcat" Saunders, who advises Democratic candidates on how to woo rural voters. The "Bard of the Bubbasphere" likes to "persuade the bubbas in language they relate to." A Saunders sound bite on gay marriage: "I'm pretty sure I ain't a queer. And I've never had queer thoughts, but I do have several queer buddies who called me and asked me to help. I think it's blasphemy to put this on the ballot and try to divide God's children for political gain. God loves them queers every bit that he loves the Republicans." ... A [piece](#) insists that Americans are safer since Bush's presidency. Refuting Obama's claim that the Iraq war has made "Al Qaeda's leadership stronger than ever," it argues that "when we look at what [the president] has actually done, it's pretty hard not to credit him with *massively* improving America's security, both at home and abroad."

#### *The New Yorker*, June 30

A [piece](#) profiles the swelling fortune and political clout of the third-richest man in the United States, Sheldon Adelson, whom "some conservatives have heralded ... as their answer to George Soros." The owner of a multibillion-dollar casino empire and a Pioneer-level Bush contributor, Adelson is "fiercely opposed" to Palestinian statehood and is behind an aggressive publicity campaign to oust Israeli Prime Minister (and recent two-state solution advocate) Ehud Olmert from power. He also has the ear of the Chinese government, on which he relies to allow its citizens to travel to his casinos in Macao. Since his first casino opened there in 2004, "his personal wealth has multiplied more than fourteen times," and profits from his total holdings now earn him "roughly a million dollars an hour." ... An [article](#) looks at the phenomenon of itching and reveals the story of a woman so tormented by a phantom itch on her scalp that "she scratched through her skull during the night—and all the way into her brain."

#### *Newsweek*, June 30

The [cover story](#) on Cindy McCain declares that the GOP candidate's wife has "thought of herself as a Navy wife whose husband was off on tour—albeit on Capitol Hill instead of somewhere in the North Atlantic." She also "has admitted that she has what she calls a 'grudge list' of people she believes have

maligned her husband or her family." ... An [article](#) investigates the practice of Laura Day, "one of a small but expanding cadre of corporate psychic consultants" whose costly services are employed by financiers, businesses, and high-powered attorneys to help make decisions about everything from new hires to jury selections. According to the piece, "[h]elping to create a favorable climate for intuitionists are the number of politicians and corporate titans who talk openly these days about 'gut feeling,' intuition's more masculine-sounding counterpart." ... An [op-ed](#) looks at Obama's popularity with Europeans and warns that they should "be careful what they wish for" because the candidate's policies on trade and his position on withdrawing troops from Iraq may not be in their best interests.

#### *New Republic*, July 9

A [profile](#) in the cover package on China reports on the activities of physician and "national hero" Jiang Yanyong, who exposed the Chinese government's cover-up of the SARS outbreak. In 2004 Jiang circulated a letter to prominent government officials urging it to acknowledge its role in the Tiananmen massacre and its continued thwarting of attempts to memorialize its victims. Soon afterward, Communist Party officials detained the "elderly doctor," subjecting him to daily interrogation sessions and demands to recant the claims of his letter. Seven weeks later, Jiang issued a measured apology for the letter, and he was eventually released: "The state had been unable to break Jiang, but it had succeeded in silencing him." ... An [article](#) holds China's one-child policy "partly responsible" for the "macho violence spurting forth through outlets like war games." The gender imbalance stemming from the policy has created "a new cadre of unstable young bachelors" that "promises to overhaul Chinese society in some potentially scary ways." ... A [piece](#) explains why Caroline Kennedy Schlossberg's endorsement of Obama "allow[s] her to bolster the family brand in the minds of young voters and thus secure it a role in the party's future."

#### *New York*, June 30

In the "Summer Issue," a [feature](#) details "the struggle for Central Park" among cyclists, joggers, and dog-walkers. It's like any other "New York neighborhood conflict, with the same kinds of seething antagonisms and the same immutable stereotypes ... the old-timers (I was here first!), the colonizers (The park is ours!), and the new-money arrivistes (Who do you think you are?)." ... A [piece](#) considers the decline of presidential speechmaking as it reviews the rhetorical power of "our national oratorical superhero," Barack Obama. Since presidents began using speech writers, "speeches have become increasingly abstract and general, our policy talk less vivid and public." But Obama "refuses to strategically hide his intelligence," and "the signature project of his candidacy ... seems to be the reuniting of presidential discourse with actual, visible thought." Now, though, at the Democratic convention, the candidate must answer claims that he offers nothing beyond pretty words: "He

has to prove he's not a talker by talking better than he ever has before."

### **GQ, July 2008**

An [article](#) explores the world of the U.S. military's Landstuhl hospital in Germany, which has "become the most high-traffic, semipermanent, extremely expensive transglobal ambulance system in history." When soldiers are injured in Iraq and they are "hurt badly enough to leave their units"—when they cannot be treated by field medics or surgical teams—they are transported to the German hospital. It's a transitional, otherworldly place where servicemen go when they "don't feel a real connection to their own injuries yet, still don't exactly know what happened to them, still feel more sorry for people they see across the plane from them than they do for themselves." ... A [profile](#) of Gene Robinson divulges that because of numerous death threats, during the consecration of the first openly gay Episcopal bishop, "the clergyman in the red stole who processed behind Robinson was no clergyman but an armed bodyguard" and that Robinson and his partner both wore bullet-proof vests.

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### **poem**

## **"Confinement"**

By Tony Hoagland

Tuesday, June 24, 2008, at 8:31 AM ET

*Listen to Tony Hoagland read .*

The dictator in the turban died and was replaced  
by a dictator in a Western business suit.  
Now that he looked like all the other leaders, observers

detected a certain relaxing of tensions. Something in the air  
said the weather was changing,  
and if you looked up at the sky and squinted, you could almost  
see

the faint dollar signs embossed upon the big, migrating clouds,  
sucking up cash in one place, raining it down in another.  
Meanwhile I was trying to get across town,

to my brother-in-law's funeral,  
speeding through yellow lights, arriving late,  
taking my place in a line of idling cars

outside the cemetery. Having to wait with everyone else  
because no one had gotten the code number  
to punch into the keypad on the automatic gate.

Cold day. The neighborhood, ugly and poor,  
like a runny nose,  
a reminder of misery in the world.

And Barney was dead, big PartyBoy Barney,  
famous for his appetite and lack of self-control—  
—now, needing an extra-large coffin,

as if he was taking his old friends  
Drinking Eating and Smoking  
into the hole with him.

—So what hovered over the proceedings that afternoon  
was a mixture of grief and vindication—  
like a complex sauce the pallbearers and aunts

were floating in, each one thinking,  
"Oh God! I *told* him this would happen!"

Later, at the reception, I saw my beautiful ex-wife,  
wearing a simple black dress  
that showed off her beautiful neck

standing next to a guy I would like to call  
her future second ex-husband.  
A long time since she and I had been extinct,

but still I found inside myself an urge  
to go over and tell her one more time  
it wasn't my fault—

and struggled for a moment with that  
ridiculous desire.  
Upstairs, looking for a place to be alone,

I found a television, turned on and abandoned in a room,  
churning out pictures and light against a wall—

Images of crowds, marching down streets, past  
burning, overturned cars; people in robes,  
gathered outside embassies and throwing stones.

Even with the sound off,  
not even knowing the name of the country,  
I thought that I could understand

what they were protesting about,  
what had made them so angry:

They wanted to be let out of the TV set;  
They had been trapped in there, and they wanted out.

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## politics

### Blessed Reassurance

How Obama can lessen the intensity of the opposition.

By Jeff Greenfield

Thursday, June 26, 2008, at 4:21 PM ET

Four years ago, after Sen. John Kerry effectively clinched the Democratic nomination, I wondered aloud—the most effective way to communicate on television—whether he would reach out to the white evangelical community. Suppose he asked to address a convention, openly acknowledging the likelihood that he'd receive few of the votes of the assembled faithful but talking about finding common ground on issues like poverty, AIDS, and human rights?

This never happened, of course, and that November, evangelicals voted for President Bush by a 78-21 margin. More important, the outpouring of faith-based voters almost surely tipped Ohio, and thus the election, into the Bush column. Would a speech, or a series of conversations between Kerry and white evangelicals, have made a difference? It's not clear: A gay-marriage ban was on the Ohio ballot that year, and that helped turn out these voters in force. Nor is it clear that John Kerry would have been convincing had he talked about his faith.

What is clear is that Barack Obama is pursuing a course radically different from Kerry's—or, for that matter, Al Gore's. (Gore lost the white evangelical vote by a 68-30 margin.) And therein lies a tale about one of the least appreciated but most effective of political techniques: the art not so much of winning over voters as of lessening the intensity of their opposition.

Earlier this month, Sen. Obama met privately with some 30 religious leaders for a no-holds-barred conversation. Participants were Catholic and Protestant, mainline and evangelical, black, white, and Hispanic. Franklin Graham was there. (He's Billy's son and now heads this father's ministry.) So was T.D. Jakes, the African-American pastor at a Dallas megachurch, and Doug Kmiec, a prominent conservative Catholic scholar who has endorsed Obama (and who contributes to *Slate's* legal blog, "[Convictions](#)").

How did the meeting go? Here's what Steve Strang, a [former Mike Huckabee](#) and current John McCain supporter, wrote in describing Obama's answer to a question on abortion: "The time he took to answer was probably 15 minutes. He came across as thoughtful and much more of a 'centrist' than what I would have expected. He did not appear to be the crazy leftist that is being supported by George Soros and his radical leftist friends. Sen.

Obama looked me in the eye as he answered my question, almost as if it were a one-on-one interview."

Will Strang vote for Obama? Almost certainly not. But will he regard an Obama presidency as a mortal threat to his most deeply held beliefs? Almost certainly not. Strang reflects the same attitude that Stephen Mansfield presents in his forthcoming book, *The Faith of Barack Obama*. Mansfield, who has published a similar book about President Bush, writes: "Obama's faith infuses his public policy, so that his faith is not just limited to the personal realms of his life, it also informs his leadership." Mansfield can't bring himself to support Obama because the candidate is pro-choice, but it hardly sounds as if Mansfield will be trying to shepherd hordes of voters to the polls on Election Day to defeat him.

And that's the point. Sometimes, the most effective approach for a candidate is to lower the temperature of the opposition—to say, in effect, "OK, don't vote for me; but you have nothing to fear from me." In other words, to reassure them that you're not so bad.

We've seen this tactic deployed repeatedly in presidential campaigns. When John F. Kennedy spoke to the Houston Ministerial Association in 1960, he knew he would win few of the votes in the room. But his campaign also knew that opposition to a Catholic president was a mortal threat to victory; just a few days earlier, prominent Protestants, including the Rev. Norman Vincent Peale, had openly announced their intention to oppose JFK on religious grounds and to stop him. So when Kennedy spoke in near-absolute terms about a wall of separation between church and state, he sought to ease fears rather than to persuade his audience to support him.

When Ronald Reagan campaigned in the South Bronx in 1980 and spoke to the Urban League about liberal programs' failure to combat endemic poverty, he wasn't really trying to win black votes. Instead, as one of his advisers told the *New York Times*, "Mr. Reagan's efforts yesterday could help in his continuing attempt to widen his appeal among other segments of the electorate, such as liberal and moderate suburban Republicans"—even if they yielded few black supporters. Similarly, George W. Bush's frequent campaign stops in 2000 at venues for minority voters, and his description of "compassionate conservatism" in his speech accepting the GOP nomination, were aimed squarely at middle-ground voters.

And back to the other side of the aisle: When Bill Clinton surrounded himself during 1992 campaign stops with a blue wall of police officers, the point wasn't to win over hard-core law-and-order voters but to reassure one-time Democrats who had left the party because of issues like rising crime that this was one Democratic politician who understood their fears. (Clinton also flew back to Arkansas midcampaign to preside over the execution of a mentally impaired murderer.)

Such tactics are very different from the familiar efforts to cross-pressure voters. As described by D. Sunshine Hillygus and Todd G. Shields in their book [The Persuadable Voter](#), cross-pressuring attempts to wrest voters from their usual partisan loyalties by stressing policies that might lead them to the other party—for instance, luring working-class whites to the GOP with abortion restrictions or wooing moderate Republicans to the Democratic side by preaching the value of stem-cell research.

The reassurance strategy, by contrast, takes the opposition as a given and then tries to lower its intensity. To oppose a candidate, after all, isn't the same as actually giving money or pulling the lever for the other guy. White evangelicals in Ohio may well support John McCain by margins of 2-1—but if they're not out on Election Day with car pools and massive door-to-door vote pulling, that's a major victory for Obama.

And this may explain why James Dobson, the head of the Christian group Focus on the Family and one of the most influential voices in the evangelical community, took to the airwaves this week to denounce Obama for his "fruitcake" interpretation of the Constitution. If Obama succeeds in providing blessed reassurance to the white evangelicals, he'll significantly neutralize a major weapon in the Republican arsenal.

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## press box

### How To Write for the Web

Caleb Crain explains it for you.

By Jack Shafer

Tuesday, June 24, 2008, at 11:45 AM ET

I'm at a two-day *Slate* retreat at the [Mohonk Mountain House](#) playing team-building "trust games" with Mickey Kaus, Julia Turner, Nathan Heller, and a handgun. I'm kidding about the trust games, but I'm serious about being stuck in the soul-bleaching bath that is a retreat. To beat the boredom, I've been hopscotching the Internet, where I found this [fine essay](#) by Caleb Crain that explains the difference between Web writing and regular writing. Thanks to Crain, I'll never read the Web the same again.

A text on the internet rarely takes for granted your decision to read it or to continue reading it. There is often, instead, a jazzy, hectoring tone. At home my boyfriend and I use a certain physical gesture as shorthand to describe it. To make it, extend your index fingers and your thumbs so that your hands resemble toy pistols. Then waggle them before you, like a dude in a cheesy Western, while you wink, dip

your knees, and lopsidedly drawl, "Heyyy." The internet is always saying, "Heyyy." It is always welcoming you to the party; it is always patting you on the back to congratulate you for showing up. It says, *You know me*, in a collusive tone of voice, and *Wanna hear something funny?* and *Didja see who else is here?* This tone is not absent from print; in fact, no page of *New York* magazine is without it. Certain decorative effects in language may be compatible with it, but it seems to be toxic to imagination.

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Heyyy, congratulate yourself for showing up by sending e-mail to [slate.pressbox@gmail.com](mailto:slate.pressbox@gmail.com). (E-mail may be quoted by name in "The Fray," *Slate's* readers' forum, in a future article, or elsewhere unless the writer stipulates otherwise. Permanent disclosure: *Slate* is owned by the Washington Post Co.)

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## reading list

### Yummy Mummies, Mongoose Mine-Detectors, and Leg-Lengthening Surgery

What the Brits are reading about science and technology.

By William Saletan

Saturday, June 21, 2008, at 9:12 AM ET

If you ever tire of reading about what Barack Obama ate for breakfast or who's on John McCain's short list of female Hispanic governors under 30, I recommend a stroll into the wonderful world of science. Discoveries and technologies are unfolding at breakneck speed, transforming how we live, what we think, and who we are. Cloning, artificial intelligence, and cyborg limbs are just a few of these developments. The best place to read about them is at *Slate's* "Human Nature" portal, [humannature.us.com](http://humannature.us.com). But the second-best place isn't in the United States; it's in the United Kingdom. Fortunately, the Internet will take you there.

Six weeks ago, news broke that researchers had created the first genetically modified human embryo. Was it on CNN? The *New York Times*? No, it was in the *Times* of London, which, like every major British newspaper, maintains a special [online section](#) devoted to science. British editors and readers follow science in a way that too many Americans don't. By the time

Americans realize what's going on, technology has run them over and moved on.

A good example is surveillance. With more than 4 million security cameras, Britain is probably the world's most closely watched society. Its people are simultaneously nosy and alarmed by invasions of their privacy. That's why you can read about [mandatory breathalyzers](#) on BBC News, airport [face-recognition scanners](#) in the *Guardian*, and [lie-detecting brain scans](#) in the *Daily Telegraph*. Or you can wander over to *New Scientist* to monitor corporate development of [eye-tracking technology](#) that will record what you're looking at in shop windows.

Brits love their robots. The *Guardian* has updates on robots with [personalities](#) and robots modeled on [human brains](#). The *Daily Telegraph* has a report on [child care robots](#)—already being tested in American schools, the paper says—that pacify children so effectively that parents and teachers may be tempted to relinquish children to them. *New Scientist* has the goods on the latest military doodads: a robot [urban-infiltration](#) contest, iPhones that operate [battlefield drones](#), and a cyborg land-mine detector consisting of a [mongoose connected to a robot](#). Animals are just another expendable machine.

Then there's all the news that's just plain weird: *New Scientist* on rats that [eat their young](#); the *Daily Telegraph* on worms that [eat their mothers' skin](#); the *Independent* on commercialized [dog cloning](#); BBC News on a family that [walks on all fours](#); the *Guardian* on stranded island mice that evolved into [oversize carnivores](#); and the *Daily Mail* on surgery that makes people taller by adding [2 inches to the tops of their heads](#).

Did I mention odd sex practices? The Brits can't get enough of them, yet they're wonderfully rational about it. The latest uproar is over [first-cousin marriages](#) in some immigrant communities (never mind that [Charles Darwin](#) did it, too). In contrast to the pious calls for prohibitive legislation that we'd surely have heard from Congress under similar circumstances, the British press actually looked at the [genetics](#) of cousin marriage. And the answer seems to be that education and genetic screening are a better way to go.

When you've had your fill of our British cousins, click over to [Agence France-Presse](#), the wire service that tells you what's going on in the rest of the world. There, you can find out about trends bubbling out of faraway continents. Nipple and genital piercings? Australians have already begun to [ban them](#) for minors. Cosmetic surgery for kids? A crackdown is under way in [Germany](#). Dog-meat restaurants? South Korea is making [peace](#) with them. Performance-enhancing Olympic swimsuits? Japan is [hard at work](#). Genetic modification of animals? Malaysia is planning it for [mosquitoes](#). Commerce in human organs? It's standard practice in Filipino [slums](#). Condoms and drug syringes? They're already being offered through vending machines ... in [Iran](#).

And now, if you'll excuse me, I'm off to BBC News to read about the latest [leg-lengthening surgery](#). It's positively mind-stretching.

*A version of this article also appears in the Outlook section of the Washington Post.*

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## recycled What Kind of Terrorism Does North Korea Sponsor?

It sells missile technology.

By Brendan I. Koerner

Thursday, June 26, 2008, at 1:54 PM ET

*On Thursday, President George W. Bush said he would [remove North Korea](#) from the list of terror sponsors after Pyongyang turned over information detailing its nuclear capabilities. In a 2003 ["Explainer," Slate](#) investigated why North Korea, a state with few terrorist ties, was on the list in the first place. The column is reprinted below.*

Once again, the State Department has [officially cited](#) North Korea as one of seven "designated state sponsors of terrorism." Yet the Stalinist "Hermit Kingdom" is certainly no breeding ground for the likes of al-Qaida or Hezbollah. How exactly does North Korea sponsor terrorism?

According to the State Department, mainly by selling missile technology to the likes of Libya and Syria, two other members of the ominous list. There is also ample evidence that Kim Jong-il's regime has knowingly sold smaller weapons to separatist groups; three years ago, the Philippines publicly alleged that North Korea did an arms deal with the [Moro Islamic Liberation Front](#). Such sales are believed to be one of North Korea's few sources of hard currency, along with counterfeiting and other criminal activities.

In terms of direct terrorist action, however, the Democratic People's Republic of Korea (as the nation is formally known) has been relatively quiet since 1987, when it's believed to have orchestrated the bombing of Korean Airlines Flight 858. That attack is thought to have been a tactic to scare tourists away from visiting the 1988 Summer Olympics in Seoul; Kim Jong-il was miffed that his country had not been asked to co-host the games. North Korean operatives were also behind a 1983 attempt on the life of South Korean President Chun Doo Hwan, who was scheduled to visit a memorial in Rangoon, Burma (now Myanmar). A traffic delay may have saved the president's life: The timed bombs went off before his arrival, killing 17 South Korean dignitaries instead.

South Korea also believes that its northern neighbor was behind the 1996 assassination of a South Korean diplomat in Vladivostok, Russia. The killing closely followed a warning from Pyongyang that it would take action if South Korea did not repatriate the bodies of several North Korean spies.

Every year, the State Department also mentions North Korea's harboring of four members of the Japanese Communist League-Red Army Faction. These terrorists were involved in the 1970 hijacking of a Japan Airlines jet, sometimes referred to as the "Yodogo Incident." They flew the plane to the DPRK, hoping to find an operational base from which they could foment a worldwide proletariat revolution. These Red Army members (originally nine in number) were allegedly later responsible for ordering the kidnappings of several Japanese citizens and spiriting them away to North Korea in the hopes of brainwashing them into becoming Communist loyalists. Japan still demands the extradition of the surviving four hijackers left in the DPRK, but Pyongyang shows no signs of relenting after all these years.

**Bonus Explainer:** Another splinter group of the Japanese Communist League-Red Army Faction, known as the [Japanese Red Army](#), is believed responsible for the 1972 massacre at Israel's Lod Airport and may still be limping along. According to the latest State Department report, it maintains "six hardcore members" who may be hiding out in Lebanon.

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## recycled Itsy-Bitsy, Teeny-Weeny

A brief history of the bikini.

By Julia Turner

Wednesday, June 25, 2008, at 5:56 PM ET

*Summer is upon us, which means that Americans are heading to the beach to slather on the sunscreen and slip out of their clothes. In honor of the season, we present a two-piece celebration of the two-piece: In 2006, on the swimsuit's 60<sup>th</sup> birthday, Julia Turner chronicled the rise of the bikini in America. Click on the module above to launch that slide-show essay, "A Brief History of the Bikini," reintroduced below. For a Magnum photo gallery of the bikini, click [here](#).*

Sixty years ago this week, the world's first bikini made its debut at a poolside fashion show in Paris. The swimsuit is now so ubiquitous that it's hard to comprehend how shocking people once found it. When the bikini first arrived, its revealing cut scandalized even the French fashion models who were supposed to wear it; they refused, and the original designer had to enlist a stripper instead. Click [here](#) to read a slide show that explains

how the bikini slowly gained acceptance—first on the Riviera, then in the United States—and became a beachfront staple.

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## rural life

### My Dog Has a Crush on My Ram

A love story.

By Jon Katz

Wednesday, June 25, 2008, at 6:55 AM ET

I cleared my throat and adopted my most paternal voice. "Lenore," I said, "This isn't going to work.

"You're so young. You know nothing of love or the ways of older men. He is far more experienced, a father several times over. You'll both be ostracized. It's a mistake.

"He has different habits and needs. You come from your own tradition, with its own expectations. I'm not sure you're compatible. He's not just unlike you: He's a completely different species."

Lenore, my black Labrador puppy, looked at me so balefully that I already knew it was hopeless. *I have instincts; I have feelings*, her dark eyes seemed to reply. *I can't just turn them off*.

As Woody Allen once said in a different context, "[The heart wants what it wants](#)."

Though I've lived for some years with sheep, cows, steers, goats, barn cats, chickens—and dogs—on a farm in upstate New York, I'd never encountered a situation where animals of different species have fallen in love, or even had much of a friendship.

But here it is: Lenore, a highly affectionate creature, is utterly smitten with Brutus, one of my three wethers (or neutered rams).

When it's warm out, I take my flock of sheep to graze in the grassy meadow at the top of the hill twice a day, assisted by my workaholic, extremely businesslike border collie Rose. Rose does not love sheep and pushes them around rather contemptuously but efficiently.

A month ago, I began bringing Lenore along. She's not a herder, but she's good company; my farm is a happier place since she joined our little band nine months ago. She lights up every space she inhabits.

Then, one morning, I looked up from my book in the pasture and couldn't see the puppy. I glanced around and was surprised to see her in a corner of the field, nose-to-nose with the grazing, affable Brutus.

I ran over, alarmed; at 175 pounds, he weighs more than twice as much as she does. But the two of them seemed quite at ease together, oblivious to me.

Rose came loping over warily to investigate and clearly disapproved. She looked agitated, almost revolted; she'd never seen anything like it. A dog hanging out with a sheep? She tried to hustle Brutus back into the flock. He wouldn't leave Lenore. Rose seemed flustered by this disobedience. It had never happened before. I called her back.

Each day, the pair seems more companionable. Lenore looks for Brutus, and when she finds him, she sometimes challenges him to romp, occasionally rolling over and flirtatiously showing her belly. She isn't above giving his nose or ear a lick. Some days, they just graze side by side, Lenore also chomping down the grass.

I feared that Rose, unaccustomed to such insubordination, might have a nervous breakdown. I imagined her leaving me a letter announcing that she was resigning and going to work for a real farmer, then striding off with her briefcase. Rose does not, apparently, believe in interspecies love; it offends her ideas of order.

Like Rose, I'd never seen anything resembling this relationship between a joyous, loving dog and a steady but undemonstrative ram. I couldn't fathom Lenore's attraction: She'd been spayed a few months earlier. And Brutus' behavior was even more incomprehensible. Sheep are flocking animals, which is why dogs can move them in and out of a pasture or a pen. They don't go off on their own and form relationships with other species; they barely seem to differentiate among their fellow sheep. (Although now that I think about it, Brutus *was* close to his mother.) It is downright unsheeplike to leave the flock and stand nose-to-nose with a dog for long periods. In fact, sheep are so incurious that you hardly ever see them do much but sleep and eat.

I can understand where Brutus is coming from, though. I'm wild about Lenore, ridiculously cute as a puppy, beautiful as a young female, with a heart as big as her appetite. I call her the Hound of Love. In the pasture, I sing to her, songs by Emmy Lou Harris, "Amazing Grace" the way Aretha Franklin sings it (well, kind of), Eva Cassidy's wrenching version of "Love Hurts." Lenore even sleeps with me, for heaven's sake.

Now she seems to prefer Brutus. The two of them are always together. She cleans his ear, he noses her or butts her gently. It's something to see.

I called an animal behaviorist I knew at the Cornell veterinary school and told him the story. He just laughed and said he had to get to a meeting. "Wait," I insisted. "What's going on between my dog and my ram?"

"Can't imagine," he chuckled, before hanging up.

At moments like this, I'm glad I'm a photographer, because people might not believe this stuff. But I have pictures. I get a lot of e-mail on my [Web site](#), but I've rarely gotten as much as when I posted photographic evidence of Lenore's love affair with Brutus.

People sent me poems and song lyrics, gushy *awwws*, and cautions about sex.

"Please, please don't separate them," Heather e-mailed from London when I joked that I was considering imposing a strict curfew. "They belong together. Give them a chance to work it out."

"Obviously, Brutus is unhappy and lonely," wrote a farmer from Nebraska. "Make sure to give them support. Nothing wrong with it."

Other people fretted about Rose. Could she handle this? Would she be damaged in some way?

I was a bit worried about Rose myself. The world had turned upside down for her and no longer worked in comprehensible ways. She glowered at the couple.

So, I took Lenore aside, issued heartfelt cautions. "The other sheep will turn on Brutus," I warned. "Rose doesn't approve. Life is hard enough. It has to end badly."

But animals are nothing if not adaptable. After a week or two, Rose simply seemed to stop noticing the odd couple and concentrated on moving the rest of the flock around. Lenore and Brutus became invisible to her.

This is the new normal. This morning, the sheep trotted into the meadow to graze, and Brutus chomped for a few minutes, then sauntered right past Rose and over to where Lenore and I were sitting. He lowered his head to the ground.

Lenore whined, wagged her tail, rolled over on her back, then righted herself and licked the big guy right on his fuzzy nose.

This relationship can't go anywhere, for obvious reasons. Love does hurt. But sometimes, it's nice while it lasts.

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## Science

### How Smart Is the Octopus?

Bright enough to do the moving-rock trick.

By Carl Zimmer

Monday, June 23, 2008, at 1:14 PM ET

Aristotle didn't have a high opinion of the octopus. "The octopus is a stupid creature," he wrote, "for it will approach a man's hand if it be lowered in the water." Twenty-four centuries later, this "stupid" creature is enjoying a much better reputation. YouTube is loaded with evidence of what some might call octopus intelligence. One does an [uncanny impression of a flounder](#). Another [mimics coral](#) before darting away from a pushy camera. A third slips its arms around a jar, [unscrews it](#), and dines on the crab inside. Scientific journals publish research papers on octopus learning, octopus personality, octopus memory. Now the octopus has even made it into the pages of the journal *Consciousness and Cognition* (along with its fellow cephalopods the squid and the cuttlefish). The title: "[Cephalopod consciousness: behavioral evidence](#)."

So, is the octopus really all that smart? It depends on how you define intelligence. And if you've got a good definition, there are quite a few scientists who would love to hear it. Octopuses can learn, they can process complex information in their heads, and they can behave in equally complex ways. But it would be a mistake to try to give octopuses an IQ score. They are not intelligent in the way we are—not because they're dumb but because their behavior is the product of hundreds of millions of years of evolution under radically different conditions than the ones under which our own brains evolved.

You'd have to go back about 700 million years to find the moment in the history of life when humans and octopuses diverged. Our most recent common ancestor, scientists suspect, was a little wormlike creature with eyespots and little more. Since then, our lineage evolved bones; theirs evolved boneless bodies they control with water pressure. We've accumulated so many and such incredible differences over that time that 20<sup>th</sup>-century scientists were excited to discover a few deep similarities. In the 1950s, for example, biologists demonstrated for the first time that octopuses have massive brains.

Cephalopods belong to the same lineage that produced snails, clams, and other mollusks. A typical mollusk might have 20,000 neurons arranged in a diffuse net. [The](#) octopus has half a billion neurons.\* The neurons in its head are massed into complex

lobes, much the way our own brains are. In comparison with their body weight, octopuses have the biggest brains of all invertebrates. They're even bigger than the brains of fish and amphibians, putting them on par with those of birds and mammals.

In the late 1950s, Oxford biologist N.S. Sutherland decided to put the big brains of octopuses to the test. He would show them two shapes and reward them for touching one but not the other. They might learn to tell a rectangle in a horizontal position from the same rectangle rotated 90 degrees. And once they had figured out this test, the octopuses knew to select any horizontal rectangle they saw, no matter what its particular dimensions. They were learning what to learn.

Over the years, octopuses have shown many more signs of intelligence. They proved to have an excellent memory. They were clever and unpredictable. [Jennifer](#) Mather, a Canadian biologist, has tossed toys into octopus tanks and watched as the octopuses inspect them and puff them around with jets of water.\* They are playing, she argues. Clams do not play. Humans do.

Mather is also the author of the new paper arguing for consciousness in octopuses. She does not claim that they have full-blown consciousness like we do but a simpler form known as primary consciousness. In other words, they can combine their perceptions with their memories to have a coherent feel for what's happening to them at any moment. Mather bases her claim not just on how octopuses behave but also on how their brains work.

For example, one sign of the complexity of the human brain is that we can be left-handed or right-handed. Our preference comes from one side of the brain dominating over the other—a sign of how the two sides of our brains are not identical. Instead, they divide up mental work and communicate with each other to create a unified sense of reality. Octopuses may not be left-handed (or left-armed), but Mather claims that they show similar kinds of specialization with their eyes. In a 2004 experiment, she and her colleagues found that when they looked out from their dens, some preferred to sit with their left eye facing out, others with their right.

But some octopus experts are skeptical of these bold claims. Many reports of weird octopus behavior come from casual observations in aquariums. Even some experiments have not held up to scrutiny. Last year, Jean Boal of Millersville University and her colleagues [found fault](#) with Mather's experiments on left- and right-brained octopuses. The problem was that the scientists had looked at too few octopuses. It was impossible to rule out the possibility that octopuses might not have any preference at all for either eye. The results of the experiments might simply have been a matter of chance.

After 50 years, in other words, we still don't know that much about what's going on in the heads of octopuses. Carefully designed experiments will be essential for finding out more, but so will a more octo-centric attitude. What we call intelligence is really just a set of behaviors and abilities that evolved in our ancestors as they adapted to a particular way of life. Octopuses evolved behaviors of their own, but they were adapting to a way of life that's hard for us to imagine—they were naked mollusks in a world of fish.

The earliest cephalopods, which lived about a half-billion years ago, had shells. Over the next 250 million years, they evolved into giant predators. They shot bursts of water out of siphons to swim—a prehistoric form of jet propulsion.\* But their glory was cut short by fish with jaws—our ancestors. Fish could swim faster by bending their bodies than cephalopods could move by jetting. Today, only a single shelled cephalopod survives—the nautilus, which spends most of its life lurking deep underwater.

The other living cephalopods lost their shells. While they gave up a defense against predators, they were free to evolve new skills. Squids became fast swimmers. Octopuses instead moved to the sea floor, where they could use their shell-free bodies to explore cracks and crevices for prey. But in order to survive in this new niche, they had to become fast learners.

Jean Boal and her colleagues have done [some experiments](#) that show how good octopuses are at learning geography. Boal put the octopuses in tanks with an assortment of landmarks, such as plastic jugs, plates of pebbles, and clumps of algae. It took only a few trials for the octopuses to find the quickest route to a hidden exit in the bottom of the tank. What made Boal's results particularly impressive is that the octopuses were learning two completely different mazes at once. Boal would move them from one to the other after each trial. Somehow, the octopuses could keep track of two geographies concurrently. When octopuses are moving across new terrain, they can perhaps learn the best escape from predators.

Octopuses escape from predators not just by hiding quickly but by deceit. One of the most impressive examples of this deception is what marine biologist Roger Hanlon calls the [moving-rock trick](#). An octopus morphs into the shape of a rock and then inches across an open space. Even though it's in plain view, predators don't attack it. They can't detect its motion because the octopus matches its speed to the motion of the light in the surrounding water.

For Hanlon, what makes this kind of behavior remarkable is that it's a creative combination of lots of behaviors, used to address a new situation. Similarly, when an octopus escapes an attack, it may puff up its body and turn white to scare a predator, shoot off puffs of ink to distract it, zigzag through the water, and then suddenly switch its skin to match the surrounding coral.

There's not much point in trying to pin this sort of behavior to some human-based scale of intelligence, because our behavior emerged as apes adapted to life spent on two legs, in groups, and using our hands to make tools. We'd fail pretty badly at an octopus-based test of intelligence, but surely we wouldn't hold it against ourselves.

***Correction, June 25, 2008:** The original version said that early cephalopods used bursts of air to propel themselves, and that octopuses used jets of water to push toys around a tank. In both cases, the animals used water, not air. ([Return](#) to the corrected sentence.) The original version also said the octopus has "half a million" neurons instead of "half a billion." ([Return](#) to the corrected sentence.)*

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slate fare

## Work for the Slate Group

National sales director wanted.

Tuesday, June 24, 2008, at 10:19 AM ET

### The Slate Group National Sales Director

#### Description

The **Slate Group** is looking for a national sales director. As one of the most influential and widely read news and culture magazines, *Slate* combines the innovation of a Web-only property with the quality and authority you'd expect from an organization owned by the Washington Post Co. With more than 6 million unique visitors monthly reported by Nielsen, *Slate* is the centerpiece of an [expanding family of sites](#) including *The Root* and the upcoming business site *The Big Money*. The **Slate Group** will continue to aggressively grow *Slate* while launching a series of new Web properties that leverage our experience, success, and existing audience.

The national sales director is a unique opportunity for an entrepreneurially minded advertising veteran to play a pivotal role with one of the most innovative, high-profile, and fast-growing media properties on the Web. The national sales director will help define and implement sales strategy while maintaining day-to-day responsibility for hitting *Slate*'s sales targets. Reporting into the *Slate* publisher, this position will be part of the *Slate* senior team and will require you to work closely with our marketing, editorial, technology, and finance teams.

#### Skill Set

We're looking for a seasoned online sales person who has at least eight years of experience selling and/or managing sales teams.

- Direct sales: track record of closing sales

- Experience with, and passion for, high-quality Web and media brands
- Industry contacts: someone who has deep relationships with advertising agencies and clients
- Strategic thinker: While we need someone who isn't afraid to roll up their sleeves, this person needs to not lose the forest in the trees.
- Management experience: The ideal candidate has experience managing sales reps.
- Team player: This position requires an ability to work well with and motivate a large and diverse team.
- Willingness to travel: Preference is for this position to be based in New York with regular trips across the country.

To apply for this position please send your résumé and cover letter to John Alderman, [john.alderman@slate.com](mailto:john.alderman@slate.com).

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slate v

## Can Apes Really Talk?

A daily video from *Slate V*.

Thursday, June 26, 2008, at 10:58 AM ET

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slate v

## Dear Prudence: Dogs Gone Wild

A daily video from *Slate V*.

Wednesday, June 25, 2008, at 11:52 AM ET

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summer vacation

## Summer Staycation

Can Six Flags survive the economic downturn?

By Daniel Gross

Monday, June 23, 2008, at 2:11 PM ET

The economic slowdown couldn't have come at a worse time for America's theme parks. An afternoon spent riding roller coasters, driving bumping cars, stuffing your face with fried dough, and waiting in 40-minute lines for water slides is, by definition, a discretionary purchase. Compared with other summertime diversion—movies, sprinklers in the front lawn, and public beaches—theme parks are pricey. So, it's no surprise that publicly held amusement-park companies like [Cedar Fair](#) and [Six Flags](#) have been [suffering in the past year](#). The macroeconomic climate has presented a particular challenge to Daniel Snyder, the wunderkind Washington Redskins owner

who took over Six Flags in 2005 and is trying to engineer a turnaround.

When Snyder took over, Six Flags' core audience was teenagers and young adults drawn to extreme rides like roller coasters. Snyder planned to boost profits by remaking Six Flags in Disney's image—as a wholesome, highly branded, family-friendly place. Fewer dudes, more dads and toddlers. He recruited top executives from the Disney empire, including [CEO Mark Shapiro](#) from ESPN and [Chief Financial Officer Jeff Speed](#) from EuroDisney. The new team has cleaned up the parks, added more rides and attractions for families, and given those families more to do (and spend money on) inside the parks by bringing in brands like Cold Stone Creamery and Johnny Rockets. Like Disney, Six Flags has also pursued international business. (In March, it [announced](#) a deal to help build a theme park in Dubai.)

How's the strategy going so far? The stock has been a poor performer, in large measure because of Six Flags' significant debt load. "We've taken some hit on our attendance, but we're seeing traction," said Speed in an interview last Friday. In 2007, total attendance was 24.9 million, compared with 28.7 million in 2005. In the [first quarter](#), per capita guest spending was up 13 percent from the year before. Speed notes that in the past two years, per person spending has risen by about 17 percent. (This [presentation](#) has excellent data on Six Flags' recent past and future strategy.)

But Six Flags' business—and its short-term prospects—are almost entirely dependent on the ability of middle-class American consumers to spend during the summer months. Six Flags counts on July and August for about 55 percent of total revenues. Eighteen of its 20 parks are in the United States, with one each in Canada and Mexico. Today's target audience: "mass-market blue-collar, with average income \$50,000 per year, and probably split between teens and young adults on the one hand, and families on the other," said Speed. In this summer of rising inflation, soaring gas prices, and economic slackness, it would seem that the economic stars are aligning against Six Flags, just as they are against other businesses that rely exclusively on middle-class discretionary spending (casual restaurants, casinos, apparel companies).

On the other hand, argues Speed with some plausibility, maybe not. There's no question the business is cyclical and tethered to the economy at large. But just as high-end competitors, like Disney, do better in exuberant times, companies that offer lower-cost options to middle-class consumers might be expected to be more resilient during a down cycle. Six Flags is hoping that in this pinched climate it will attract more trading down business. Not people [trading down](#) from Provence, France, or the Hamptons, N.Y., to Six Flags, but families trading from a three-day, four-figure trip to Disney to a one-day, three-figure trip to Six Flags. Call it a daycation or a staycation. "There's no doubt

that when people at the lower end of the disposable income spectrum get to a point where they can't afford our product, we'll get impacted," said Speed. "The flip side of that is that people in the middle and upper ends of the spectrum aren't taking longer trips, and we can be a beneficiary of that."

A day at Six Flags for a family of four isn't necessarily cheap, but it's a bargain compared with Disney. A typical Six Flags visitor in 2007 spent \$36 for the day, including parking, the price of a ticket, and meals. So, the company says, a day at Six Flags for a family of four costs less than \$175. For many families this year, that may still be an affordable luxury. And Six Flags has responded to the rough economic environment with promotional pricing on one-day passes, letting adults in for the price of kids.

Six Flags doesn't give out forecasts on attendance, because too many unpredictable variables (like weather) come into play. But Speed said he suspects "we're going to see more families and more higher-disposable-income families this summer." For the definitive answer, investors will have to wait until this fall, when Six Flags reports its earnings for the summer. In the meantime, the curious can do informal checks on other potential indicators of a higher-end family presence at what had been a low-end teen paradise, like Priuses in the parking lots or arugula salads at Johnny Rocket's.

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## summer vacation

### The Great Barbecue Debate

Is charcoal bad for the planet?

By Brendan I. Koerner

Monday, June 23, 2008, at 2:07 PM ET

**Barbecue season is upon us, and I'm wondering about the greenest method for cooking up my legendary T-bones and sweet sausages. Should I stick with charcoal, which I've used for years, or should I finally make the switch to gas?**

If you're concerned solely with the carbon dioxide that wafts off your grill, then gas is the easy choice. But if you step back and consider the whole production cycle, then certain types of charcoal may well be the greener cooking fuel. The real trick, as is so often the case, is to select a product that's been created conscientiously—a tough assignment, given how little information manufacturers typically provide.

The indisputable part of the charcoal-vs.-gas conundrum is that the [briquettes](#) emit far more carbon dioxide per unit when they're burned. According to [Oak Ridge National Laboratory](#), obtaining a [British thermal unit's](#) worth of energy from charcoal produces three times the carbon emissions as a BTU from natural gas.

When taking into account the amount of fuel needed to run a barbecue for an hour, a gas grill puts out 5.6 pounds of carbon, while a grill using briquettes pumps 11 pounds of the stuff into the air.

But charcoal's defenders [point out](#) that because the substance is made from trees, it can actually be carbon neutral in the end. They contend that the harvested trees, if taken from well-managed timberlands, are presumably replanted. So, while the felled trees are emitting carbon on barbecues nationwide, the new trees are sucking that carbon right back up. Gas, on the other hand, can't be replenished—or at least not for the millions of years it takes for organic matter to break down into fossil fuels.

On top of that, briquettes are made primarily from wood waste, such as sawdust, which would simply be thrown away if it weren't turned into cooking fuel. So, it's not as if we're cutting down forests simply to make briquettes—they are, instead, a byproduct of the paper-manufacturing process. (Lump charcoal, made from whole pieces of wood, is more problematic from an environmental standpoint, since it may require that trees be chopped down expressly for the purpose of making barbecue fuel.)

The major problem with most briquettes, however, is their nonwood additives, such as coal, borax, and sodium nitrate. These are added to aid ignition and ensure slow burns yet end up causing appreciable emissions of smog-forming [particulate matter](#). Another downside to briquettes is the energy that must be expended to bake them into shape. Some charcoal manufacturers claim to capture the excess heat from this kilning process and use it to generate electricity for their factories. But it's unclear how much energy savings this provides or how much fossil fuel they use to create a bag of briquettes.

There are several briquettes that claim to be eco-friendly, most notably those from [Wicked Good Charcoal](#), which are certified as coming from sustainable timber operations by the [Forest Stewardship Council](#). Wicked Good's briquettes are also additive-free. For a truly green grilling session, though, the company recommends that you eschew lighter fluid, which contains [volatile organic compounds](#), in favor of a [chimney starter](#).

No matter how it's made, charcoal still presents a disposal issue once the grilling is done. While the ash from additive-free lump charcoal can be used occasionally by skilled gardeners, it's usually best to toss out charcoal remnants (especially those from mainstream, chemical-rich brands). Gas provides no such disposal quandary—it's either piped in from a home hookup or siphoned off from metal canisters that can be refilled again and again.

The Lantern personally prefers environmentally sound briquettes like those from Wicked Good but more for the taste than to protect the Earth. If you don't like that charred flavor, go ahead and use gas, but please do so responsibly—for example, don't leave the grill on for unnecessarily long stretches of time. Perhaps gas does a bit more long-term harm to the environment, in terms of increasing the amount of carbon in the atmosphere, but the effect is minuscule: Barbecue emissions account for 0.0003 percent of our nation's annual carbon footprint.

The situation is quite different in Africa, however, where a significant amount of cooking is still done over wood fires. According to a [2005 study](#) by researchers from the University of California-Berkeley and Harvard, the pollution from those fires causes 1.6 million premature deaths each year, primarily from respiratory diseases. If those fires ran off sustainably created charcoal or gas instead, millions of lives would be saved.

Is there an environmental quandary that's been keeping you up at night? Send it to [ask.the.lantern@gmail.com](mailto:ask.the.lantern@gmail.com), and check this space every Tuesday.

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## summer vacation

# The Pasta Salad Manifesto

Twelve steps to a better dish.

By Sara Dickerman

Monday, June 23, 2008, at 8:14 AM ET

Pasta salad is the wallflower of summer foods: It almost always makes it to the barbecue, but no one quite remembers who invited it. At its plainest—elbow noodles, mayonnaise, a careless scattering of celery and onions—it is the embodiment of the midcentury American fear of flavor. Perhaps even worse is the "new school" pasta salad, which emerged in the '80s. It looks good: It's made with multicolored tortellini or fusilli in a thin, sweet vinaigrette and then gussied up with colorful canned olives and raw peppers or broccoli—garnishes that are the food equivalent of moussed bangs and shiny pouf skirts that can't make up for a fundamental lack of charisma. But pasta salad doesn't have to be mediocre. Anyone who has stood fridgeside nibbling at last night's lasagna knows that cold pasta has a certain appeal—it's just a question of getting the flavors right. At its best, pasta salad can get out there and party with the stars of the cookout: the steaks and salmon, the grilled corn and the *caprese* salads.

Pasta salad's problems stem, in part, from a lack of respect. When it comes to pasta, Americans look to Italy for approbation, but cold noodles are not particularly popular there. Food corporations like [Kraft](#) churn out [pasta-salad mixes](#) that seem to

be little more than cross-marketing gambits for their processed meat brands. Although fans of [Hawaiian plate lunches](#) might disagree with me, macaroni salad isn't an American populist classic like barbecued ribs or even coleslaw. Nor is it considered fancy enough for the aspiring backyard gourmand. On this season's *Top Chef*, one of the contestants, [Zoi Antonitsas](#), expressed disgust when called upon to make pasta salad for a neighborhood block party. (The judges, in turn, were visibly disgusted by her efforts).

Personally, however, I've had a lot of luck with pasta salads, perhaps because I've worked for a few high-end delis in my day. There's a diverse tradition of cold noodle dishes from Asia, including Japanese soba with soy dipping sauce, cold and pickly Korean noodle soups, and Sichuan-style [dan dan noodles](#). Working in a broadly Cal-Mediterranean style, the key to a good cold noodle dish is attentive seasoning, both with salt and with more aromatic ingredients like fresh herbs and scallions. It's time to rescue the dish from its shrinking-violet status. Here, then, is my pasta salad manifesto, designed to make the world a better place for cold noodles.

1. Start with dried (not fresh) noodles, prepared al dente. (If cooking in an Asian vein, then soba or cellophane noodles work well.) Cool them off quickly by rinsing them in cold water in a colander. Or, my preferred method: After draining, toss the noodles with olive oil, lay them in a single layer on a sheet pan, and cool them in the fridge.
2. The main elements of a pasta salad should be oily in character, not vinagery. This is essential—most deli pasta salads have a pinched quality that comes from a bland vinaigrette. Balsamic vinegar is a double disaster since it darkens the noodles, resulting in an unappealing color. It's far better to use fragrant olive oil plus other rich ingredients like smoked salmon or tuna in oil, oil-cured olives, or homemade pesto. Instead of vinegar, lemon juice is all you need to offset these lush flavors. (Butter, by the way, is not a good fat in pasta salads since it will congeal when chilled.)
3. Avoid tortellini. Store-bought tortellini are tragic enough when served warm, but are downright foul served cold and congealed with little nuggets of parmesan-addled sausage to gnaw on.
4. Though it is a beloved standard, I've found that elbow macaroni is a loser, too—it has a tendency to get floppy. Better to choose a dried noodle in a smallish shape, like orzo, penne, orchiette, farfalle, or fusilli.
5. Mayonnaise is not a good idea. I don't think I need to say much about the standard jarred-mayonnaise-and-elbow-noodle pasta salad—it serves only to make the other dishes at a cookout look good. But even homemade mayonnaise—delicious in other summer salads—is not ideal. The noodles themselves don't have enough character to offset the creamily diffuse quality

of the mayonnaise. Someone might be able to convince me that I'm wrong with a sufficiently interesting mayonnaise like, say, homemade [green goddess dressing](#). But something that lovely is better expended on a truly indulgent dish like lobster salad.

6. Ranch dressing is a mayonnaise substitute and should therefore not be used, either.
7. Too many potluck chefs go for a "festive" look with lots of crudités like red peppers, broccoli, and carrot shreds, which add very little other than color. Vegetables are great in pasta salads, but on the whole, they should be cooked. (Possible exceptions: finely diced red onions, slivered scallions, and cherry tomatoes.) Before chopping them up and tossing them in your salad, roast your red peppers, grill your broccchio and your asparagus, and at least blanch your broccoli.
8. Tender herbs like chives, dill, mint, basil, cilantro, and Italian parsley are the magic ingredients in a good pasta salad—use a little more than you think you need, and add them close to serving time. Be very, very, careful with more aggressive herbs like oregano or rosemary, and never use dried herbs.
9. Another secret ingredient in pasta salads: a light, tangy cheese like feta, manouri, fresh chèvre, or ricotta salata, which give an acidic balance to the salad without the pucker of vinegar. Parmesan is OK, but it doesn't add a creamy element as the others do and might be just a hair too serious for the occasion.
10. Pasta salads need compelling ingredients and textures, but not too many—three or four "interesting" ingredients should do it. Think smoked salmon, finely diced red onions, and chives; or grilled broccoli raab, slivered black olives, and hardboiled egg; or grilled mushrooms, ricotta salata, and chopped parsley. Roasted red peppers, basil, grilled lamb, and feta work well together, too.
11. There is a golden moment when pasta salad has sat long enough for flavors to meld, but not so long that the whole affair gets soggy. I can't tell you exactly how long this takes, but it is on the order of 3-4 hours. Stir in fresh herbs and any crunchy bits like pine nuts or fried capers shortly before serving.
12. Don't forget to taste your creation one more time before putting it on the picnic table. You'll probably need to use more salt than you think (I like kosher salt for this kind of seasoning), so keep tasting and seasoning as you go along.

At most summer barbecues, it's a pleasant surprise if the guests manage to choke down half the pasta salad. But don't let this fact discourage you from putting my advice into practice. When you do pull together a delicious batch, you'll have the double blessing of good flavor and low expectations. And once you've taken on pasta salad, you'll be prepared for other, equally

challenging picnic makeovers—yeah, I'm looking at you, potato salad.

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## summer vacation

### We're Going on a Treasure Hunt

How to make a summertime museum trip with kids worthwhile.

By Emily Bazelon

Monday, June 23, 2008, at 8:13 AM ET

In the middle of a recent hot Sunday, I found myself on the National Mall in Washington, D.C., with two tired children and a divided agenda. On one side was my ambitious plan to inject my kids with culture, first by hearing Russian-born singer [Regina Spektor](#) and then by trekking over to the FDR Memorial and the Lincoln Memorial. On the other side was my 8-year-old son, Eli, sinking into the dusty grass beside the path we were supposed to be walking on. "I want to go swimming!" issued forth as he collapsed, for the second time in two minutes. His younger brother, Simon, looked down at him pityingly and took up the chant.

I am actually not much of a museum/memorial/high-class-performance-goer. (OK, Spektor doesn't really qualify for that last category, but she's not a puppet show.) Exhibits tend to make me feel like I'm falling asleep on my feet; all the earnest appreciating is just too taxing. So, my kids' weekends aren't often punctuated with good-for-them activities. In our household, it's all catch-as-catch-can. Our kids don't play instruments or casually pick up sketch pads. They kick and throw balls. But once in a while, I am shamed into action. Parents aren't supposed to always opt for the crowd-pleasing lowest common denominator; we are supposed to expose kids to history, art, music—the 2008 version of finishing school.

On this particular Sunday, I was also feeling the prick of inadvertent peer pressure: a friend's offhand comment that her kids had been to the FDR Memorial more times than she could count. Whereas mine had been there never. Even though they are little American-history sponges who know all about the [Battle of Yorktown](#) (they tell me it has something to do with the Revolutionary War). And so I was determined to make them take a hit of music, for variety's sake, and then march around the memorials, where they'd drink up worthy quotations and iconic images.

But here's the thing about kids, summer, and culture: Know thy timing and their limits, and plan accordingly. The beach and the pool require only sun and sunscreen to be a good bet. Highbrow outings are more delicate creatures. My three-event program was utter overkill—too much thinking and walking. And I'd chosen

the wrong moment: early summer, when the pool still seems novel and the mosquitoes haven't yet had the chance to remind us that Washington, D.C., was built on a swamp.

Just as I was insisting that Eli rise from the dust to prove his (or, really, my) fortitude, Paul, my husband, appeared out of the car-parking distance and performed triage. FDR Memorial, yes. Regina and Abe, no. Also, no walking; the reason we'd never worshipped at the altar of FDR is that it's way off to the side of the Mall somewhere. We would take a cab, with air conditioning, in which the boys could suck away at their water bottles. They did. And they emerged rejuvenated, only to complain that the [first statue of FDR](#) was "weird, because he's not looking at anything." Paul segued gamely into the controversy over whether to show FDR in a wheelchair. "Why do you think he didn't want to be photographed that way?" he asked after a bit of suggestive explanation. "I dunno," Eli said, as Simon tried to climb onto the president's lap and then moved over to petting his Toto-like dog.

Still, when I asked the kids a few weeks later what they remembered about the memorial, they came up with, "The Depression made people poor" and their inevitable bid to pose for a picture in the back of the [bread line](#). I call that success. We did also make it to the pool that afternoon, which either kept them happy enough to retain those facts or just kept them happy.

I notice now that the "For Kids" link on the FDR Memorial Web site [isn't working](#), which seems fitting, because the monument isn't really designed with children in mind. This is OK, since it's outdoors and has huge blocks of stone and waterfalls as well as that line of beaten-down men that somehow everyone must join. But most of the time, what makes a museum trip work even when you could go to the beach is some form of a treasure hunt. I'm not talking the crown jewels. I mean something, pretty much anything, to look for.

My colleague John Dickerson reminds me that the [recent Edward Hopper](#) exhibit at the National Gallery did this well, instructing visitors to look for things in the paintings and then explaining their significance. A twofer. Since the rest of us have already missed that exhibit, I'll also suggest the [James Joyce walk](#) in Dublin, and some other *Slate* family favorites: the Egypt exhibit and [family offerings](#) at the [Museum of Fine Arts in Boston](#), the [mummification lesson](#) at the San Diego Museum of Man, the treasure hunt at the [New Mexico History Museum](#) in Santa Fe, and the workshops at the [Nelson-Atkins Museum of Art](#) in Kansas City, Mo. Also, for younger kids especially: the [Hands-On House at the Children's Museum](#) in Lancaster, Pa., and the [Eric Carle Museum of Picture Book Art](#) in Amherst, Mass. The [Hirshhorn Museum and Sculpture Garden](#) gives kids a little shape and tells them to find it around the museum—in a painting, in the architecture, in the bathroom, wherever.

Here is a [Web site](#) devoted to formalizing the treasure hunt concept, and I also love the idea of a tour of the Met based on retracing the steps of the protagonists in *The Mixed-Up Files of Mrs. Basil E. Frankweiler*, which *Slate* intern Uzoamaka Maduka told me about. And columnist Anne Applebaum gets a prize, I think, for organizing her own hunts for her kids: "We go into the gift shop, everybody buys a couple of postcards, and then they have to find the pictures/sculptures," she writes. You need a good gift shop to make this work; in addition to Washington, D.C.'s National Gallery of Art, Anne recommends the [Pergamon Museum](#) in Berlin.

Hunts also work when they're humble. Last August (late summer, better timing), Eli and I whiled away an afternoon finding pinwheels, footballs, pine cones, and sleds in the quilts hung at the [Billings Farm & Museum](#) in Woodstock, Vt. The nice elderly women who run the show handed out those stubby pencils plus a list of objects to find, and off we went.

I've got one final piece of museum-going advice: Take only one child at a time. This is hard to pull off, but—for me at least—it's worth the effort because my kids are never more charming than when I have them one-on-one. Plus, it allows me to cater directly to each of them: Simon doesn't end up at an exhibit at which it matters that he can't read, and Eli isn't asked to find something—anything—to do at the [Please Touch Museum](#) one more time. If you need to span an age gap, go to the beach or the lake or the pool. Go there anyway, on some of those sunny days off. But if you're craving air conditioning, and you've got one kid to entertain, the right museum can be like a long, cool drink for you both. Last week, after school ended and before camp began, my mother took Simon to "[Real Pirates: The Untold Story of the Whydah](#)" at the Franklin Institute in Philadelphia. Input: one kid, a topic he's mad for, and a well-designed show. Output: excursion heaven. Simon didn't even want to go swimming afterward. He was too busy talking about the sights he'd seen.

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## technology

### Victoria's Circuit

Harnessing the untapped power of breast motion.

By Adrienne So

Monday, June 23, 2008, at 4:10 PM ET

As a woman who loves sports, I've always found the concept of breasts bothersome. If all goes according to plan, they will fulfill their intended function for about three of the 70 years that I have them. The rest of the time, they alternate between getting in my way and embarrassing me. They are a favorite target of Frisbees and soccer balls. Finding sports bras is a chore. Shirts don't fit.

And these are just the physical discomforts. I am still tortured by the memory of three cousins standing in a circle around me, at the impressionable age of 10, mocking my early development and telling me that I was going to be the Asian Dolly Parton. Fortunately, that never happened, but the possibility haunted my late childhood.

Then one day recently I had an idea. As I rode public transportation to the office, my messenger bag slung uncomfortably across my chest, I thought, "Why not put the girls to work?" Human-powered devices are showing up everywhere, from Rotterdam's [sustainable dance floor](#) to [human-powered](#) gyms in Hong Kong. The time seemed perfect—perhaps even overdue!—for a bra that could harness the untapped power of breast motion.

The idea of an energy-generating bra isn't as crazy as it might sound. A company called Triumph International Japan recently unveiled a [solar-powered bra](#) that supposedly will generate enough energy to power an iPod. But I live in foggy San Francisco and prefer not to walk around in my underwear in public. Could someone design an iPod-powering bra for me?

I decided to run the question past some scientists. It turns out that the physics of breast motion have been studied closely for the last two decades by a gamut of researchers, most of them women. LaJean Lawson, a former professor of exercise science at Oregon State University, has studied breast motion since 1985 and now works as a consultant for companies like Nike to develop better sports bra designs. Lawson was enthusiastic about my idea but warned it would be tricky to pull off. You would need the right breast size and the right material, she explained, and the bra itself would have to be cleverly designed. "It's just a matter of finding the sweet spot, between reducing motion to the point where it's comfortable but still allowing enough motion to power your iPod," she said.

Lawson explained that breasts move on three different axes: from side to side, front to back, and up and down. The most motion is generated on the vertical axis. Naturally, the bigger the breast, the more momentum it generates. "Let's face it—if you're a double-A marathoner, you're probably not going to get that iPod up and running," Lawson said. Measurements compiled by Lawson and her colleagues show that a D-cup in a low-support bra can travel as much as 35 inches up and down (35 inches!) during exercise, while a B-cup in a high-support bra barely moves an inch.

Fabric and design are also important factors in distance traveled. Elastic fabric allows the breast to move more. Choosing between an encapsulation design, in which the cups are separated, or a compression design, where they are hugged close to the body, can also affect breast motion. An encapsulation design further reduces motion because two smaller masses are easier to control than one large one. "Also, if you have a really high neckline, the

breasts won't fly up," Lawson said. So I was in the market for an elastic, compression-style bra with a low neckline. Sexy!

Of course, even a bra that perfectly maximized motion (without sacrificing support and comfort) would be useful to me only if there were a way to turn that motion into energy. For a primer on how to do that, I turned to Professor Zhong Lin Wang of Georgia Tech, who is currently working to develop fabric made from nanowires that will capture energy from motion. Wang's wires are about 1/1,000<sup>th</sup> the width of a human hair. When woven together in a fabric, these nanowires rub up against one another and convert the mechanical energy from the friction into an electric charge. According to Wang, the fabric is cheap to produce and surprisingly efficient; his team hopes to use it to create energy-generating T-shirts and other articles of clothing. A square meter of fiber produces about 80 milliwatts of power, which is enough to run a small device like a cell phone. Wang expects to have a shirt available for purchase within five years.

Many bra patterns call for about a meter of fabric, which would probably mean that a regular bra would have enough energy to power an iPod. But the fabric could also be layered, doubling or even tripling the amount of energy produced. I asked Wang whether his fabric could be used to make a bra. "Bras would be ideal," he said. "There is a lot of friction and movement in that general area. And the fabric would be thick."

"So you can generate enough energy to power an iPod?" I asked.

"Definitely," Wang said.

I asked Wang if this bra would be machine-washable.

"You don't need to wash a bra!" he said.

I disagreed. Wang said his team has been working on the washing problem for a while. Nanowire technology can generate electricity only if the space between the wires is maintained, and that space might be affected if the fabric were agitated by washing. One solution would be to layer the fabric so that the parts that directly touch the skin could be washed, leaving the nanowires in between untouched.

There was one more approach I wanted to investigate, one that might supplement Wang's technology. Was there a way to capture the energy of the bra strap, which bears the pressure of holding up the breast mass? To answer this question, I called Larry Rome, a biology professor at the University of Pennsylvania and the creator of [Lightning Packs](#). The Lightning Pack, intended for long-haul hikers and for the military, generates kinetic energy from the vertical displacement of a heavy backpack. Would it be possible to use the kinetic energy generated from a breast's vertical displacement?

"The backpacks we've built are intended to carry between 40 to 80 pounds," Rome said.

I cited the D-cup numbers given to me by Lawson. "Well, that's not normal, is it?" Rome asked.

I said that it probably wasn't. Yet after a moment's thought, Rome came up with an idea. The Lightning Pack uses a rotary generator, which converts motion into energy by winding a rotor as the backpack moves up and down. Rotary generators produce up to 7 watts of energy, enough to power a compact fluorescent light bulb. Rome said it might be possible to insert a linear generator into the bra. A linear generator is a lot smaller and creates energy by moving a piston up and down. Rome conceded that with the right body type, this just might work, though he warned it "probably wouldn't be very comfortable."

Still, if someone were to engineer a kinetically powered bra, even one that isn't quite as comfortable as the old-fashioned kind, I'd be intrigued—and I might just start looking at my breasts in a different light. Maybe it's not very sexy to see breasts as a pair of batteries, but oil prices are so high, people are jogging to work. It may be time for breasts to start pulling their own weight.

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## television

### The Apprentice

My day at reality-TV school.

By Troy Patterson

Friday, June 27, 2008, at 12:11 PM ET

One of the great stock scenes of 20<sup>th</sup>-century child-rearing—a cliché since, let's say, the first season of *American Bandstand*—sees Mom lecturing Junior that it's a nice summer day outside and that it's such a shame he's indoors watching television. But these are different times, and a new breed of American mother walks among us, sometimes even upright. She is the Reality-TV Stage Mom, and some nice summer day very soon, I imagine she'll be able to drop off Junior at a place very much like the [New York Reality TV School](#) so that he can go indoors and prepare to be watched on television. Imagine the parting scene at curbsides: her firm phrases of encouragement, the moist peck planted on the center of the lad's tender forehead, the final words warmly hectoring Junior to bear in mind all that he'd learned in those many hours of studying Puck on the third season of *The Real World*, frame by gnarly frame.

The NYRTVS is the brainchild of Robert Galinsky, a 43-year-old acting coach and improv comedian. Of his two IMDb acting credits, the more amusing to read is "Fanatic Hassidic Jew" in something called [Brooklyn Babylon](#) (2001). Galinsky claims to

have coached 50 Cent for a recent audition. I must talk about this with Fiddy.

According to the crude text on the NYRTVS Web site, the school's mission is to pioneer "the development of reality TV training in order for professionals and beginners to take their place as exciting, confident and vibrant real people/entertainers on any reality TV show." It seems gratuitous to follow that quote with a "sic," so I will merely add that the school boasts of having "worked with personalities" who have debased themselves on shows including *The Bachelor*, *Big Brother*, and *The Apprentice*. Last Saturday in Manhattan, about 20 aspiring followers in those footsteps—real people and some entertainers, too—participated in Galinsky's one-day intensive course. It cost \$139, with a \$20 discount for early registration. It amounted to a three-hour lesson in cultivating narcissism—being one's self as noisily as possible. It was not quite as imbecilic as I'd hoped.

We entered a room at a Chelsea theater workshop, murmured among ourselves over up-tempo pop songs, and, just after noon, formed a circle. Two cameramen circled the circle, encouraging our camera consciousness and stroking our vanity, and the Panopticon element was heightened by the presence of a handful of journalists, including a woman from Swedish radio with a microphone in her hand and pants low on her hips. We met Galinsky and the other instructors, Robert Russell and Jorge Bendersky. Russell works on the casting side of the business and has spent the past 27 years helping to assemble all the game shows, reality programs, and dating trash that you love to hate yourself for watching. His head was shaved bare, and his chin was sternly goateed. "I feed off personality for a living," Russell said. "I'm like a vulture that way." He said this at the end of day, I should note, during a well-padded Q-and-A session that Galinsky insisted on calling a "press conference."

Jorge, meanwhile, is a standout contestant on the current season of *Groomer Has It*, which airs on Animal Planet and is to poodle-appropriate barber scissors as *Project Runway* is to pinking shears. His T-shirt boasted that he hearted Argentina, and his accent matched. "I'm like the love child of Fran Drescher and Ricky Ricardo," Jorge passionately lisped, continuing, "I was born without an indoor voice." Later, in a private conversation, he would underline the importance of developing quality sound bites.

And the pupils? We were mostly in our 30s and 40s—struggling actors, aspiring reality-show hosts, and not a few of those women who, having correctly been told all their lives that they're pretty, take that praise as a license to spend perfectly good money on mediocre head shots. There was a woman who introduced herself as a recovering alcoholic, and we applauded her years of sobriety. Then she explained that she suffers from alcohol-related brain damage, and we didn't know what to say. She, of course, showed a lot of potential. There was a performer named Queen Esther, but she bailed early, not long after the

introductory stretching exercise—an acting-class staple—and the enforced three-minute dance party to which it inexorably led. In parting, Queen Esther explained that she just won a singing contest and was headed uptown to perform at Jazzmobile's Summerfest. We wished her "good luck" when we should have said, "Break a leg." If Galinsky noticed this faux pas, he let it pass, preferring to note that Her Majesty had, in heralding this appearance, increased her "IMI"—i.e., her "Individual Marketing Index."

Galinsky is fond of acronyms and such. For instance, our only handout listed his "8 Commandments" of reality TV—"with an all new 9<sup>th</sup> Bonus Commandment!"—and its fifth item was, "Thou Shall Groom Hairy PITTs," which stands for "personal issues to tease." The commandment went on: "As a reality star I will always groom my PITTs and allow them to be accessible—they are relationship, family, work related." What he's struggling to say here is that in an audition tape and on a reality show itself, it's crucial to develop themes that audiences can hold onto. Like much of Galinsky's advice, this would seem obvious to any reality-TV glutton who exhibits the slightest traces of thoughtfulness. The brilliance of Galinsky's business plan is that only a few people have been able to watch that much television without losing their minds, and most of them are too busy writing for [Television Without Pity](#) to start up a competing class. He's alone in giving reality-TV wannabes the "emotional preparation" to be themselves.

After cruising hastily through the Commandments ("2. Thou Shall Never Say 'I AM AN ACTOR' ... [E]verything I do must be candid, genuine and not an act"), we participated in an exercise called On the Grill With Phil. Phil—a Galinsky associate wearing plaid pants, a trim mustache, and a cartoonishly abrasive personality—recited text from actual want ads and Craigslist postings announcing reality-show auditions, and we jumped before a camera to blare out our qualifications for the respective shows. One of only two married students, I stepped forward in response to a call for ABC's *Wife Swap*; being self-conscious in the wrong way, I was lousy. The strongest real person there was a male extrovert from the outer boroughs, a guy boasting an easygoing smarminess and a résumé featuring an appearance on NBC's *Deal or No Deal* and a related Web series. During a break, he told me, sotto voce, that he's an actor and feels himself most comfortable with "sitcoms, commercials, hosting, and reality." He wore a horribly flamboyant jacket modeled on Old Glory, a garment that simultaneously desecrated the flag and defiled the retina. The casting expert complimented him highly on its assertiveness.

The afternoon began winding down with a "networking" mixer. It might have been easier to network had the food consisted of hors d'oeuvres, say, as opposed to Greek salad, but we managed. A fellow student shared that she and her husband co-own a film-production company, and that she was developing a movie about reality TV, and that the casting guy had been particularly

inspiring in his blunt viciousness. The brain-damaged lady, sprightly still, distributed her press kit. Galinsky, in closing, said he hoped that he'd given us some tools with which we could express our core selves with "confidence and purity": "That's pretty much a good recipe for life." Indeed, the New York Reality TV School encourages its students to ask, "Who am I?"—but if you've enrolled, you already know the answer: I'm a star.

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## the best policy

### The Department of Forgetting

How an obscure FBI rule is ensuring the destruction of irreplaceable historical records.

By Alex Heard

Tuesday, June 24, 2008, at 12:47 PM ET

I got bad news from the FBI a few months ago. A file I'd requested under the Freedom of Information Act wasn't going to be available. Ever.

And not for one of the reasons I already knew to expect—that the material was classified, that the file concerned a living person, or that no file existed to begin with. Judging by the FBI's final response letter, there might have been a file on my subject, a long-deceased Mississippi lawyer name John R. Poole. But if there was, it got shredded.

"Records which may be responsive to your ... request were destroyed on July 01, 1995," the letter said. "The FBI Records Retention Plan and Disposition Schedules have been approved by the United States District Court for the District of Columbia and are monitored by knowledgeable representatives of the NARA."

NARA is the National Archives and Records Administration, the agency that keeps track of everything from the Declaration of Independence to Lee Harvey Oswald's [rifle](#). The letter conjured up images of my file getting scrutinized by furrow-browed NARA scholars who decided that, alas, John R. Poole was not of sufficient historical interest to keep around.

At the time, I was new to the weird science of FOIA requesting, so I didn't know the FBI was allowed to destroy files routinely. Dismayed, I looked into how the Records Retention Plan works, with help from several generous FOIA experts. What they described sounded more like a Records Destruction Plan, since it allows the FBI to discard roughly 80 percent of its files at any given time. The FBI would have you believe the plan is a best-of-all-possible-worlds compromise that preserves the essential and discards only the unworthy. Don't buy it. Though the NARA

experts who helped create the plan tried to come up with a fair, workable system, the bottom line is that the FBI gets to trash mountains of historical source material without adequate oversight. And there is nothing the public—which owns the records, after all—can do to stop it.

Like many people who make FOIA requests, I'm probably hypersensitive to the potential loss of any one file among millions, but that's how it is when you're researching something: The people on your punch list become all-important. I'm writing a book about the 1951 execution of Willie McGee, an African-American man from Laurel, Miss., who got the death penalty in 1945 for allegedly raping a white housewife from the same town. For the past two years, I've been working to find out anything I can about McGee, Poole, and dozens of other people involved in the case.

McGee's legal saga was little-noticed at first, but it became so famous that, toward the end, President Harry Truman was getting harangued by people from all over the world who wanted him to grant McGee a pardon—some because they thought he was innocent, some because they thought the sentence was too harsh. Given the time, place, and nature of the offense, the outcome of McGee's first trial in December 1945 was almost pre-ordained. It lasted a day, and an all-white jury found him guilty after deliberating for 2½ minutes.

During appeals and two retrials over the next five years, the [Civil Rights Congress](#), a Communist-linked activist group based in New York, threw tremendous energy into making the case a cause. McGee's appeals lawyer was a young, energetic Bella Abzug. Among the prominent figures who spoke out were Jessica Mitford, Paul Robeson, Albert Einstein, and Josephine Baker.

The FBI took an interest because the case involved lefties. I already have its thick file labeled "Willie McGee," and I won't have much problem gathering info about the famous people—[Einstein's file](#) is so popular that the FBI has put it online. But the smaller fries like Poole are at risk, and to me they're just as important. Poole was a white lawyer from Mississippi who represented McGee during his third circuit-court trial, and though he wasn't a Communist, he got Red-baited by fellow lawyers on the other side of the case. This led to his getting disbarred, at the end of a murky process, the basic facts of which are hard to pin down. I'd hoped an FBI file on him might contain useful information.

Which brings us back to the Records Retention Plan. The reason the Poole file might not exist anymore dates back to the early days of FOIA, which was enacted by Congress in 1966. For the first several years, the FBI was largely successful in fending off FOIA requests, which is exactly how J. Edgar Hoover wanted it. "One precept of Hoover's was that these are *our* files, they're nobody else's, and nobody else can have them," says [Scott](#)

[Hodes](#), a Washington, D.C.-based lawyer who ran the FBI's FOIA litigation unit from 1998 to 2002.

But Congress changed the playing field in the wake of Watergate, making it easier for researchers to get their hands on FBI material. According to Ivan Greenberg, an independent researcher who is writing a book about the FBI and civil liberties called *Trouble Times*, the new rules led the FBI to conduct a massive internal purging of files, among them more than 330,000 pages from the FBI's file on "Sex Deviates," which tracked [homosexuals in government](#).

That phase of house-cleaning came to a halt in 1980, thanks to a case brought by the American Friends Service Committee and a host of plaintiffs, including Daniel Ellsberg and Jessica Mitford. The suit was prompted in part by unchecked file dumping at FBI field offices in cities like New York, Atlanta, Los Angeles, and elsewhere. The plaintiffs won, and Judge Harold H. Greene ordered the FBI and NARA to conduct an inventory and come up with a plan about what would be kept and destroyed.

A 17-member body dove into that task in 1981. According to a summary of the appraisal process written by archivist James Gregory Bradsher, they were confronted with files that took up 500,000 cubic feet of shelf space in 70 locations. (To put that in perspective, the volume of the Washington Monument is just over 1 million cubic feet, so the files would have filled it about halfway.) Obviously, the archivists didn't sit down and study every word. The process relied on a method developed in the late '70s during a review of 35,000 cubic feet of records from the Massachusetts Superior Court. It involved a systematic sampling designed to answer a macro-question: What percentage of the FBI's total holdings seemed to have genuine historic value?

The team reviewed roughly 20,000 files from FBI headquarters and seven major field offices—with FBI personnel on hand to pull files individually and hand them over—scribbling information about the contents on a data-collection sheet that asked some 75 questions. How thick was the file? ("Fat file theory," a rather obvious guidepost used in the Massachusetts review, holds that if there's a lot of stuff inside a folder, it might be important.) What were the results of the case? Whom or what was it about? What forms of intelligence-gathering were used?

Using this data, files were rated according to a scale of perceived research potential, with four main values applied: *no*, *low*, *medium*, and *high*. By May of 1981, a review of 5,832 headquarters files yielded a breakdown that went like so: 71 percent of files were deemed to have no value; 22 percent had low; 5 percent had medium; and less than 1 percent had high. Trudy Huskamp Peterson, who worked on that review and later served as the acting archivist of the United States during the Clinton administration, told me the group looked at samples of records from each of the 214 filing classifications used by the FBI. Then as now, the Bureau arranged its material in large

categories that are each assigned a [number](#). For example, 44 is Civil Rights, 76 is Escaped Federal Prisoner, and 100 is Domestic Security, which covers subversive activities on the left and right. New categories have been added since the big review in the '80s, covering crimes like Tampering with Consumer Products (251) and Weapons of Mass Destruction (280). Some but not all of these categories have subsequently been sampled and analyzed by NARA.

For each classification, the 1981 assessment group came up with a rule for the FBI, describing in big-picture terms what they had to keep and what they could consider for destruction, a process that led to a final retention rate of about 20 percent. Civil Rights came through with broad protection. For that large category—there was a total of 234,379 cases in the headquarters and field offices combined—everything created prior to 1977 was marked "permanent," thanks to the assumed historical value of this subject. Presumably, John Poole wasn't a class 44 Civil Rights case, or his file would not be sleeping with the banana peels. My initial guess—the FBI's response didn't say—was that he was filed under 100, Domestic Security. There were more cases created in the Domestic Security category than in Civil Rights—1,790,191 as of 1981. The destruction guidelines on this class are looser, however, and if Poole was in there, he didn't make the cut.

The system's fundamentals make sense, I guess—very complicated sense—but to me the disturbing part comes at the end of the line. At some point 25 years after a case closes, a file that isn't marked "permanent" gets pulled and looked at by one or two people inside the FBI. There are no "knowledgeable representatives of the NARA" monitoring this crucial moment. If it's decided internally that the file isn't important, it's gone.

Michael Ravnitzky, an FOIA researcher based in the Washington, D.C., area, is no fan of the Records Retention Plan and likens it to an open-ended manual for strip-mining a priceless public record. "The FBI got a list of exceptional files given to them by historians, and they said, 'We'll keep that,' " he says. "We'll keep large files. Smaller files, we'll keep a sampling. Everything else gets tossed. That's what the plan is." Based on documents Ivan Greenberg obtained from the FBI, he estimates that 250 million pages were destroyed between 1986 and 1995.

But isn't the FBI destroying only junk? I doubt it. Ernie Lazar, an independent researcher in California whose particular interest is in far-right groups, sent me a list of "destroyed" responses he's received over the years from FBI headquarters and field offices. There are dozens. We'll never know if they were significant—they don't exist anymore—but they sure look interesting to me. In 1994, for example, the Baltimore field office destroyed a file called "Arab Participation and Influence of Hate Literature in the United States." Also destroyed in the '90s or later: files on "race riots" from Birmingham, Ala.; a Dallas file on the John Birch

Society; and a headquarters file on the political activities of actor Walter Brennan.

When I moaned about this to Peterson, she acknowledged that the system wasn't perfect, but she said there was no other choice because of the volume. "It is a mammoth quantity of material," she said, "and to save it all is just impossible." An FBI spokesman told me that there are now 56 linear miles of files scattered in headquarters and field offices. That's approximately 300,000 cubic feet. I have no idea how much new material has been added since '81—the FBI wouldn't tell me—but there's obviously been a huge net loss since then.

Maybe the volume is too much to manage, but I have to wonder if it might be time to put on the brakes and reassess. Even if the Records Retention Plan team had scrutinized every page, I wouldn't trust their ability to decide now what might be significant to someone 100 years down the road. Also, the rate of handoff from FBI to NARA seems awfully slow. At this point, NARA has been sent only about 13,100 cubic feet of records for permanent archiving. What do they have? Good luck figuring that out. There's no general index to the NARA holdings that lists this information using comprehensible subject headings like "John Birch Society" or "Judge Crater." You sort of have to know they have it before asking for it, which you find out by sending them or the FBI a FOIA request.

My final gripe: The volume of the FBI files isn't *that* mind-boggling. NARA has a much bigger load in the attic—29,019,647 cubic feet of material in its main D.C.-area facilities, regional hubs, and Presidential libraries—and NARA manages to preserve it without institutional meltdown. That's *60 times* as much as the FBI files targeted for destruction. The half-million cubic feet of FBI documents from 1981 would have fit into about a dozen [McMansions](#), packed floor to ceiling. The stuff was already cataloged and cross-referenced, so a simpler strategy would have been to keep it all together. The Feds have no shortage of storage space. *Time* published a report in 2006 on the nationwide glut of empty government buildings that require expensive upkeep, including Chicago's Old Main Post Office (2.5 million square feet of floor space) and the General Services Administration (376 "vacant and underused" buildings, courthouses, labs, and warehouses). To protect this priceless collection of FBI material, all it would have taken was shelves, guards, and about 20,000 smoke alarms.

Meanwhile, there's a new glimmer of hope on the John Poole front. I was able to get an interview with an FBI official who said the destroyed Poole file was listed under the classification that covers interstate transport of stolen vehicles. That's probably not my John Poole, but attempts to confirm it either way have met with foot-dragging. Separately, I sent a Poole request to the Jackson, Miss., field office and was told that material "which may pertain to your subject" has been released to the big National Archives storage facility in College Park, Md.

But when I contacted College Park, I was surprised to find out that this material, fully freed up by the FBI, can be obtained only with a separate FOIA request to NARA. I'll do that next, and I'll let you know whether I get the information or just decide to lie down and go nuts—whichever comes first.

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## the breakfast table

### The Supreme Court Breakfast Table

Was it ever *Miller* time?

By Walter Dellinger, Jack Goldsmith, Dahlia Lithwick, and Cliff Sloan

Thursday, June 26, 2008, at 3:49 PM ET

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**From:** Dahlia Lithwick

**To:** Walter Dellinger, Jack Goldsmith, and Cliff Sloan

**Subject:** Come Together

**Posted Saturday, June 21, 2008, at 11:31 AM ET**

Dear Walter, Jack, and Cliff:

Waaaack! It's June??

I mean, um, *welcome* to *Slate's* [seventh annual](#) Supreme Court Breakfast Table, celebrating the final week of the court's 2007 term. Walter—if I may brag on your behalf—your [final entry](#) in last year's exchange snagged an "[Exemplary Legal Writing](#)" award from the *Green Bag* this year. (No pressure.) Jack and Cliff, welcome! Jack, [your book](#) won the same award. (No pressure.)

We are so excited to have you with us for breakfast this year, Jack and Cliff. There may not be quite as many thrills and spills as we saw at the end of last term, but there are several important cases due to come down in the next few days—virtually all of which Walter appears to have argued. Perhaps the most important case of the term, *Boumediene v. Bush*, has already been decided, finding that the right of habeas corpus was not properly stripped from the detainees at Guantanamo Bay. I [suggested last week](#) that the language of the dissenters—who were weirdly confused about whether the courts or the detainees are more worthy of contempt—was both overheated and dangerous. This weekend Justice Antonin Scalia appeared on [Charlie Rose](#) and essentially restated his dissent: "Something like 30 of the people that the military have released from Guantanamo have returned to the battlefield and killed Americans and others. Do you expect that number to be reduced when judges are making the decision who know less than the military?" He reiterated that "the result of that answer is more

people, more Americans will be killed. I think that's almost for sure."

Is he right, Jack? And if he is, should that be the end of the constitutional discussion? Does it matter at all that most of the remaining detainees at Gitmo are probably not the rabid, frothing killers he describes? Or that some may have become rabid, frothing killers as a result of their treatment at Guantanamo?

One of the things I'd like to hear from you, gentlemen, is whether you've been surprised by the almost total absence of the sharply polarized 5-4 decisions we were reading this time last year. Instead, this term (with the glaring exception of the habeas case) has seen scads of unanimous, or near-unanimous, decisions and strange-bedfellow opinions that defy the usual liberal/conservative labels and reflect a new pragmatic minimalism at the center of the court.

So, what's up with that? Are the [liberals caving](#) or [poised for triumph](#)? Is the generational split [on the importance of precedent](#) between the younger and older conservatives becoming a real rift? Has [John Roberts finally](#) steered the court to a bipartisan new Age of Constitutional Aquarius? Or [were this term's cases](#) just not the sorts of cases that keep ideologues up at night?

Let me say again just how delighted I am to be ushering in the last week of the term with you all. Welcome to *Slate*.

Cheers,  
Dahlia

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**From:** Cliff Sloan

**To:** Walter Dellinger, Jack Goldsmith, and Dahlia Lithwick

**Subject:** Not Your Typical Term

**Posted Monday, June 23, 2008, at 9:33 AM ET**

Good morning, everybody. It's a pleasure to belly up to the table with you.

Dahlia, I want to pick up on your question about the voting patterns on the court this year. With the huge caveat that we'll see what happens with the pending decisions on [gun control](#), the [death penalty for child rapists](#), and [punitive damages](#), many people are buzzing about the fact that the court this term has not fallen into a predictable 5-4, liberal/conservative + swing-vote-on-either-side pattern. On cases ranging from [voter identification](#) and [lethal injection](#) to [child pornography](#), international treaty protections for [criminal defendants](#), and [employer communications about unions](#), the Supreme Court has decided

cases by votes of 7 to 2 and 6 to 3, rather than the bare majority 5-4 cases that have dominated public perception in recent years. Although the court's blockbuster Guantanamo case was decided along familiar lines on a 5-4 vote (Justice Anthony Kennedy plus the four "liberals"), that exception seemed to prove the rule this term. "Swing" voter Kennedy has been on the losing side in four of six 5-4 decisions so far, for example, and only one other 5-4 decision has seen all four "liberals" together on the same side of the case.

[As you point out, Dahlia](#), commentators have offered a range of intriguing theories for this development, including the idea that justices like John Paul Stevens and Stephen Breyer are sometimes voting with the "conservatives" to shape and steer the outcome in more moderate directions and the notion that Chief Justice Roberts is successfully crafting a winning center. But I think lying in plain sight is a far more obvious explanation: I think it much more likely that the unexpected voting patterns this term result from the fact that the justices actually approach the cases as legal *cases*, rather than political platforms, and that the nuances of each case actually matter. In this view, the Supreme Court actually functions like a court, as it should, rather than as a predictable political player.

To take just one example, in the voter identification case, Stevens' plurality opinion upholding the Indiana law requiring government-issued photo ID to vote repeatedly emphasizes the absence of facts in the record about identifiable harm from the law. Stevens believes deeply in the crucible of litigation and in the importance of the actual record of a case. This perspective has informed his views in opinions hailed by liberals, as in his [dissent in \*Bush v. Gore\*](#), and reviled by liberals, as in his opinion for the court in the [Paula Jones case](#). It should not be surprising to find that a case with a weak factual record failed to persuade him. Nor does it take sophisticated detective work or attribution of hidden political motives to understand the basis for his position.

I know Justice Stevens well from having clerked for him. Most fundamentally, his votes and opinions this term vividly illustrate the danger of pigeonholing him. It is worth remembering that, before he began to be lionized as the "leader of the liberal block," he was commonly termed a "maverick." And, as his record this term confirms, the most accurate label for him actually is the description that was used when he was nominated to the court almost 33 years ago—a "judge's judge."

Whatever one thinks of the outcome in particular cases this year, I think it's a breath of fresh air to see not only Justice Stevens, but the Supreme Court as a whole departing from rigid predictability. It's especially interesting to observe this development in the last year of President Bush's tenure, a tenure that began with what seemed to be the astonishingly weak decision in *Bush v. Gore*. I find it refreshing to see the court defying ideological type and confounding pundits.

What do you think? Is this too simplistic an explanation for the way the court has shuffled the deck this term?

Best,

Cliff

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**From:** Dahlia Lithwick  
**To:** Walter Dellinger, Jack Goldsmith, and Cliff Sloan  
**Subject:** Blowin' in the Wind  
**Posted Monday, June 23, 2008, at 1:01 PM ET**

Dear Walter and Cliff and Jack:

It's almost impossible to explain what happens at the Supreme Court when the press corps discovers that this last Monday of the term—a day ripe with the promise of guns and oil slicks and capital punishment—swirls down the tubes in the span of 20 minutes of boring decisions. Three opinions were handed down this morning—[Sprint Communications v. APCC Services](#), [Greenlaw v. United States](#), and [Rothgery v. Gillespie County](#)—each of which we will read as fast as we can. So disappointing were these results that half the press corps promptly took off the rest of the day to get pedicures. And there's this poor guy I know named Walter Dellinger, who now has three cases that *he has argued* all coming down later this week ... what does that feel like, Walter?

Nevertheless, and through the fog of despair at the utter lameness of this morning's catch, I would be remiss not to point out this glorious bright spot: Chief Justice Roberts, dissenting in *Sprint Communications*, reminds us this morning what happens when you put a hip guy into a square job. The case is an insanely technical dispute over whether a group of "aggregators," who have been assigned the legal claims of pay-phone operators that are suing long-distance carriers, have standing to bring suit in federal court. I know, I know—tell me when your heart starts up again. In any event, the chief justice, dissenting from Justice Stephen Breyer's majority opinion finding that there is standing, writes as follows:

The absence of any right to the substantive recovery means that respondents cannot benefit from the judgment they seek and thus lack Article III standing. "When you got nothing, you got nothing to lose." Bob Dylan, "Like A Rolling Stone," on *Highway 61 Revisited* (Columbia Records, 1965).

Smell like a reader contest to you??? Yup. So while we Breakfasters toil away on today's opinions, we invite readers to submit entries for Dylan lyrics that sum up any case or dissent from the 2007 Supreme Court term. We'll post our favorites. Send mail to [Dylan-tante@hotmail.com](mailto:Dylan-tante@hotmail.com). I guess in anticipation of the D.C. guns case, I'll offer up this line from "Knockin' on Heaven's Door":

Mama, put my guns in the ground  
I can't shoot them anymore.

Later,

Dahlia

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**From:** Walter Dellinger  
**To:** Jack Goldsmith, Dahlia Lithwick, and Cliff Sloan  
**Subject:** A New Era of Good Feelings?

Updated Tuesday, June 24, 2008, at 11:10 AM ET

Dear Dahlia, Jack, and Cliff:

First, [Dahlia](#), to answer your question about what it's like to have three cases I argued still undecided—well, it seems kind of odd. The statistical chances against none of the three being announced today were pretty long. There is always a whole lot to do on a day when a case you've argued is announced, and it blows up your schedule when it happens. I'm not sure what you do when two or three are all announced at once. I guess I am about to find out.

Today we were supposed to write about the "landmark" cases to be announced this morning. I didn't know it was possible to find three such uneventful cases left at this time of the year. Thank goodness for the chief's Bob Dylan quote. Is it true that I am barred from entering your contest? That's a shame since I believe that few, if any, people who follow the court know as many lyrics by Bob Dylan (or other rock-'n'-roll greats for that matter) as I do. I would have been a serious contender for the prize. What? There's no prize? Well, nevermind.

In the absence of important cases, I would retreat to Big Themes of the term. But here I am skeptical of all of the analyses explaining why the court has "moved" in the direction of greater moderation and consensus, less ideological divide, and fewer 5-4 cases. There has been a good bit of imaginative speculation about the causes of this new Era of Good Feelings at the Marble Palace. But I don't buy the underlying premise that the court has "moved." I just think there are simply fewer cases on the court's

plate this term that lend themselves to divisive 5-4 splits. It's the docket that's different, not the justices.

Evidence cited for a shift or movement on the court includes 1) some instances of "liberal" justices—John Paul Stevens and Stephen Breyer—joining in "conservative" results; 2) some instances of "conservative" justices—the chief justice and Justice Alito—joining in "liberal" results; and 3) the fact that the resulting decline in 5-4 cases has been accompanied by a rise in the number of "let's all agree to agree" 9-0 cases.

But, as [Cliff](#) convincingly notes this morning, Justice John Paul Stevens' vote to decline to invalidate the Indiana voter ID law in [Crawford v. Marion County Election Board](#), and his and Justice Breyer's votes sustaining Kentucky's lethal injection process in [Baze v. Rees](#), may well be explained by their lawyerly view that there was simply not a sufficient basis in the record to invalidate either state's "illiberal" procedures. Whether or not one agrees with their conclusions, there is no reason to think either justice would have written or voted differently had the same case appeared a year ago.

As for the chief justice and Justice Samuel Alito joining in decisions favoring victims of discrimination—see, for example, [CBOCS West v. Humphries](#), which recognized a right to sue for retaliation for bringing a discrimination claim and was decided 7-2—these outcomes were determined by precedent, not politics, most recently by the decision of the court in [Jackson v. Birmingham Board of Education](#), which held that a high-school coach dismissed for complaining about discrimination against girls' sports could sue for reinstatement under Title IX. The opinions in [CBOCS West](#) make clear that a majority of this court would have held against the retaliation claim if the court hadn't already heard [Jackson](#). It is also clear that Coach Jackson ([for whom I argued](#) in the Supreme Court) would have been tossed out of court if his case had come before the court this term. And had that happened, every coach, teacher, and guidance counselor would have learned to keep their mouths shut when the girls' teams were denied heated gyms, real backboards, and buses to the away games like the boys have.

Is it a sign of some new moderation that the court is actually respecting *stare decisis*? I don't think so. The employment discrimination cases involve statutory interpretation, and such cases have always been accorded the highest and strongest version of respect for prior precedent. If you are a new chief justice or an associate justice, why in the world would you want to eviscerate the doctrine of *stare decisis* in interpreting statutes? To do that would mean that when the next wave of federal laws (which could be the work of a dramatically new federal government) come before your court, your own decisions putting an interpretative gloss on those laws would not be the least bit binding on subsequent courts.

To say the Supreme Court has "moved" this term would imply that cases decided in the last couple of terms would have come out differently—in vote or tone if not result—had they been argued and decided this term. But I see no evidence that this is so. My assumption is that the federal partial-birth abortion case, the school desegregation cases from Louisville, Ky., and Seattle, and the campaign finance cases surely would have had the same 5-4 splits and produced the same degree of rancor if they had been argued and decided this term. In every one of those cases, the court decided more sweepingly than was necessary to resolve the particular issue before the court. When the next wave of abortion cases comes before this court, and when it first confronts the Establishment Clause cases that were nowhere to be seen this year, this term's glimmer of consensus and minimalism may be long gone.

Jack and Cliff, in celebration of this slow news day, Dahlia and I just went on the first-ever Supreme Court Breakfast Table Alternative Activity Road Trip, in which we traveled to the [Brookings panel launching](#) Ben Wittes' new book, *Law and the Long War*, to hear Jack, Seth Waxman, and Stuart Taylor discuss the issues Ben raises. Jack, both you and Seth have played heroic roles in these extraordinary times of clashing concerns of liberty and security, and all four of you were terrific today. *Boumediene* is undoubtedly a case of historic importance, and we should all discuss it tomorrow. Jack, you were head of the Office of Legal Counsel at a most critical period. Your thoughts are the ones we most look forward to.

Best,

Walter

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**From:** Jack Goldsmith  
**To:** Walter Dellinger, Dahlia Lithwick, and Cliff Sloan  
**Subject:** *Boumediene*: A Huge Deal or a Gentle Nudge?  
**Posted Tuesday, June 24, 2008, at 11:07 AM ET**

Greetings everyone. Sorry to be late.

I agree with [Walter](#) that the number of 5-4 votes on the court this year probably doesn't indicate a trend toward a new moderate center. Seven hotly contested cases (that is why they are last) have not yet been announced. If most of these traditionally splintered late decisions are 5-4, the court won't be far from its average of 5-4 votes for the last 10 years (22 percent). (The outlier was last term, when more than one-third of the decisions were decided by 5-4.) But even if there is more consensus this term, I am skeptical of [Cliff's suggestion](#) that the reason is that the court is approaching cases legally rather than politically.

Why would the court be political in the last few years but care more about law this year? The appearance of consensus and surprising votes is likely—as Walter suggests—a function of the accidental lineup of cases.

And now to the enigmatic [Boumediene](#) decision, which gave Gitmo detainees a constitutional right to challenge the legality of their detention in federal court. Here is one indication of the decision's oddness: Chief Justice Roberts' dissent, which Justice Scalia joins, disparages the decision's "modest practical results" and notes that it provides a hollow victory to the detainees, and Justice Scalia's dissent, which Chief Justice Roberts joins, predicts the decision will result in the release of dangerous terrorists and "almost certainly cause more Americans to be killed." Either could be right.

On my own first reading of the case, I was drawn to Justice Scalia's view. The majority opinion by Justice Kennedy (for whom I clerked in the 1990 term) is extraordinary in its claims of judicial power during war. The court for the first time confers constitutional habeas corpus rights on alleged enemy prisoners captured and detained outside the United States during war. These rights are much more generous than anything contemplated by the international laws of war. More amazingly, for the first time during a war, the court invalidated a military measure—a statute that stripped habeas corpus in lieu of detention review by a military tribunal and the D.C. Circuit—that had the support of both Congress and the president. The decision only extends judicial review of military detentions to Gitmo, but the court hints that its writ might go wherever the military goes, depending on the circumstances. And the court suggests that alleged terrorists may get unprecedented access to lawyers, witnesses, and classified information and adds that "more may be required."

Read for all it says and implies, this decision could place an extraordinary burden on the commander in chief and our soldiers. It might require release of detainees at Gitmo for whom the military lacks the quality and quantity of evidence that a new and more demanding standard requires. We are not facing up to the implications of this possibility if we assume, [as Dahlia did last week](#), that the remaining prisoners at Gitmo are not terribly dangerous. The government made mistakes in its Gitmo detentions during the last seven years and has released many less dangerous or innocent prisoners. But the most careful study of the Gitmo population—Chapter 3 in Ben Wittes' great new book, *Law and the Long War*—concludes that a substantial number of the remaining prisoners are committed and very dangerous terrorist threats to the United States. (Wittes has estimated [elsewhere](#) that this figure is about 100.) And the potential implications of the court's ruling are not limited to release of prisoners from Gitmo. The fact that it could also place greater burdens of evidence-gathering on soldiers on the battlefield and at the margins means that terrorists we capture in the future will not be detained or will be released prematurely. We should not

avert our eyes from the fact that higher standards of judicial review designed to minimize false positives in military detentions will likely produce false negatives that mean more Americans will be killed than would otherwise be the case.

After reading *Boumediene* a few times, however, I doubt that Justice Scalia's worst-case scenario will come to pass. Because at the end of Justice Kennedy's opaque opinion, no doubt in response to the fierce dissents, he walks away from its more burdensome implications. He notes that "accommodations can be made to reduce the burden habeas corpus proceedings will place on the military." He acknowledges (citing a pro-government state secrets case) the government's "legitimate interest in protecting sources and methods of intelligence gathering." He insists that "the law must accord the Executive substantial authority to apprehend and detain those who pose a real danger to our security." And he states (again citing a famously pro-government precedent) that "in considering both the procedural and substantive standards used to impose detention to prevent acts of terrorism, proper deference must be accorded to the political branches."

I don't think this prospective deference to the political branches in a case that affords them little deference is posturing. I think Justice Kennedy means it. His opinion is mostly directed to the political branches' attempt to deny the court a seat at the table in reviewing counterterrorism policy. But he also seems to realize that, as Justice O'Connor said in a [2005 speech at West Point](#) concerning the court's role in terrorism cases, "The court is only one branch of government, and it cannot, and should not, give broad answers to the difficult policy questions that face our nation today." These difficult policy questions often require trade-offs between liberty and security that the politically unaccountable court, for all its assertions of relevance, is uncomfortable making. Uncomfortable and ill-equipped. For as Justice Kennedy says in one of the most revealing passages in his opinion, "Unlike the President and some designated members of Congress, neither the members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people." When this admission is combined with Kennedy's prospective pledges of deference and his insistence that the habeas remedy is flexible and depends on the nature of the threat, the opinion seems much less threatening to the executive branch.

In truth, *Boumediene* could turn out to be a huge deal or not a big deal at all; the court leaves open almost all possibilities except the elimination of some form of habeas review over Gitmo detentions. I think the decision will, over time, come to look like the court's other terrorism decisions—*Hamdi* (the 2004 case that upheld the president's power to detain a U.S. citizen enemy combatant but imposed modest due process constraints) and *Hamdan* (the 2006 case that invalidated the president's military commissions but invited Congress to reconstitute them, which it did). Both of these cases were originally viewed as

stinging defeats for the president that undermined his war-on-terrorism policies. Over time, they came to be seen as gentle nudges by the court to the president and Congress to work together, leading to improvements in the quality of our counterterrorism policies from the baseline of 2001.

But not enough improvement. Congress still has not done anything since its September 2001 Authorization To Use Military Force to clarify who precisely in this novel war can be detained under traditional noncriminal military detention powers. Nor has it yet said anything about standards of proof, access to evidence and lawyers, the relationship between detention and trial, and many other issues that a comprehensive detention regime should address. All Congress has done about detention is to strip habeas corpus and establish direct judicial review over the military detainee review procedures to ensure their compliance with the military's procedures and "the Constitution and laws of the United States," a standard that provides no concrete guidance whatsoever to courts. Chief Justice Roberts' excellent dissent argued that the court should have first allowed the lower courts to consider the meaning of this statutory standard and the possibility that it was an adequate substitute for habeas before deciding the constitutional question. I agree, but the truth is that Congress provided no real guidance on these issues in the statute.

Despite its extravagant rhetoric and reasoning, in *Boumediene* the Supreme Court has once again left open the door for the political branches to take the lead together in making the difficult tradeoffs required to craft a long-term detention policy. Whether and when they will do so remains to be seen. The issue has already become entangled in election-year politics, with the White House and Republican members of Congress threatening to push comprehensive legislation that will put the Democrats and their presidential candidate on the spot, and many Democrats insisting that any such legislation should await the election.

Any thoughts, Cliff, Dahlia, or Walter, on whether this legislation is a good idea, whether it should happen before or after the election, and what it should look like? I have views, but I'm out of time and space.

Jack

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**From:** Dahlia Lithwick  
**To:** Walter Dellinger, Jack Goldsmith, and Cliff Sloan  
**Subject:** Are They Really Just "False Positives"?

Updated Tuesday, June 24, 2008, at 11:09 PM ET

Jack: Thanks so much for your [thoughts on the Guantanamo case](#). As [Walter observed](#) last night, your actual experience here is worth exponentially more than so much of the rhythmic drumming we've been hearing on the subject. And I completely agree with your conclusion that this case is not as consequential, for good or for bad, as some court-watchers have suggested. This decision—like *Hamdan*—is a sort of jump-start for democracy. It will likely lead the executive branch and Congress to further refine their terror policies. Checks! Balances! It works!

If I may take issue with you on one point, it's your characterization of my characterization of the remaining prisoners at Gitmo as "not terribly dangerous." I don't think I said that. Never having met any of them, I would not presume to judge their dangerousness, especially after more than six years of being penned up like baby veal. I believe that [what I did say](#) was that among the 270 men still held at Guantanamo, there were "people who were grabbed as teens and others who claim actual innocence." Whether they ever were dangerous, or whether—after six years of abusive confinement—they have become so, I have no idea. It's all come down to a smackdown of the expert reports.

I suppose that I can see your citation of Ben Wittes' Chapter 3—or his estimate that of the 270 prisoners at Guantanamo, [about 100 are](#) too dangerous to let go—and raise you the [incredibly disturbing new McClatchy](#) report last week on released detainees who had been captured "on the basis of flimsy or fabricated evidence, old personal scores or bounty payments." (That same McClatchy report confirms that prisoner abuse and mistreatment were rampant at Gitmo, and the new report from [Physicians for Human Rights](#) arrives at the same conclusion.) I will then cite the Seton Hall study showing that just 45 percent of 516 Guantanamo detainees committed hostile acts against the United States or its allies, and only 8 percent were al-Qaida fighters. You will no doubt counter with the study from West Point's Combating Terrorism Center, which (using the same raw data) found that 73 percent of the prisoners posed a "demonstrated threat." Do we really think this is a matter best settled by dueling expert reports?

Using the report of your choosing, let's agree there are incredibly dangerous people still at Gitmo, but also that there are very probably some who are not—or who are dangerous now but were not when they were captured—a state for which the United States bears at least some moral responsibility. And then let's get to the hard part. You write that "higher standards of judicial review designed to minimize false positives in military detentions will likely produce false negatives that mean more Americans will be killed than would otherwise be the case." Do we protect the rights of these false positives or not? I always thought that was a pretty fundamental legal principle, although sometimes we call them "[innocents](#)" rather than "false positives." It is the willingness to sacrifice both these nondangerous

prisoners and those fundamental principles that frustrates liberals most.

I imagine Walter and Cliff have more to add, unless Walter is carbo-loading in anticipation of tomorrow's SCOTUS dump. Again, Jack, thanks for your thoughts.

Best,

Dahlia

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**From:** Jack Goldsmith  
**To:** Walter Dellinger, Dahlia Lithwick, and Cliff Sloan  
**Subject:** The Proper Error Rate Is Never Zero  
**Posted Tuesday, June 24, 2008, at 6:36 PM ET**

Dear Dahlia, Cliff, and Walter:

I think [Dahlia and I](#) have hit on the hardest and most important policy question in the design of a detention system for dangerous terrorists: how the system should strike the balance between the erroneous detention of the innocent and the erroneous release of dangerous terrorists. The bad guys do not wear uniforms or dog tags, so the chance of mistakes is higher than in a traditional war and so, too, is the cost of those mistakes, which is potentially indefinite detention. On the other hand, the average terrorist today is much more dangerous than the average soldier in World War II or the average criminal. So mistakes in either direction are really bad.

In analyzing Justice Scalia's claim that Americans would die because of the *Boumediene* decision, I said that "higher standards of judicial review designed to minimize false positives in military detentions will likely produce false negatives that mean more Americans will be killed than would otherwise be the case." My point was that we shouldn't flinch from recognizing (as I probably incorrectly took you to be doing) that higher standards for detention that better protect innocent detainees will at some point likely result in the deaths of the innocent attacked by terrorists erroneously released.

You respond that it is a "fundamental legal principle" that we "protect the rights of 'false positives'—i.e., the innocent." I agree. But this "fundamental" principle is *not* an absolute one. We might be able to design a procedural system that would guarantee no mistaken detentions (I doubt it), but that system would come at the very high cost of allowing many mistaken releases of dangerous terrorists. Every system of detention faces this quandary. The criminal law system's "beyond a reasonable doubt" standard is commonly said to be premised on the idea

that it is better for 10 people to go free than for one innocent to be convicted. This means that the criminal system tolerates the conviction of innocents (as many DNA cases have shown), and we build many layers of legal doctrine to privilege the finality of those convictions over the ability of innocent convicts to vindicate themselves. We do that because at some level, we recognize that the proper error rate, even for criminal justice, is not zero.

If our criminal law system is not and is not designed to be perfect, then we should not expect our military detention system to be, either. This is why I disagree with you that recognizing the possibility of mistaken detentions in this system constitutes a "willingness to sacrifice both those nondangerous prisoners and those fundamental principles that frustrate liberals most." Even liberals, I assume, would not want to design a system that ensured *no* mistaken detentions, for that system would be more demanding than our criminal law system and would involve the release of many very dangerous people. Am I right about this?

If I am right, then the hard question is where and how to draw the line: What kind of risks in both directions are we willing to assume, and which procedural system best gets us to that point? I think we both agree that the system in place before *Boumediene* was not up to the task, though I suspect we disagree on how to strike the balance going forward. One point I was trying to make in my last post is that while courts undoubtedly have a role to play in monitoring and legitimizing the military detention system, the political branches are best positioned to decide the hard liberty and security trade-offs that the system tries to guarantee. They are best positioned because they have more information about the risks of terrorism, weighed against the risk of being too aggressive against terrorism, and because they face the electorate if they get that trade-off wrong. Whether the political branches—in particular Congress—have the political desire to exercise their duties and assume these responsibilities is another question altogether.

This might be my last post as tomorrow's decisions will move us on to terrain beyond my expertise. Thanks for letting me join in!

Jack

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**From:** Walter Dellinger  
**To:** Jack Goldsmith, Dahlia Lithwick, and Cliff Sloan  
**Subject:** It's Huge  
**Posted Tuesday, June 24, 2008, at 11:06 PM ET**

Dear Dahlia, Jack, and Cliff:

[Jack's posting](#) on *Boumediene* is a very insightful and balanced account of that decision and its potential consequences. He does not shrink from acknowledging the potential danger to the security of Americans that many of those detained at Guantanamo pose. Although he applauds Chief Justice Roberts' dissent and finds the majority's rhetoric "extravagant," he reassuringly concludes (in contrast to the somewhat hysterical reaction to the decision from many on the right) that the Supreme Court "has once again left open the door for the political branches" to make the "difficult tradeoffs" involved in crafting a long-term detention policy.

On three points I would differ from or expand upon Jack's thoughts. First, I do not agree that *Boumediene* "could turn out to be a huge deal or not a big deal at all." It's huge. Second, the court was very likely influenced in reaching this decision by the fact that the current administration has repeatedly, recklessly, and needlessly undermined the basis for Congress and the court to trust the executive branch to act lawfully. And third, both the rights of the detainee and the security against malefactors among them might be better off, had the administration not provided a process that was far too little, far too late. The enduring mystery will be why the administration refused to engage Congress (which itself is not without blame) early on with a timely resolution that would have protected both liberty and security and been sustained by the court.

Jack's reason for thinking that *Boumediene* could turn out to be "not a big deal at all" is that the court leaves open "almost all possibilities except the elimination of some form of habeas review over Gitmo detentions." But "some form of habeas review" is huge. *Boumediene*, like the cases that preceded it, is profoundly important not because of the sweep of the rights it guarantees to detainees; those rights may indeed turn out to be modest and judicial involvement quite deferential. *It's huge because of the extravagant claims of authority rejected.* The detainee line of cases may have only "imposed modest due process restraints," but the line between some due process and none is at the heart of liberty.

The court's concerns for due process could not have been allayed by the administration's early invocation of the disturbing notion that procedures for determining guilt or innocence could be truncated because terrorists attacking the United States deserve no better. That sentiment may well be true: The problem is that we can't know in advance whether the person being held in detention is indeed such a person. More broadly, the court's willingness to trust the executive branch to determine fairly whether particular detentions are justified was severely undermined by the administration's violation of countless laws, which it implausibly justified by utterly unconvincing (and intended to be secret) torture memos and by implausibly defended violations of provisions of the Foreign Intelligence Surveillance Law and other enactments.

Remember that the administration's first plan for dealing with detainees, announced by White House counsel Alberto Gonzales, was to set up military commissions with no judicial review. My Duke University colleague Chris Schroeder and I defended the plan to use military commissions against attack from some civil libertarians. Writing on Dec. 6, 2001, we argued in the pages of the *Washington Post* that

Military trials commissioned by the president have occurred since the beginning of the republic. In time of war, they represent an effective means of dealing with hostile combatants—especially those captured on foreign soil—free of evidentiary rules designed to serve the social goals of ordinary times. Military commissions can function partially or entirely in secret, avoiding disclosure of information that would compromise intelligence sources or reveal vulnerabilities in our defenses. And they can be expeditious.

We noted, however, a point that seemed obvious: The White House's announced intention to preclude any form of judicial review would be fatal to the plan.

... [I]t cannot be constitutional to exclude the courts altogether. The attempt to do so might in fact come back to haunt the government, because any federal judge might assert the inherent constitutional power of the courts. The president and Congress would be well advised to provide for judicial review by a single designated federal appeals court, a special panel of judges established for the purpose or by the Supreme Court itself. Secret evidence alleged to be material to a conviction could be reviewed in camera by the judges or the justices. Independent review outside the executive branch is essential if the nation is to be assured that such military commissions are fairly designed to ascertain guilt and are limited to the extraordinary circumstances that alone can justify their use.

I quote this not (or at least, not exclusively) as an "I told you so." The point we made seemed rather obvious, both then and now. If asked to do so by the president, Congress would have passed—and the court would have sustained—a sensible system of commission trials with some procedural safeguards and with perhaps some provision for continued detention of some individuals who could not be criminally convicted but who manifestly were a threat to U.S. security. Perhaps any judicial review could have been postponed until after the completion of commission trials—if trials had proceeded.

But people were simply detained year after year. Torture was used. A nation's reputation in the world was tarnished. Trust was destroyed. And the presidency itself was weakened.

Bringing "some due process" to bear on all this is huge.

Regards,

Walter

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**From:** Cliff Sloan

**To:** Walter Dellinger, Jack Goldsmith, and Dahlia Lithwick

**Subject:** This "Adequate" Substitute for Habeas ...

**Posted Tuesday, June 24, 2008, at 11:30 PM ET**

Dear Walter and Dahlia and Jack:

[Jack](#) and [Dahlia](#)—you're both correctly focused on the hard and important question of the procedures that should govern going forward in the detainee cases, a question not resolved by the Supreme Court decision (although you might not know that from some of the overheated commentary on the case). But I think it's also important to dwell a bit more on the procedures that were at issue before the Supreme Court—particularly in light of Chief Justice Roberts' dissent arguing that these procedures should have been given a chance to work—a point that, while I do not agree with it, I find considerably more substantial than the table-thumping in Justice Scalia's dissent. It's especially important to understand what was at stake here in light of denunciations like Sen. McCain's castigation of *Boumediene* as "one of the worst decisions in history."

The debate over the "adequacy of a substitute for habeas" and the nature of legal procedures can sound dry and technical. I think it's worth remembering two important points, both of which help to humanize the question of the adequacy of procedures.

The first is that principles like representation by counsel really do matter in allowing innocent people who have been locked up to show their innocence. Nowhere was this point demonstrated more vividly than in Seth Waxman's rebuttal in his Supreme Court argument on behalf of the detainees. It is quite simply one of the best rebuttals I have ever heard in any court, and it bears quoting at length. Recall that these are the last words the justices heard in the Guantanamo argument, and think about the impact they must have made on a justice like, say, Anthony Kennedy:

**WAXMAN:** ... Mr. Kurnaz ... was a petitioner in this court, but he has since been released by

the government because of the fact that he had what the CSRTs [the military tribunals] won't give him, which is a lawyer. He was told, two years after he was detained—he's a German permanent resident—he was told at his CSRT, as many of these individuals were not, that he was being held because he associated with a known terrorist. And he was told the name.

He was told that he associated with somebody called Selcook Bilgen who, the government contended, was ... a terrorist, who was—had blown himself up while Mr. Kurnaz was in detention ... and in a suicide bombing; and all that Mr. Kurnaz could say at his CSRT where he had no lawyer and had no access to information was, 'I never had any reason to suspect he was a terrorist.'

Well, when the government, in the habeas proceedings [which the government believed should not have been allowed], filed its factual return in Judge Green's court, it filed as its factual return the CSRT record.

His counsel saw that accusation. Within 24 hours, his counsel had affidavits not only from the German prosecutor but from the supposedly deceased Mr. Bilgen, who is a resident of Dresden never involved in terrorism and fully getting on with his life.

That's what—and that evidence would not have been allowed in under DTA review [the procedure at issue in the Supreme Court case]. It wouldn't have been in the CSRT, and it won't come in under DTA review.

And that's why it is inadequate.

**CHIEF JUSTICE ROBERTS:** Thank you, Mr. Waxman.

As Waxman dramatically showed in this rebuttal, a right such as the right to counsel is not merely an addition or subtraction in a zero-sum game in a battle between liberty and security; it can also be an indispensable engine in the search for truth, which presumably benefits both liberty and security.

The second important point to remember is that some senior military officials with actual responsibility for the military tribunals were appalled by the tribunals. For example, last summer, Lt. Col. Stephen E. Abraham, who had been a member of one of the military's hearing panels, [testified to Congress](#):

"Not only I, but the other members of the panel said, 'This is garbage.' " Abraham further explained, "What I expected and what occurred were two entirely different things. ... What I expected was a fundamentally fair process." His complaints about the process were brushed aside, he said, because "a quick result was preferred over a probing inquiry."

In fairness, not all military officials shared this view. But the accounts of Abraham and other senior military insiders provide a searing context for the objection that the procedures should have been given more of a chance to work.

Jack, you emphasize the role that the political branches must play in fashioning appropriate procedures, and I generally agree with that emphasis. But I also think it's important to realize, as the Supreme Court has emphasized, that those imprisoned at Guantanamo have been there for years, some taken from their families far from any battlefield in Afghanistan (as Kennedy explained, "from places as far away from there as Bosnia and Gambia"). When we further remember that the detainees have not been given the opportunity that was provided to Mr. Kurnaz in Waxman's rebuttal example and that, instead, they've been given only a weak and limited process that military officials themselves denounced, I think that—one way or another—we need to move quickly to finally provide the detainees with fair procedures in which to address their imprisonment.

Best,  
Cliff

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**From:** Jack Goldsmith  
**To:** Walter Dellinger, Dahlia Lithwick, and Cliff Sloan  
**Subject:** Objects in the Rearview Mirror May Appear Larger Than They Are  
**Posted Wednesday, June 25, 2008, at 10:34 AM ET**

Dear Walter, Dahlia, and Cliff,

I have a few brief things to say in response to [Walter's](#) and [Cliff's](#) great posts on *Boumediene* before this morning's decisions take over everyone's attention.

Walter might be right about *Boumediene* being huge. But I still think that—as with similar claims made about *Hamdi*, *Rasul*, and *Hamdan* at [this very Breakfast Table](#) and elsewhere in [2004](#) and [2006](#)—it won't be nearly as huge as it seems in the week after it was announced. The question is what *Boumediene* adds to the system of military tribunals and direct federal court review that was in place long before *Boumediene*. Not much, probably, especially since that system, as interpreted by the D.C. Circuit, is looking pretty robust. The Supreme Court declined to say that

this system violated due process, declined to say much about what the additional habeas remedy looked like, and said it would defer to the political branches in figuring this latter issue out. I agree that "the line between some due process and none is at the heart of liberty." But the detainees were getting a lot of due process before *Boumediene*—much more than any alleged alien enemy combatants have ever received in this country.

Walter recounts the administration's early aggressive claims against judicial review, and again I agree (as I argued in my book [The Terror Presidency](#)) that those claims were self-defeating. But those claims were rejected years ago, and (largely because of judicial nudges) Congress has now put in place a system of statutory judicial review. *Boumediene* had nothing to do with any of this. I also doubt that *Boumediene* will bring due process to bear on many other aspects of the administration's counterterrorism policies that Walter and the world dislike, for the court extended the constitutional habeas remedy for alien enemy combatants only to Gitmo.

And also consider the largely unnoticed case of [Munaf v. Geren](#), issued the same day as *Boumediene*. There, a unanimous court held that two American citizens transferred by U.S. military forces in Iraq to Iraqi officials for criminal trial could invoke the statutory writ of habeas corpus but quickly added that the writ gave them no relief. They reached this conclusion even though the petitioners claimed they would be tortured by Iraqi officials. The court said such allegations must "be addressed by the political branches, not the judiciary," adding that the "Judiciary is not suited to second-guess" the executive's determination that the petitioners would not be tortured, because doing so "would require federal courts to pass judgment on foreign justice systems and undermine the Government's ability to speak with one voice in this area."

I would make similar points in response to Cliff's contention that the detainees have been given "only a weak and limited process" and that "one way or another, we need to move quickly to finally provide the detainees with fair procedures in which to address their imprisonment." I agree, and have [argued in several places](#), that despite the unprecedented procedural rights given to the detainees at Gitmo, we need a better framework for indefinite noncriminal detention in this novel war. I just think that—as we learned after the decisions in 2004 and 2006—the idea that a quick or effective detention framework can or will come from courts alone, or even courts primarily, is misplaced. In the end it can come only from Congress, and in the end I expect that *Boumediene* will be seen mainly as the event that finally got Congress to act.

Good luck in your three cases, Walter (though I must confess that I am rooting for the other side in the gun case).

Jack

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**From:** Dahlia Lithwick  
**To:** Walter Dellinger, Jack Goldsmith, and Cliff Sloan  
**Subject:** Making the Tough Moral Choices, So You Don't Have To ...  
**Posted Wednesday, June 25, 2008, at 4:01 PM ET**

Dear Walter, Jack, Cliff:

There is a lot to digest from this morning, but we'll try to tackle today's big decisions in some fashion, starting with congratulations to Walter for the result in [Exxon](#). I wanted to begin with some thoughts about the 5-4 decision in today's other big case, [Kennedy v. Louisiana](#), which struck down the death penalty for child rapists as cruel and unusual under the Eighth Amendment. The interesting things about this opinion are the majority's claims and the dissenters' counterclaims on the ways judicial pronouncements about cruel unusualness act as a one-way ratchet to narrow the death penalty. Eric Posner has [already posted](#) on this topic in *Slate*'s legal blog, "Convictions." I wonder what you think about the argument that trends really only get to go in a single direction—away from the death penalty—under current Eighth Amendment jurisprudence?

Before I hop onto the fast train to Crazyville—which is where the [counting of trends and countertrends](#) in capital-punishment states invariably leads me—I want to point to one other aspect of Justice Anthony Kennedy's majority opinion, which I have read only once and quickly. Kennedy opens with the sick-making narrative about the crime in question: Then-8-year-old L.H. is so badly raped that she requires emergency surgery. Kennedy initially focuses on L.H.'s conflicting accounts of who raped her, although that has almost nothing to do with the constitutional problem at hand. He describes the child's videotaped interview with a psychologist, which has obviously left an impression on him: The child spoke "haltingly and with long pauses and frequent movement" and expresses "reservations about the questions being asked." He describes how the girl went from blaming some neighborhood boys for the rape, to eventually naming her stepfather as rapist. Then he launches into many pages of analysis of the "evolving standards of decency" and the Eighth Amendment.

But Kennedy returns to the need for the court to exercise its "own judgment" about the "moral grounds" for barring the death penalty for child rapists. And it's here that Kennedy truly channels Kennedy. Although ostensibly making a policy decision about expanding the death penalty to noncapital crimes, he is very focused on "the victim's fright, the sense of betrayal, and the nature of her injuries." Kennedy is bothered by the "long-term commitment" required of child witnesses in capital rape cases and laments that because of the case against her rapist, L.H. was forced to "come to terms with the brutality of

her experience," during "the formative years of her adolescence." (She was 13 when she testified against her stepfather at trial.) Further, Kennedy is wary of the ways in which "the death penalty involves the child victim in its enforcement" and complains that this is "forcing a moral choice on the child, who is not of mature age to make that choice."

Kennedy goes on to worry about the reliability of child testimony. And he's afraid that children might be less willing to report rape if their rapist is someone they know and the death penalty were on the table. Finally, he notes that making child rape a capital crime increases the rapist's incentive to kill his victim. Much of this is uncontroversial and was, in fact, urged on the court by [one amicus brief](#) filed by sex abuse and social workers and [another filed by criminal defense lawyers](#) worried about the reliability of child testimony. But having reread both briefs, I don't see where Kennedy is getting his too-agonizing-a-moral-choice-for-children point. Both briefs oppose extending capital punishment to rape cases but not because kids should not be forced to make complex moral choices. We let children make those choices every day.

Testifying in a rape case is traumatic, yes. Testifying in a capital rape case would be more so, I imagine. But my stomach goes a little funny reading Kennedy on the inappropriateness of forcing "a moral choice on the child," who is "not of mature age to make that choice." The child has no say in whether the state seeks the death penalty. Any child who reports rape is potentially involving himself in a painful, long-term criminal prosecution, possibly of a loved one. That moral dilemma has absolutely nothing to do with this case. Perhaps it's because Kennedy's talk of moral choices smacks of that same paternalism that animated his decision in last year's [partial-birth abortion case](#)—when he fought to protect poor, pregnant teenagers from making choices they'd come to regret—but when the justice starts rooting his constitutional decision-making in the principle of "I'll make the tough moral choices so you don't have to," I get a little freaked out.

So do the dissenters, apparently. Justice Samuel Alito reserves most of his dissent to make the one-way-ratchet point, suggesting that in light of the court's recent Eighth Amendment jurisprudence, a state would have to be nuts to try to expand the reach of the death penalty. Then he calls Kennedy out for privileging his views about the fitness of children for testimony in a capital rape trial over parsing the Eighth Amendment's protections for the rights of the accused. I don't want to suggest that I am unhappy with the result in *Kennedy*. I happen to agree with the majority that "in most cases justice is not better served by terminating the life of the perpetrator rather than confining him" and that Louisiana did not demonstrate a growing national consensus that nonlethal child rape should be punished by death. But when Kennedy arrives at the correct decision by way of a pit stop at Substitute Moral Judgments for the Weak and Infirm, I can't quite bring myself to celebrate.

Am I overreacting, gentlemen?

Dahlia

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**From:** Dahlia Lithwick  
**To:** Walter Dellinger, Jack Goldsmith, and Cliff Sloan  
**Subject:** Whoops! Exxon Just Earned *Another* \$2.5 Billion as I Wrote This!  
**Posted Wednesday, June 25, 2008, at 6:58 PM ET**

Dear Walter, Cliff, and Jack:

Anyone want to revisit their comments from earlier in the week about truly strange new bedfellows at the high court? The compromise between the justices who wanted to give huge punitive damages to victims of the 1989 *Exxon Valdez* oil spill in Alaska, and those who wanted to give none, is that everyone agrees to cap the damages with a formula that is almost [completely arbitrary](#). I'm looking at the [Exxon decision](#) now, in which the court sliced and diced a punitive damages award against oil behemoth Exxon from \$2.5 billion to the amount of compensatory damages awarded \$507.5 million. That's an 80 percent reduction.

Anybody who may have mistakenly believed that the high court was somehow conforming its decisions to public opinion this term can now rest assured that with gas at \$4 a gallon and oil company profits at record highs, handing a monstrous win to Exxon might not be a popular move. By handing the more than 32,000 plaintiffs (of whom 20 percent are dead after 16 years of litigation) \$15,000 each, as compared with the \$75,000 they'd have collected had the \$2.5 billion judgment been upheld, while Exxon earns an estimated \$2.5 billion in net profits just about every *three weeks*, this court is pretty much assured of being labeled "pro-business." In fact, in the time it's taken me to write this one paragraph, I think Exxon just earned the money it will have to pay out to the plaintiff who sat next to me at oral argument.

The interesting part of this decision is that seeking vastly different results, everyone agreed to disagree. They split 4-4 on the question of derivative liability in maritime law—whether a ship's owner may be held liable for punitive damages based on the misconduct of its allegedly drunk employee. But then they voted 5-3 to cap the punitive damages award at the same amount as the compensatory damages. And no, the court isn't going to make unemployed cannery workers, Native Alaskans, and fishermen any happier with Justice David Souter's meandering legal excursion through the dusty facts of 19<sup>th</sup>-century maritime cases, cheerful references to the Code of Hammurabi, or the

rollicking tour through median ratios. (0.66:1 versus 1.60:1—oh, my, how to choose?)

Walter, this was a monster win for you. One might even say it's huge. But how huge? What's the precedential value of all this going forward? Is the cap in punitive damages the law of the land or just of the seas? Will this be the new benchmark for state court damage awards? And for Walter and Cliff and Jack, another question: Is this an "activist" decision? Why? Why not?

Yours,  
Dahlia

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**From:** Cliff Sloan  
**To:** Walter Dellinger, Dahlia Lithwick, and Jack Goldsmith  
**Subject:** A Skeptical New Mood About the Death Penalty?  
**Posted Wednesday, June 25, 2008, at 9:07 PM ET**

Dahlia, Jack, and Walter

Today's death-penalty decision is interesting on many levels.

Beyond the significance of the holding in the [child-rapist case](#) itself—that the state's taking of a life requires a crime involving the loss of a life—I wonder if there are also hints in the decision that other members of the five-justice majority have any inclination to pick up on Justice Stevens' call earlier this term to re-examine the death penalty itself. Justice Kennedy's majority opinion includes striking comments indicating possible skepticism about the entirety of capital punishment jurisprudence. In a remarkable statement, he says that the court's extensive body of death-penalty case law "is still in search of a unifying principle." That's a pretty bold statement about the whole project. And consider this statement by Kennedy today: "When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint."

In Stevens' [remarkable concurrence](#) in the lethal-injection case earlier this term, he explained that, after more than 30 years applying the death penalty (and co-authoring the [decision that restored it in 1976](#)), he now finds the death penalty unconstitutional. Stevens pointedly argued that "[t]he time for a dispassionate, impartial consideration of the enormous costs that death penalty litigation imposes on our society with the benefits that it produces has surely arrived." Does Kennedy's opinion contain subtle signals that others on the court may be inclined to have just such a discussion?

I recognize that this may well be over-reading the faint tea leaves. There certainly is evidence for a different view—that the court will continue applying the death penalty but limiting it to narrow circumstances. Kennedy's opinion also explains, for example, that, precisely because of its unique risks and dangers, the death penalty must be restricted in its application—and, of course, restricted is very different from prohibited:

The rule of evolving standards of decency with specific marks on the way to full progress and mature judgment means that resort to the penalty must be reserved for the worst of crimes and limited in its instances of application. In most cases ["most"—not all], justice is not better served by terminating the life of the perpetrator rather than confining him and preserving the possibility that he and the system will find ways to allow him to understand the enormity of his offense.

Still, as even that passage suggests, it seems to me that there may be something notably new and skeptical in the court's tone on the death penalty in general.

[Dahlia](#), I think you're right that Justice Kennedy's emphasis on the difficulty of the child victim as a witness is a bit jarring in the opinion—most notably, because nothing actually turns on it. He ends up concluding, for the court, that the death penalty must be reserved "in cases of crimes against individuals, for crimes that take the life of the victim." The decision does not, in fact, rest on anything particular to child victims or the difficulties they face. I suppose that his discussion could be viewed as part of the response to the argument that child rape is uniquely different from other nondeath crimes and more deserving of capital punishment. But the simplicity of the court's core principle—that, at least in "crimes against individuals," the state cannot take a life if there has not been a loss of life—does not depend on the many difficulties of child-witness testimony.

I also want to note one new bizarre consequence of the court's nose-counting of jurisdictions in establishing trends for "evolving standards of decency." The *majority* labored to argue that it previously was not clear under Supreme Court jurisprudence that the death penalty was unconstitutional for child rape. In most contexts, the majority would be explaining that today's decision fits comfortably within existing precedents—the court has not allowed a death penalty for a crime that did not involve death for decades, and it has, in the meantime, struck down capital sentences when the offense did not involve death. But if the court had gone with that conventional approach, it would have had difficulty with its argument about the scarcity of jurisdictions imposing the death penalty for child rape. As various states argued to the court, many states probably have viewed the death penalty for nondeath cases as off-limits. Understanding what other states

and the federal government do with the same offense, or the same type of offender, clearly is relevant to the court's inquiry. But, as this new wrinkle illustrates, the court may well be making far too much of it (your Crazyville point, Dahlia), particularly because, in the end, the court relies on its own judgment of proportionality.

Best,  
Cliff

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**From:** Walter Dellinger  
**To:** Jack Goldsmith, Dahlia Lithwick, and Cliff Sloan  
**Subject:** The Purpose of Punitive Damages  
**Posted Thursday, June 26, 2008, at 11:25 AM ET**

Dear Dahlia, Cliff, and Jack,

Before responding to [Dahlia's question](#) about whether the *Exxon Valdez* decision will have a significant impact on punitive damages generally, I can't resist putting her comments about the case in context, expressly noting as a caution to readers that I argued the case for *Exxon* in the Supreme Court. This case raised the question of whether punitive damages should be paid, and if so, in what amount, for one and only one aspect of the tragic *Valdez* oil spill—economic losses to a class of individuals, principally those engaged in commercial fishing. The court held yesterday that the award of punitive damages for that commercial-fishing class should be limited to \$500 million—an amount equal to the compensation previously paid to members of the class for economic losses. As Justice Souter notes in his majority opinion, the company years ago separately paid more than \$3 billion for environmental damages, fines and penalties, cleanup costs, and compensation. The punitive damages for the commercial-fishing class members at issue before the court were to be in addition to those previously paid amounts.

One fundamental point that your comments seem to overlook is the public purpose of punitive damages. Like others, you note that the amount of punitive damages in this case are relatively small, if considered in light of what the average award would be for each member of the large class. But as Justice Souter notes, the court has long held that "punitive damages by definition are not intended to compensate the injured party, but rather to punish the tortfeasor ... and to deter him and others. ..." It's the total amount that serves that purpose, whether it's awarded to one person or thousands.

You also mention the net worth of the defendant in this case. The court understands, however, that the total wealth of the company is less relevant than what kind of profits the wrongful

acts would have engendered. And that is the factor that leads the court to conclude that an amount equal to compensatories is the limit in this case—the absence of either malice or a desire to increase profits from the wrongful acts in question. Justice Souter writes that "in cases like this one, without intentional or malicious conduct, and without behavior driven primarily by desire for gain," there is no basis for exceeding the 1:1 presumption for cases with "substantial" compensatories (which surely includes this case).

Will this case, you ask, have an influence beyond the area of maritime law and become something more like the "law of the land" as well as the sea? I think it will. The court's prior punitive damages cases have involved the court in its customary role of enforcing constitutional limits on the outer boundaries of what state courts (and legislatures) have done in awarding punitive damages. The justices in those cases are somewhat like umpires setting the outer boundaries within which punitive damages determinations are made by the states.

But maritime law governing the *Valdez* oil spill is different. It's federal law—and, here, judges made federal law. That means the justices are less like umpires and more like players—they get to suit up and play the game the way state court judges do. Here the court gets to decide what the right answer ought to be, not just where the constitutional outer boundaries are located.

So while the court's approach is not binding on states, it did present a unique opportunity for the court to lead by example and demonstrate for judges around the country how they ought to go about limiting punitive damages awards. And the justices' message was that state courts ought to be placing some serious, predictable limits on punitive damage awards. In particular, the court strongly suggested that states should adopt a limit of 1:1—an award equal to the compensatory damages—in cases where there was no malicious intent to harm and where the wrongful conduct was not driven by a desire to maximize profits. The opinion suggested that if state courts don't so limit punitive damage awards, the court may impose a 1:1 limit (at least in non-malicious, non-intentional harm cases) as a constitutional matter. Whether a majority of the justices would impose such limits as a matter of constitutional due process is yet to be resolved. But what the Supreme Court justices believe state courts *should* do comes though clearly.

Well, it's on to the final day and the Second Amendment case, *Heller*. An imaginary conservative friend of mine has a simple reason for believing the District of Columbia will lose: "Having ruled last Thursday in *Boumediene* that all the terrorists can get out on habeas and roam free in the streets, the least the court could do today is let everybody arm themselves with a handgun." We'll know by the time this is posted.

Regards,  
Walter

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**From:** Dahlia Lithwick  
**To:** Walter Dellinger, Jack Goldsmith, and Cliff Sloan  
**Subject:** Today's Decision "Will Almost Certainly Cause More Americans To Be Killed"?

Posted Thursday, June 26, 2008, at 11:32 AM ET

Dear Jack and Walter and Cliff:

I am reading the decision in [Heller](#) as fast as I can and will post my thoughts as soon as possible. The headline is that the court decided 5-4 (no mushy plurality here) that the D.C. handgun ban and the trigger-lock requirement violate the individual right to bear arms as protected under the Second Amendment. But I must first pass along this rather brilliant observation from professor Stephen Wermiel from American University, who wonders why none of the dissenters cautioned the majority that today's decision "will almost certainly cause more Americans to be killed." (*Boumediene*, Scalia, J. dissenting.)

Looking forward to your thoughts.

Best,  
Dahlia

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**From:** Cliff Sloan  
**To:** Walter Dellinger, Jack Goldsmith, and Dahlia Lithwick  
**Subject:** Deactivating the Language of Judicial Activism  
Updated Thursday, June 26, 2008, at 3:49 PM ET

[Dahlia](#), I love your question about whether the punitive-damages decision is "activist." It tees up one of my hobbyhorses—that there is no more meaningless term in constitutional or political dialogue right now than the claim of judicial activism. Today's pair of decisions in the [gun-control case](#) (striking down the District of Columbia's gun ban) and the "[millionaire amendment](#)" to the campaign-finance law (striking down Congress' relaxation of campaign-finance limits for opponents to self-funded candidates) further prove that point. In both decisions, the "conservatives" in the five-member majority struck down the handiwork of the political branches on complex social problems. And, in both cases, the four "liberals" vigorously dissented and would have deferred to the political branches' resolution of these vexing social issues.

As satisfying as it can sometimes be to put the shoe on the other foot, I don't think it advances the conversation one whit to call

either of today's decisions "activist" or to use that label in yesterday's [punitive damages](#) case. It's pejorative and a distraction. It substitutes for a serious consideration of the issues—of whether, in a particular case, a legal limit, set by the Constitution, statute, or common law, has been exceeded. When somebody says, "activist," it often simply means, "I don't agree with that decision." That's what it means, at any rate, when it's not being used merely to score cheap political points. I think it would be much healthier, in politics as well as law, to ditch the label and focus on the underlying questions.

In the punitive-damages case, if the "activist" question was whether the Supreme Court played a legitimate judicial role in setting the punitive-damages rule, the answer, for me, is a double yes. Yes because, [as Walter points out](#), in federal maritime law, federal judges necessarily have a broad role to play in shaping the rules. And another yes because, even when the punitive-damages question does not involve federal maritime law, the punitive-damages issue, as Walter again points out, is strictly a question of *punishment*, not compensation. It's certainly an appropriate role for federal courts to consider the outer constitutional limits on state punishment. One can have a legitimate discussion about whether Justice Souter's new rule is the correct one and whether, as Justice Breyer argued, \$2.5 billion was a more appropriate punishment for Exxon's conduct even though the damage Exxon caused, as the case came to the Supreme Court, was only one-fifth of that amount. But that's a far different discussion from throwing the "activist" label around.

The same is true of the gun case and the millionaire amendment case. I happen to disagree with the court's conclusion in both these cases, and I think the dissents have the better of the arguments. But I don't think there's anything inappropriately "activist" in the court's determinations today that the political branches exceeded constitutional bounds. Justice Scalia's opinion in parsing the peculiarly written Second Amendment certainly is not a frivolous interpretation. I do think his interpretation can legitimately be faulted for giving short shrift to the "prefatory clause" and, as Justice Stevens emphasizes, for strangely not even addressing it until after he's already reached a conclusion on the "operative clause." But the project of construing constitutional language and enforcing constitutional provisions is exactly what courts should be doing, and we shouldn't disparage it as some "activist" frolic, even if there's a lively debate about the correct constitutional interpretation.

The millionaire amendment case is along the same lines. Congress carefully worked out a scheme to try to avoid the one-sided consequences of self-financing, and Congress' handiwork in this difficult area (lifting certain limitations for the opponent of the self-financed candidate) does not strike me as unfair or oppressive. But the regulation of political campaigns clearly raises important First Amendment questions, and it does not

advance the ball to try to paint Justice Alito's opinion as "activist," even if one disagrees with his conclusions. Better to focus on any perceived flaws in his analysis.

Let's retire the label of "activist" once and for all, and have at it on the issues.

Yours,  
Cliff

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**From:** Dahlia Lithwick  
**To:** Walter Dellinger, Jack Goldsmith, and Cliff Sloan  
**Subject:** Was It Ever *Miller* Time?  
**Posted Thursday, June 26, 2008, at 3:47 PM ET**

Dear Walter, Jack, and Cliff:

So *this* is what a lobotomy feels like. Reading the *Heller* decision, it's as if I have been transported to some alternate universe in which [United States v. Miller](#) never happened at all. *Miller* was, I believed, a unanimous announcement in 1939 that "in the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." Until quite recently every court in the country believed—maybe wrongly—that this established a collective-rights rule for the Second Amendment. What is seriously causing me to doubt my sanity today is the almost universal media claim that the court just looked at this question for the first time since 1791.

**Click on the video below to see the reaction of D.C. officials to the ruling:**

See, for example, [this CBS story](#): "The court had not conclusively interpreted the Second Amendment since its ratification in 1791." [CNN reports](#) that "[t]he Supreme Court had avoided the question since the Bill of Rights was ratified in 1791." [WHSV](#) clears it all up by explaining that "[i]t is the first time since the amendment was ratified in 1791 that the essence of the meaning of the Second Amendment has been clearly defined." *Miller* was just a sort of screen-saver. *Heller* is about the *essence* of the *meaning*.

Look, I am totally willing to plead Canadian on the gun question. Don't like guns. Wildly prefer the hockey stick. But I reckon that reasonable people can differ about the costs and benefits of guns and also about how to interpret the Second

Amendment. I am in no way surprised to see that Justice Antonin Scalia reads *Miller* to say that the case is only about government regulation of short-barreled shotguns and not about whether those guns have any "relationship to the preservation or efficiency of a well regulated militia." If you are going to read the whole Second Amendment with your thumb over the militia clause, you pretty much have to read *Miller* that way as well.

Am I wrong to say that Scalia doesn't accord the historical understanding of *Miller* even the tiniest bit of respect? "*Miller* did not hold that and cannot possibly be read to have held that," he proclaims. (Scalia calls the defendants in *Miller* "crooks," just so you get the idea that they deserved to lose simply for being bad guys.) But what really raises the hackles on my dander is when the mainstream media agree to announce that *Miller* either didn't say what it said, or mean what it meant, for the dozens of courts that have relied upon it for decades. According to professor Robert J. Spitzer in his most recent book, [Saving the Constitution From Lawyers](#), in the 70 years since *Miller*, federal appeals courts have relied on *Miller*'s collective-rights theory more than 40 times, and the Supreme Court has denied certiorari in almost half of those cases—allowing them to stand because it considered this a closed matter. Why is it easier for the majority and the media to pretend this was a question never before decided than one that had been—correctly or not—decided and relied upon for decades?

It's not like I have any expectation that Justices Antonin Scalia or Clarence Thomas would be moved by the existence of a precedential ruling. They eat old precedents for breakfast. But if you've been singing hymns to the chief justice and Alito for their willingness to adhere to precedent with which they disagree, ask yourselves whether it's better to overrule old cases directly or do what everyone seems to wish to do with those old precedents and pretend they aren't there. In yesterday's [child-rape case](#), Alito made a big point of arguing about the importance of state court reliance upon dicta in *Coker v. Georgia* because even though it's dicta, "lower courts and legislators also take into account—and I presume that this Court wishes them to continue to take [it] into account." Today, Scalia scoffs at later Supreme Court reliance upon *Miller* as "footnoted dictum."

If the lower courts have indeed been suffering for 70 years from the same mental defect as I am—the irrational belief that *Miller* meant something—one might think Scalia would at least nod to that. Offer up a little "whoopsie." Instead he spends his time assailing Justice John Paul Stevens for his devotion to *Miller* as though Stevens is some kind of nutty lone crusader. Poor Stevens is left to huff in dissent that since *Miller*, hundreds of judges have relied on the collective-rights view and that "even if the textual and historical arguments on both sides of the issue were evenly balanced," the court should have erred on the side of precedent.

The reason I am so annoyed by this is that—as long as we're trotting out hobbyhorses, Cliff—it's of a piece with the Bush administration's claims in the torture context that every day is Groundhog Day when it comes to the law of torture. Every settled legal question can be reopened and re-examined—[John Yoo is doubtless testifying to that fact](#) this very moment—so long as someone, somewhere is willing to pretend it was never a settled question in the first place.

Yours,  
Dahlia

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## the chat room

### Low Pay, No Respect, High Satisfaction

Readers chime in as Emily Yoffe discusses the reality of day care work.

Thursday, June 26, 2008, at 2:24 PM ET

*Slate* columnist Emily Yoffe was online at [Washingtonpost.com](#) to take readers' questions about her two-week adventure [working at a day care center](#). An unedited transcript of the chat follows.

**Emily Yoffe:** I'm here to discuss my experiences working at a child care center in D.C. I promise I will not solve the problem of how this country gets high-quality, affordable day care.

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**No Laughing Matter:** Having learned from past experience, I was not eating while reading this Human Guinea Pig column. This one wasn't funny, unlike virtually all of them, but I did enjoy it immensely. It reminded me of how lucky I was to be able to afford high-quality care when my son was 3 months old and I had to return to return to work. For the first 10 months, I visited his class every day at lunch time, initially to breastfeed and then to play with, and be soothed by, the babies for an hour. It was a fantastic experience, made even more so by his calm, wise and delightful teachers. It is astonishing to me how hard those women worked and how little they were paid.

**Emily Yoffe:** Thanks so much. At the center where I volunteered, Gap Community Child Care Center in D.C., I was astounded by the patience and competence of these women. We expect so much from them at barely over a minimum wage. I like your point about "being soothed by the babies"—I felt exactly the same way, there is something primal about how good you feel being in a roomful of happy babies.

**Rockville, Md.:** Why couldn't you have just written about what it was like to work in a day care without taking little digs at working parents? "This schedule made me think of the lovely, shapeless days of my daughter's babyhood, when I was an at-home mother. ... Because of the long hours the children spend, the workers are a primary civilizing influence. They're the ones who do the heavy wiping in toilet-training these children; they're the ones who teach them to set the table before they eat; they're the ones who remind them committing assault is not the way to get a toy."

Do you really think that the parents of kids who go to daycare don't teach them these things? Instead of just writing from the perspective of the employee, you let your bias creep into your article and made judgments about the value of day care vs. staying at home with your child. You should even the score and talk about some of the good things that the kids got from day care.

**Emily Yoffe:** I didn't mean it as a dig. When my daughter was 2, I sent her off to pre-school. I was just reflecting on the fact that in order for a day care center to function, it has to be a schedule, and the lovely (and also sometimes maddening) thing about being with a young child without a schedule is that you are free to do things like spend the morning at the sandbox. I think the kids at this center are getting a tremendous amount from the experience. I was astounded to see the 3-year-olds setting the table and cleaning up with only a word from the teacher.

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**Houston:** Looking into daycare costs in my area, it is around \$1,000 a month, with a typical ratio of five children to one adult. So, for each teacher, they are bringing in \$5,000 a month. If this money is not going to the teachers, where is it going?

**Emily Yoffe:** You have to factor in the costs of rent, utilities, administration, etc. But this would be a good question to ask at your center. Is it possible for the teachers to get a raise? The other side is, Would you want to pay more so they get it?

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**New York:** As the parent of an 18-month-old, I took great interest in your article (I also remember the [oil drilling platform one](#)). Looking after just one kid on the weekend is exhausting—I just don't know how people can handle multiple kids all day. We try to be generous at the holidays, but your article reminded me to do more to thank those looking after our child.

**Emily Yoffe:** You are so right. I really don't know how these women keep the pace and focus that's required day after day. We can't do enough to thank them.

I stayed home for the first year and I had jury duty when my daughter was 10 months, so my husband had to take a day off from work and spend his first 8 hour stretch alone caring for her. He could not get off the floor when I arrived home, he was so exhausted.

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**Highland Park, NJ.:** As a parent who has gotten an insider's glimpse into the day care world, what changes would you make if you had the power to do so? Specifically, what training and/or certification would you like to see all day care workers have, and what compensation would you like to see day care workers earn?

**Emily Yoffe:** Wouldn't it be wonderful if their salaries were doubled? The national average is about \$18,000 a year—that's not a living wage. But I also have no answer as to how we get there. It's clearly not going to happen without subsidies—the government now underwrites about 1/3 of the cost of day care nationally.

There has sometimes been a push to require day care workers to have college degrees. But some studies have found that a certificate course—which lasts a few months—does a lot to improve the skills of the workers, and may be enough. There's no way to make this a job requiring a college education without vastly increasing the salary—which gets us back to the first conundrum.

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**You have to factor in the costs of rent, utilities, administration, etc.:** Insurance is *very* expensive.

**Emily Yoffe:** Excellent point—liability is on everyone's mind constantly at a day care center. And the center I was at provides health insurance for the teachers, they are unusual in that, but that's another huge expense

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**Norristown, Pa.:** After graduating from a liberal arts college where I majored in economics, I discovered a passion for working with young children and decided to pursue early childhood education as a career. I've found that however fulfilling the job may be and how hard I work, it simply does not pay my bills, nor does it earn me respect among the parents of children or my peers.

I don't work just to gain respect, but the lack of appreciation and acknowledgement of my efforts certainly lowers my morale. There are few viable options in the field for highly-educated, qualified individuals, and so the majority of the day care workforce remains undereducated ... I'd be interested to know

how many day cares in America employ individuals with master's degrees in early childhood education.

**Emily Yoffe:** Your letter is so depressing, because as hard as the job is, there are incredible rewards. These teachers really shape and civilize and in some cases bring love and stability to the lives of the children. The kids are fun and funny! But you're right, if you want to pursue this as a career it has no money and no prestige.

I would believe very few day care centers have people with masters degrees. At the most elite levels, of course, there are certain prestige centers which parents are willing to do almost anything to get their kids into. Remember the scandal of Jack Grubman, the investment banker who ended up being indicted for a financial scheme, the impetus of which was to get his kids in the right Manhattan preschool?

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**Boulder, Colo.:** I gave early childhood education 22 years of my life, including center ownership with 29 infants and toddlers. It gave me incredible life skills, continual practice in staying in the moment, great insight concerning parent perspectives ... and after 22 years drained my spirit! Can you believe that people continue this amazing job in spite of the pay, long hours and lack of recognition?

Still, as a public school teacher, I get comments such as "what's it like having a real job now?" Hmm I thought I *was* in a real job when I was a day care worker, lead teacher, director and center owner. Another common comment: "Wish I could stay on the floor all day and play." So my question is, did you meet any long-stayers, and if so, what insight did they add to your short experience in this field? What makes them stay?

**Emily Yoffe:** Again—another depressing letter. "Real job" "stay on the floor all day and play," jeez!

Many of the women working at the center were fairly new immigrants to this country and the ones I talked to said this job was a gateway to other things. Even if they wanted to continue working with kids, it would not be at day care; one wanted to get a college degree in psychology. Another was starting evening classes at business school. I spoke to one young American woman who had been at the center for several years. Her mother also worked in day care. She said she liked the job, but since she lacks a college degree, her options for more lucrative employment are not good.

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**Arlington, Va.:** Wonderful article. It just broke my heart—especially the image of the 10-month-old wanting to be held. I'm

mom to a 9-month-old, and at present we're lucky enough to manage a system where her dad stays home part-time and she has a wonderful sitter about 15 hours a week. I'm already worried about what to do when she gets older. It makes me crazy that the most important jobs (child care providers, teachers, social workers) do not get the respect—or pay—that they deserve. And that it's nearly impossible to live (at least in this area) on one income.

**Emily Yoffe:** You put your finger on one problem with having to put babies into day care. The workers were wonderful! Loving and encouraging and compassionate. But they only have so many hands and they cannot just soothe a fussy baby to the exclusion of the other children. But because I was at a high-quality center, I came away feeling that if you had to make arrangement for someone else to care for your baby, this was a good compromise.

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**Boulder, Colo.:** I can help with costs! As a previous center owner, (with a five-to-one ratio), wages per hour have hidden costs, such as matching social security funds. Insurance is high. In many cities toys are taxed. There are high utility bills because of high water use, heating/cooling costs ... and the list goes on. If owners could pay more, they would. The profit margin, if any, is extremely low.

**Emily Yoffe:** Thanks for the insight.

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**Re: Working Moms:** Why are working moms always so defensive? I didn't see any digs in your article.

**Emily Yoffe:** Thanks—I really didn't intend any.

Is it the nature of mothers do be defensive about whatever choice we make? Don't the staying at home mothers always feel dissed about not pursuing their careers?

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**Silver Spring, Md.:** Come on, didn't you ever have a moment when you wanted to cover your ears and scream at the top of your lungs? I have two kids in daycare (ages 3 and 5) and I love my kids, but hanging out all day with other people's kids would drive me insane. It couldn't have been as lovely as you make it out to be.

**Emily Yoffe:** I mentioned that around 4:30 I was thinking, "Time to plop the kids in front of the television!"

Also having to endlessly sing those little ditties would make me nuts.

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**Maryland:** I have a 4-month-old son, and I work from home as a consultant. As he gets older, though, I'll need some kind of child care. I wish I lived in Europe with top-quality subsidized day care, instead of in the U.S. with heavily subsidized corporations and enormous tax breaks for the very wealthy. However ... I have found in the past four months that while I love my child dearly, the bulk of the tasks involved in caring for him are entirely menial, requiring not one jot of education or training—just common sense, endurance and love. I can feel my brain rot just reading the description of your days. I'm not sure even higher pay would entice any professional people into the job, although it might reduce turnover. Thoughts?

**Emily Yoffe:** Yes, much of caring for small children is made up of menial and repetitive tasks. But the amazing thing is seeing how quickly these kids change. A 5 month old is an entirely different being from a 15 month old. Providing the right mix of nurture, encouragement, and independence is not a brain rot task. Also, when you're dealing with many children, you are going to have those who have special needs. But common sense, endurance and love are the hallmark qualities of a good day care worker. And you're right, those aren't necessarily the qualities of highly educated professionals.

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**Chicago:** Did you get a chance to talk to the parents of the children you cared for? My experience has been that this is one of the hardest but most important tasks for child care workers to do, but they get very little training about how to work with or communicate with parents.

**Emily Yoffe:** I didn't. I did talk to some of the workers about their relationship with the parents. Most said the parents were wonderful, but some were extremely frustrated with parents who weren't giving the kids at home the kind of patient, encouraging care they got at the center. I agree, this is an important and delicate area and one that probably doesn't get enough attention.

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**Durham, N.C.:** Your experience reminded me of the scene in *Paris, je t'aime* where a poor immigrant stays away from her own baby all day to take care of a rich family's infant. It's sickening that taking care of children during their most impressionable years is considered such a low-skill (and therefore low-wage) activity. What can be done? Is universal preschool the answer? It seems like that's just expanding the age of public school not for the benefit of the children, but for the

accommodation of our economic system, wherein both parents have to spend eight hours a day away from their kids.

**Emily Yoffe:** Many of the women working in day care are mothers of young children themselves. One I spoke to doesn't get home until 6:30, so she has a network of friends and relatives watching her daughter while she cares for other people's children. I don't know if universal preschool is the answer, but it is not on the political agenda now. But in this country in the 1970s about 25 percent of 4 year olds were being taken care of outside their home, today 60 percent are.

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**Defensive working moms?:** Um, they are because they have to be, with constant accusations of "outsourcing" our child-rearing. Your "digs" may not have been intended, but I suspect otherwise even with some of the comments now (i.e. if you "have to" make child care arrangements this is a good compromise). Yes, some of us have to have two incomes.

**Emily Yoffe:** It seems that the point you're making is that the raw economics of being able to keep your house and feed your family requires many mothers to go to back to work months, or even weeks after their children are born. You are making my point: that in an ideal world this wouldn't be a necessity, and some women would prefer to take more time off of work. I'm not making a dig, I'm understanding this can be a wrenching decision for some, with no perfect choices.

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**Boulder, Colo.:** Thanks for this article—you truly went in with open eyes. The opportunity to socialize human beings at such an early age was my passion when I was in this field. Do you agree that, when done right, a day care classroom can create human beings with great social skills that will get them through, later in life, along with the potential for people getting along better?

**Emily Yoffe:** I sent my daughter to pre-school for part of the day starting when she was 2, and I think it was absolutely great for her. But the long-term studies on the preschool effect present mixed data. In general spending part of the day with other kids does seem to confer benefits, but spending all day every day can be somewhat detrimental. Many studies of poor kids in high quality day care show that they are cognitively and socially ahead of a control group of kids who didn't go, but the effect fades as the children move through elementary school. But this may be due to the fact that the schools they go to are inadequate

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**Arlington, Va.:** The National Association for the Education of Young Children (NAEYC) recently increases the educational

standards for day care workers, requiring—among other things—that most head teachers have bachelor's degrees. Honestly, I think this is the wrong approach. I'd much rather have a sensible grandmother-type taking care of the infants, and save the degrees for preschool teachers. In any event, a bachelor's does not equal fabulous teacher. At my daughter's daycare center, her worst three teachers had bachelor's, and could not control the classes she was in. Her best teachers have included those with degrees and those without.

**Emily Yoffe:** You raise a very good point. We can be so credential mad that we lose sight of the real skills required here. A warm, patient, empathic person with no college degree can be a fabulous day care teacher.

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**Emily Yoffe:** Thanks everyone for your provocative questions. As promised, no solutions as to what to do about getting our kids high-quality, affordable care.

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## today's papers Year of the Gun

By Daniel Politi  
Friday, June 27, 2008, at 6:10 AM ET

All the papers lead with the Supreme Court's ruling for the first time in history that the Second Amendment protects an individual's right to own a gun. The justices—split along traditional ideological grounds and by a 5-4 vote—struck down the District of Columbia ban on handguns, the strictest gun-control law in the country. The *Washington Post* naturally devotes most of its front-page real estate [to the ruling](#), noting that it "wiped away years of lower court decisions that had held that the intent of the amendment ... was to tie the right of gun possession to militia service." The *New York Times* says Justice Antonin Scalia's [majority opinion was](#) "his most important in his 22 years on the court." The *Wall Street Journal* [points out that](#) "[f]or the third time this month, a major constitutional issue was decided by a single vote—that of Justice Anthony Kennedy, the maverick conservative" who had sided with the court's liberal wing in the Guantanamo and child-rapist cases but yesterday lined up with the conservatives.

In his majority opinion, Scalia took pains to emphasize that the ["decision, while historic, was narrow and its practical effects limited,"](#) says the *Los Angeles Times*. The individual right to gun ownership is not unlimited, and Scalia said the court would uphold restrictions on concealed, as well as "dangerous and unusual," weapons and laws that prohibit firearms from government buildings and schools. "Beyond that, the court did

not address what types of regulations would survive legal challenges," notes [USA Today's lead that says the decision](#) "immediately cast doubt on gun restrictions nationwide." The *LAT* points out that yesterday's decision "brought immediate court challenges to similar laws in Chicago and San Francisco."

Advocates for gun rights praised the ruling and said the decision provides them with a clear opening to issue a variety of [legal challenges](#) to existing restrictions on the ownership of firearms. But gun-control advocates also said they were at least heartened by the fact that the court didn't dismiss all restrictions on firearms as unconstitutional. In a scathing dissent, Justice John Paul Stevens warned that yesterday's decision would likely lead to a new era of [judicial involvement](#) in an issue that is best left to elected lawmakers. In reality, though, the ruling "will have little practical impact in most of the country," says the *NYT* [in a Page One analysis](#). It is likely to be felt mostly in a few urban areas that have the most restrictive gun-control laws.

In their opinions, Scalia and Stevens "went head to head in debating how the 27 words in the Second Amendment should be interpreted," [notes the NYT](#). Stevens emphasized that the right to own a weapon exists only "in conjunction with service in a well-regulated militia," while Scalia said that the militia part of the amendment isn't meant as a limit on the pre-existing right to bear arms. The two also sharply disagreed on the 1939 decision that was the last time the issue was analyzed by the court and has been [widely interpreted](#) as a rejection of the individual-rights argument for possessing firearms.

The presidential candidates [both quickly praised the decision](#), although Sen. John McCain was a bit more effusive than Sen. Barack Obama. McCain called it "a landmark victory" that brings to an end "the specious argument" that there's no individual right to gun ownership. For his part, Obama said the decision protects the rights of gun owners but also emphasized that this protection "is not absolute."

The *WP* and *LAT* both publish opinion pieces that argue yesterday's decision involved the court's conservative wing displaying its most activist instincts. In the *LAT*, [Erwin Chemerinsky](#) writes that the ambiguity of the Second Amendment should have led the justices to follow precedent and allow lawmakers to decide the issue. Instead, the majority took matters into their own hands in "a powerful reminder that the conservative justices are activists when it serves their political agenda," writes Chemerinsky. In the *Post*, [E.J. Dionne Jr.](#) agrees and says the conservative justices once again demonstrated "their willingness to abandon precedent in order to do whatever is necessary to further the agenda of the contemporary political right." The decision serves as a good reminder "that judicial activism is now a habit of the right."

It's Election Day in Zimbabwe, and those who don't vote risk being beaten or killed, [notes the NYT inside](#). President Robert

Mugabe has refused to bow to international pressure and insisted the vote will go on as scheduled, even though his opponent dropped out of the race and violence has engulfed the country. Zimbabweans will likely be rounded up and taken to the polls, where many believe that if they don't vote for Mugabe they will face retribution. "If you don't show your finger that you've voted, you'll be beaten," explained opposition leader Morgan Tsvangirai, [who tells the WP that he's boycotting the elections](#) and will "do nothing" today.

So who's going to do the beating and killing? Young men whose "life has come down to a painfully simple equation: If you don't beat your victim hard enough, you may be the next victim," [reports the LAT](#). Mugabe's thugs have often been portrayed as ruthless villains, but the *LAT* talks to three who sound more like scared children than vicious killers as they describe how they want to escape but fear the militia would capture them or kill their families. They also tell the *LAT* that young women and girls as young as 15 are being kidnapped to serve as sex slaves for the militias. It's another [must-read story from the LAT](#), whose reporter has been writing some of the best, most detailed accounts of the situation on the ground in Zimbabwe that manage to illustrate how regular citizens are caught in the middle of the horror.

The *NYT* fronts and the *WSJ* goes inside with interesting looks at why exactly South Africa's president, Thabo Mbeki, has refused to criticize Mugabe and continues to insist on mediation. The world is puzzled by Mbeki's approach, which the *NYT* characterizes as "[walking softly, carrying no stick](#)," but it's the result of his close personal relationship with Mugabe as well as his political convictions and a reluctance to allow the Western world to meddle in Africa's affairs. Tsvangirai has called for Mbeki to [step down](#) from his role as the region's appointed mediator.

The *NYT*, *LAT*, and *WP* front President Bush's announcement that North Korea will be removed from the list of countries that sponsor terrorism after Pyongyang provided long-awaited details about its nuclear efforts. Although the move is largely portrayed as symbolic, the *NYT* [highlights](#) that it demonstrates how Secretary of State Condoleezza Rice managed to win "a major battle" against Vice President Dick Cheney and his allies, who are none too happy about the move.

The country that Bush once designated as part of the "axis of evil" provided details about its main nuclear effort, but everyone says there was [lots missing from the report](#), particularly any information about assembled nuclear weapons. Pyongyang also provided no details about a suspected [uranium-enrichment program](#), which has led some to speculate that perhaps North Korea will continue secret efforts to build a nuclear weapon. Early-morning wire stories report that, as had been announced, North Korea destroyed a 60-foot-tall cooling tower at its [Yongbyon nuclear plant](#).

Everyone notes the bad day at the stock market. Oil prices continued to increase, and the Dow Jones industrial average fell to its [lowest level in almost two years](#). Although it seems like just yesterday that many were saying the economy would rebound in the second half of the year, there are doubts about whether [that will actually happen](#). Financial firms continue to lose money, and consumers are highly pessimistic about the state of the economy.

The *WP*'s [Steven Pearlstein](#) writes that no one should expect the economy to rebound in the near future. "This thing's going down, fast and hard," he writes, while noting that this downturn will be different from most because it's "a recession with an overlay of inflation." The inconvenient combination is particularly difficult for the Federal Reserve to deal with, because trying to fix one problem makes the other worse. "Don't let anyone fool you: It will be a while before things return to normal."

Starting next week, smokers [won't be allowed to light up](#) in cafes, bars, restaurants, and clubs in the Netherlands. Well, light up cigarettes, at least. *USAT* reports that while smoking a joint at a coffee shop will still be perfectly legal, smoking cigarettes will be forbidden. Naturally, people are confused, particularly since many Europeans are used to mixing a little tobacco with their marijuana. "I will have to ask, 'What's in that joint?'" one coffee shop owner said. "It's going to make it pretty difficult to enforce."

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## today's papers Not a Time To Kill

By Daniel Politi

Thursday, June 26, 2008, at 6:11 AM ET

The *New York Times*, *Washington Post*, and the *Wall Street Journal*'s world-wide newsbox lead with the Supreme Court ruling that it's unconstitutional to execute someone for [raping a child](#). The 5-4 decision restricted the death penalty to punish murderers and those who commit [crimes against the state](#). Writing for the majority, Justice Anthony Kennedy said that cases of child rape "may be devastating in their harm," but "they cannot be compared to murder in their severity and irrevocability." The *Los Angeles Times* devotes its top nonlocal spot to yesterday's other big Supreme Court decision, which reduced a punitive damages award against Exxon Mobil from \$2.5 billion to [around \\$500 million](#). The ruling brought an end to a legal battle that has been going on for almost 20 years after the *Exxon Valdez* spilled almost 11 million gallons of crude oil in Alaska in 1989.

*USA Today* leads with the chairman of the House appropriations defense subcommittee saying that the Pentagon will have to spend more than \$100 billion to [replace and repair equipment](#). Rep. John Murtha said the failure to properly plan for a long war in Iraq means the Pentagon has neglected its equipment and now will likely have to give up hopes to increase the size of the military. Pentagon leaders are coming to the realization that they will have to make a choice between a larger military and improved equipment.

No one has been executed for raping a child [since 1964](#), but yesterday's 5-4 decision voids the laws in six states that allowed the death penalty to be imposed for such a crime. Two men in Louisiana are the only ones in the country currently on death row for child rape, and their sentences will now be changed to life without parole. As the *NYT* points out, this was the [third time in six years](#) that the Supreme Court has put a limit on the death penalty, saying that it was following the evolving standards of decency under the Eighth Amendment. Both presidential candidates criticized the decision. Sen. John McCain called it "an assault on ... efforts to punish these heinous felons" while Sen. Barack Obama said he disagreed with the court's "blanket prohibition."

A majority of justices said that Exxon Mobil shouldn't have to pay more in punitive damages than what it had to pay for the [actual damages](#). Writing for the majority, Justice David Souter said that a 1-to-1 ratio between compensatory damages and punitive damages would be appropriate. The big question now is whether this will become a defining guideline for all punitive damages or whether it simply applies to cases [involving maritime law](#). Exxon and business groups praised the decision, saying that it might go a long way to bring an end to the unpredictable nature of punitive damages. The *LAT* points out that the fact that Exxon made [\\$40.6 billion in profits](#) last year means that "it could pay the punitive damages with about four days' worth of profits."

The *LAT* fronts, and everyone goes inside with, the latest from Zimbabwe as African leaders continued to criticize President Robert Mugabe and called for Friday's [runoff election to be postponed](#). Queen Elizabeth II stripped Mugabe of his honorary knighthood, and Nelson Mandela, who barely talks about politics in public, said there's been a "tragic failure of leadership in Zimbabwe." Archbishop Desmond Tutu went even further and said Mugabe "mutated into something quite unbelievable." Approximately 300 people, many of whom were injured, gathered outside the South African Embassy to ask for asylum while the opposition leader called on the African Union and the United Nations to deploy [peacekeeping troops in Zimbabwe](#).

Of course, Mugabe has shown no signs of caring about what the international community thinks and insists that "only God" can remove him from power. "It's time to give God a helping hand," writes [Timothy Garton Ash](#) in the *LAT*'s op-ed page. It's a

mistake to think that the only way the international community could intervene would be to invade Zimbabwe. "The choice is not either invade or do nothing," he writes. "There are hundreds of ways in which states and peoples intervene in the affairs of other states and peoples without resorting to the use of military force."

The *NYT* fronts a look at the ongoing discussions between Obama and Sen. Hillary Clinton on a variety of issues, including how to help the former first lady repay some of the [debt left over from her campaign](#). Clinton will formally introduce some of her biggest donors to Obama tonight, and the two will appear together on Friday. Famous Washington lawyer Robert Barnett is helping the two camps work out the issues, but it isn't all love among the Democrats. Many Clinton supporters continue to harbor feelings of ill will toward Obama and his campaign. Primarily, some of her biggest supporters say Obama hasn't done enough to help Clinton with her debt and point out that the presumptive nominee hasn't even taken the trouble of writing a \$2,300 check to her campaign in what many believe would be a strong symbolic gesture.

On the Republican side, the *WP* fronts a look at Richard Davis, McCain's top campaign adviser, who has been working without pay for almost a year in what he says is a demonstration of his [dedication to the presumptive nominee](#). But it really might just be his way of saying thanks. Davis has taken a leave from his lobbying firm, but his relationship with McCain has paid off handsomely throughout the years. Ever since he first managed a McCain campaign eight years ago, he's made quite a bit of money from companies that wanted the senator's attention and even earned a bit of cash from what the *Post* calls "a panoply of McCain-related entities." Davis is hardly the only McCain aide who has made money from a relationship with the senator, but his case is a great reminder of how terms like *free advice* and *unpaid* are all relative in Washington.

Many had once hoped that a campaign between Obama and McCain would bring about a new level of political discourse. But the *Post's* [Dan Balz](#) is clearly disappointed when he notes that the first few weeks of the general election have seen the two candidates fall into the same old habits of aggressive attacks and counterattacks that can't possibly interest anybody besides obsessive political junkies. It's still early and things might change, but it could be telling that the candidates fell back into old habits so quickly. "The question is whether the opening weeks are a true reflection of their characters and the kind of campaigns they intended to run or a temporary departure."

It was only a little while ago that Republicans thought they could win over voters in congressional elections by tying Democratic lawmakers in conservative districts to Obama. But the strategy didn't work, and now a Republican senator (from Oregon, but still) has gone the other way and is touting his supposed close relationship with Obama in a campaign ad, [notes the \*Post\*](#). Not

surprisingly, Obama has been inundated with requests from Democratic congressional candidates who want the presumptive nominee to help get them elected.

Lately, McCain's campaign has taken to [calling Obama the "Dr. No" of energy policy](#). But the *LAT* points out that McCain might want to slap the label on himself, particularly since he has vowed to build new nuclear plants. He does have a catchy name, but the truth is that James Bond's antagonist in the 1962 film "was something of a pioneer in nuclear energy."

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## today's papers

### Rise of the Insurgents

By Daniel Politi

Wednesday, June 25, 2008, at 6:16 AM ET

The *Los Angeles Times* leads with new Pentagon data that show insurgent activity is [on the rise in Afghanistan](#), a development that has led military leaders to order a review of current strategy in the country. In the first five months of the year, insurgent attacks have gotten more sophisticated and increased almost 40 percent in the eastern provinces, a region of Afghanistan that was once relatively calm and several senior Pentagon officials had frequently touted as an example of success. The *Washington Post* leads with the [mounting international pressure](#) against Zimbabwe's government and its plans to go on with the presidential election on Friday. The president of Senegal and the leader of South Africa's ruling party both said the election should be canceled and urged both sides to sit down and work out an agreement.

The *Wall Street Journal* leads its world-wide newsbox with an internal Justice Department report that found officials broke the law by favoring those who didn't have [ties to the Democratic Party or liberal organizations](#) for the department's highly coveted intern and honors jobs, which are meant to be awarded on merit. The *New York Times* leads with a look at how Congress is on the verge of approving legislation that could help thousands of homeowners [avoid foreclosures](#). Lawmakers are eager to act as new data were released showing that home prices have plunged more than 15 percent over the past year. *USA Today* leads with yesterday's announcement that the state of Florida has reached a tentative agreement with U.S. Sugar to buy all of the company's assets for \$1.75 billion in an attempt to [restore the Everglades](#). Under the deal, U.S. Sugar would have six years to close up shop before Florida takes over its 187,000 acres of land that it wants to return to its natural state and protect from development.

While the rate of U.S. military deaths in Iraq keeps on decreasing, the [opposite is true in Afghanistan](#), where 50 Americans have been killed in combat this year, compared with

28 who were killed in the first six months of 2007. Pentagon leaders want to increase the number of U.S. troops in Afghanistan but can't do much about that desire until there's a significant withdrawal of forces from Iraq. Although many in the Pentagon once advocated that troop reductions in Iraq should be used as an opportunity to give servicemembers more time to rest and train stateside, military planners now agree that any drawdown from Iraq will lead to an increase of forces in Afghanistan. Problem is that no one knows when there will be further withdrawals from Iraq. In the meantime, to streamline the operations in Afghanistan, the Pentagon will propose "in the coming weeks" that all U.S. and NATO forces report to the new four-star commander in Afghanistan.

Southern African leaders will meet in Swaziland today to discuss the [growing crisis in Zimbabwe](#), but there's little reason to think that President Robert Mugabe will listen to their concerns. Mugabe continued campaigning yesterday and mocked his former rival for dropping out and seeking refuge in the Dutch Embassy. "He is frightened, frightened of the people," Mugabe said. "These are voters. They won't do you any harm." The *NYT* highlights that even though South Africa's ruling party called for the vote to be postponed, it also insisted that foreign diplomats should resist the [urge to intervene](#) because it "will merely deepen the crisis." Meanwhile, there were hints that even as Mugabe dismissed international pressure, he was opening the door to talks with the opposition, but only after he wins the election and can negotiate from [a position of strength](#).

There's little doubt that Mugabe will win Friday's election, but, just in case, the violence and intimidation continue. In a must-read Page One dispatch from Harare, the *LAT* reports that ruling party officials are telling voters at meetings that the ballot serial numbers will allow them to know who voted for the opposition and warned that those who [don't vote for Mugabe will be killed](#). "They said, 'Even if you run away, we'll chop the heads off whoever you leave behind at your house. We don't care if it's your children or your grandchildren,'" recalled a 60-year-old woman who was forced to go to a meeting. One man who has been attending meetings every day for two weeks said the talk of serial numbers on ballots was being repeated daily. "They will launch another operation, called Operation Elimination, where people will be disappearing," he said. "They repeat the same message over and over."

The report by the Justice Department found that senior officials attempted to figure out [political affiliations of applicants](#) through Internet searches as well as a close analysis of their essays and résumés to look for any hint of liberal bias. Although ideology can be used as a factor for political appointees, federal law prohibits it from being considered for civil-service jobs. This is the first in what many think will be a series of reports that will show how [the Justice Department was politicized](#) under former Attorney General Alberto Gonzales. The current attorney general, Michael Mukasey, emphasized yesterday that it's

"impermissible and unacceptable" to consider political affiliation when hiring career lawyers.

The "[centerpiece](#)" of the Senate's housing legislation would allow borrowers to refinance into a more affordable, fixed-rate loan that would come with a federal guarantee. The bill would also increase assistance for first-time buyers, and regulation on Fannie Mae and Freddie Mac would be strengthened. The *WP* reveals the "centerpiece" was initially suggested by [lobbyists for major banks](#). Although the banks would get less money for the loan, it also would allow them to get rid of properties, and the taxpayer would have to foot the bill if there are defaults. Around Capitol Hill, the proposal was known as the "Credit Suisse plan" before it was incorporated into the legislation.

The *LAT* off-leads a new national poll that shows Sen. Barack Obama has a 12-point lead [over rival Sen. John McCain](#). In a two-way race, Obama received 49 percent while McCain got 37 percent. Interestingly enough, when the independent (Ralph Nader) and Libertarian (Bob Barr) candidates are added to the list, the margin increases to 48-33 because most of their support comes from independents who would have otherwise voted Republican. The *LAT* notes McCain suffers from "a passion gap" since many Republicans still aren't very excited about voting for him. Most of those who supported Sen. Hillary Clinton are now supporting Obama, though 11 percent have moved over to McCain's side.

When TP knows an e-mail contains bad news, he sometimes refuses to open it immediately, believing that it can't be real until it has been read. Seems like the White House follows the same strategy. Today, the *NYT* reveals that when the Environmental Protection Agency reached the conclusion that greenhouse gases are pollutants and must be controlled, the White House [refused to open the e-mail message](#). Instead, the White House began a furious lobbying campaign to get the document changed. The watered-down report to be released this week makes no conclusions and simply goes over the legal and financial implications of declaring greenhouse gases a pollutant.

The *LAT* fronts word that Chrysler will announce tomorrow that everyone who buys a 2009 model will have the option of adding [wireless Internet to their vehicle](#). In an ironic twist of fate, the announcement will come just a few days before drivers in California and Washington will be required to use a headset when talking on a cellular phone. But, in California at least, it's unclear whether the law prohibits surfing the Web while driving.

The *NYT* reports that a group in San Francisco will ask voters whether the name of a water treatment plant should be [changed to George W. Bush Sewage Plant](#). Those who came up with the plan while in a bar want to put a vote on the November ballot to provide "an appropriate honor for a truly unique president."

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## today's papers

### Taking a Stand

By Daniel Politi

Tuesday, June 24, 2008, at 6:34 AM ET

The [New York Times](#) leads with the United Nations Security Council condemning the "campaign of violence" that has targeted supporters of Zimbabwe's opposition and said it would be "[impossible for a free and fair election to take place](#)" as scheduled. The move came after opposition leader Morgan Tsvangirai sought refuge at the Dutch Embassy in Harare and police officers raided the opposition party headquarters and arrested 60 people. The [Wall Street Journal's](#) world-wide news box leads with a newly released [Pentagon report](#) that calls Iran the "greatest long-term threat to Iraqi security." The report was largely positive, noting that violence is at its lowest levels in four years and praising the Iraqi prime minister for cracking down on Shiite militias.

[USA Today](#) leads with a look at how rising food and gas prices are hurting people's abilities to keep up with basic bills as utilities are reporting that they're [disconnecting many more customers than last year](#). "We're seeing a record number of shutoffs," the head of the National Energy Assistance Directors' Association said. The [Washington Post](#) off-leads the news about Zimbabwe and leads with a look at how consumers are facing [gas surcharges in a variety of industries](#). There's no regulation to limit how high a surcharge can go, so they're often all over the map. "It's almost impossible to tell if they're fair," the executive director of the Consumer Federation of America said. "It makes it very difficult for consumers to comparison-shop and understand the full price of the products that they're buying." The [Los Angeles Times](#) leads with news that Broadcom co-founder [Henry Samueli pleaded guilty](#) to lying to the Securities and Exchange Commission as the regulator investigated stock-option backdating at the chip-making firm.

The United Nations had largely remained on the sidelines, but yesterday the Security Council took its [first formal action](#) on Zimbabwe's crisis and called on the government to allow opposition rallies and liberate political prisoners. U.N. Secretary General Ban Ki-Moon went even further and called on Mugabe's government to postpone the runoff election, saying that it "would lack all legitimacy" if it went on as scheduled. Of course, Mugabe has shown he doesn't really care about international opinion, so it's unlikely that this alone will change anything.

Tsvangirai dropped out of Friday's runoff election on Sunday, but the violence and intimidation campaign by loyalists of President Robert Mugabe [continued unabated yesterday](#). The [NYT](#) talks to opposition officials who say they [knew a raid was](#)

[coming](#), so most of the 1,500 people who had sought refuge in their Harare headquarters quickly fled, which meant that by the time the police arrived "only a few dozen of the most helpless people, many of them wounded, were left." For its part, the [WSJ](#) has a telling anecdote from a young woman who was stopped by a group of thugs on her way to work and forced to attend a [10-hour pro-government rally instead](#), illustrating how the intimidation campaign doesn't only affect those involved in politics. While Mugabe is increasingly facing criticism from other leaders in the region, the president of South Africa, Thabo Mbeki, has remained largely silent while trying to get members of the opposition and ruling parties to sit down and negotiate.

On the [NYT's](#) opinion page, [Peter Godwin](#) writes that the "international community has no choice but to delegitimize Mr. Mugabe's regime." This wouldn't be necessary if Mbeki actually decided to do something about the deepening crisis. But if he won't, the international community has a golden opportunity to apply pressure with the World Cup that will be held in South Africa in 2010. "Perhaps it's time to share the Zimbabweans' pain, to help persuade Mr. Mbeki to bear down on its source by threatening to grab the world's soccer ball and take our games elsewhere."

In a piece headlined "The Bush Doctrine Is Relevant Again," the [WSJ's](#) [Bret Stephens](#) predicts Tsvangirai will win the Nobel Peace Prize and notes that "Zimbabwe is now another spot on the map of the civilized world's troubled conscience," joining the likes of Burma and Darfur. And as in those other troubled spots, nothing in Zimbabwe will change unless Mugabe is removed by force.

Contrasting the Pentagon's largely positive report on Iraq, the Government Accountability Office released its own report that has a decidedly less rosy look at the situation on the ground. The [WP](#) says that "the two reports seemed to assess wholly different realities" and notes that the GAO didn't mention [Iran once in its report](#). The GAO said the way the Bush administration chooses to measure progress in Iraq doesn't tell the full story, many of the president's goals haven't been reached, and there is no clear strategy for how U.S. troops will proceed after the "surge" ends. Although the GAO acknowledged there has been a [decrease in violence in Iraq](#), it also noted that the administration often uses misleading and exaggerated figures to show progress. The government auditors say a mere 10 percent of Iraq's security forces can operate without assistance from the United States.

Yesterday, the [WP](#) looked into the failure of the U.S.-funded TV network in the Middle East, and today it examines how al-Qaida has been highly successful in its [propaganda efforts during the digital age](#). It's truly a study in contrasts, as al-Qaida's top leadership has been able to get their message to a massive audience through as-Sahab, the terrorist network's propaganda studio. U.S. officials say they might have been able to disrupt the propaganda operations in the past, but now security is so

airtight that it's practically impossible to cause anything more than temporary damage. Because the propaganda is distributed through a network of decentralized Web sites, arresting individual members of the network wouldn't stop the transmission of the information.

The *NYT* fronts news that congressional investigators have discovered that the American ambassador to Albania knew evidence of the Chinese origins of ammunition [was removed](#) before it was [shipped by a U.S. contractor](#) to Afghanistan. The ambassador apparently supported a plan by the Albanian defense minister to hide boxes of the Chinese ammunition [from a \*NYT\* reporter](#), even though U.S. law prohibits trading in Chinese arms. According to the whistle-blower, "the ambassador agreed that this would alleviate the suspicion of wrongdoing." On Friday, the 22-year-old president of the contractor, AEY Inc., and three others were charged with selling Chinese ammunition that they said was Albanian.

Nobody fronts news that a federal appeals court ruled that a prisoner who has been held in Guantanamo for six years should be [released, transferred, or given a new military hearing](#). The court ruled that Huzaiifa Parhat, one of 17 ethnic Chinese Uighurs who are being held in Guantanamo, was inappropriately labeled as an enemy combatant. It marks the first time a Guantanamo detainee has successfully challenged his designation as an enemy combatant.

The *Post* fronts in-house news and reports that the paper's executive editor, Leonard Downie Jr., will be [stepping down after a 17-year tenure](#). Downie spent his entire career at the *Post*, where he started as an intern in 1964. As could be expected, the piece is full of praise and no word on what led to his departure beyond a rote line about wanting to spend more time with his wife. The move wasn't unexpected, but, of course, it does seem strange that a dedicated newsman at the center of the country's political scene would want to leave in the middle of the presidential campaign.

The *WP* and *USAT* report on a poll of religious attitudes in the United States that found 92 percent of Americans [believe in God or a universal spirit](#) and 58 percent say they pray at least once a day. But most aren't convinced their religion is the only one that can lead to salvation, and the overwhelming majority believe there is more than one way to interpret a religion's teachings. But the one common factor is the belief in God or a higher power, which is shared even by 21 percent of those who said they are atheists. "Americans believe in everything," [a sociologist said](#). "It's a spiritual salad bar."

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## today's papers

### Life Is Not Worth Losing

By Daniel Politi

Monday, June 23, 2008, at 6:18 AM ET

The *New York Times*, *Washington Post*, and the *Wall Street Journal's* world-wide news box lead with Zimbabwe's opposition leader announcing that he would [pull out of the presidential runoff election](#) scheduled for Friday due to rising levels of violence. Morgan Tsvangirai said he could no longer ask his supporters to risk their lives "for the sake of power." Violence has been escalating as President Robert Mugabe's supporters have been stepping up their efforts to kill and intimidate opposition activists under the ruling [party's new slogan](#): "WW—Win or War." The opposition party, the Movement for Democratic Change, says that [at least 86](#) of its supporters have been killed and thousands more have been injured. "We will not be part of that war," Tsvangirai said.

*USA Today* leads with word that there's been an almost 90 percent decrease in deaths caused by [roadside bomb attacks in Iraq](#). Military leaders say this is due to a variety of factors, including new armored vehicles, more assistance from Iraqi security forces, and enhanced methods of surveillance. The *Los Angeles Times* leads with a look at how Barack Obama wants to get a record number of black voters to go to the polls in November as part of his strategy to win [five key battleground states](#). Aides have identified "a gold mine" of new voters and will target them with the help of Obama's deep pockets and sophisticated techniques that were critical to Bush's victories in several crucial swing states. But strategists insist he has to play a delicate balancing act in order to avoid the appearance that he's "exploiting race or running solely as a black candidate," which could hurt his chances with white working-class voters who didn't support him in the primaries.

The *LAT* talks to an official from Zimbabwe's ruling party who makes it clear that just because Tsvangirai plans to drop out of the election (he has to put it in writing to make it official) doesn't mean the violence will automatically end. The official warned that the [crackdown would intensify](#) if opposition supporters decide to protest. The *NYT* notes that [Tsvangirai's decision](#) "seems intended to force Zimbabwe's neighbors to take a stand." There is a growing sense of frustration among Zimbabwe's opposition about the reluctance of South Africa, along with other African nations, to condemn Mugabe's tactics.

The *WSJ* says that although it's evident that there's "growing international impatience with the Mugabe regime," it's unclear whether it "would translate into any concrete steps." The United States and Britain want the [United Nations Security Council](#) to discuss the issue, a move South Africa has long opposed. The *WSJ* points out that the opposition wants foreign leaders to support a transitional government that would take over

Zimbabwe until fair elections can be held. But, of course, it's quite unlikely that Mugabe would agree to such a plan, seeing as he's made it clear that he would not hand power to the opposition, no matter the results of the election.

The *WP* fronts a look at al-Hurra, the Arab-language television network founded by the Bush administration to improve the image of the United States in the Middle East and to [promote democracy](#). Around \$350 million in taxpayer money has been plunged into a project that has been, for all intents and purposes, a flop. Al-Hurra has been plagued with problems from the start, partly due to the fact that many of its top executives had no experience in the TV business and couldn't speak Arabic. But, ultimately, critics say the whole idea that a network could play the same role as Radio Free Europe did during the Cold War was ill-conceived. As opposed to those who lived behind the Iron Curtain, residents of the Arab world have plenty of choices due to the high proliferation of satellite dishes, and al-Hurra's programming, which is widely described as mediocre, has never found an audience. Coincidentally (or not?), [ProPublica and 60 Minutes](#) released the extensive results of a joint investigation into al-Hurra and its partner radio station last night and say that the network's "four years of operation have been marked by a string of broadcast disasters that government officials believe are as negative as anything aired by Al Jazeera."

The *NYT* fronts a look at Obama's close ties to domestic ethanol producers. The presumptive nominee represents the country's second largest corn-producing state, so it's hardly a secret that he's a big supporter of ethanol as an alternative fuel. Today, the *NYT* notes that [several of his advisers and biggest supporters have close ties to the ethanol industry](#). Obama's campaign insists the presumptive nominee's views have nothing to do with where he's from or any pressure from special interests. But the *NYT* points out that the presumptive nominee is against removing the tariffs on Brazilian ethanol that is made from sugar cane even though it is much more efficient. Instead, Obama favors awarding subsidies to farmers and imposing the tax on imports so the United States can build "energy independence."

The *LAT*, *USAT*, and *WP* catch late-breaking news that legendary comedian George Carlin [died of heart failure yesterday](#). Throughout his career, Carlin tried to push boundaries and was probably best-known for his routine called "The Seven Words You Can Never Say on TV," which exemplified how he came to be known as "[the dean of counterculture comedians](#)." The "Seven Words" routine got him arrested in 1972 and even led to a 1978 Supreme Court ruling that said the government has the power to police offensive language if children might be listening. "I think it is the duty of the comedian to find out where the line is drawn and cross it deliberately," [Carlin once said](#). He was 71 and had a history of heart trouble.

**Quote of the day:** "Republicans say [Karl] Rove is the architect," [a GOP insider tells the Post](#). "He's the architect of our demise."

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## today's papers

### A Separate Peace

By Jesse Stanchak

Saturday, June 21, 2008, at 7:04 AM ET

The [New York Times](#) leads with analysis of the impressive, yet exceptionally fragile, [security gains](#) made in Iraq over the past six months. The [Wall Street Journal](#) tops its world-wide newsbox with the House [passing](#) an electronic surveillance bill that would all but certainly put an end to legal challenges pending against telecommunication companies who were involved in warrantless wiretaps. The [Washington Post](#) leads with grassroots groups in Burma [aiding cyclone victims](#) despite crackdowns from the ruling junta. The [Los Angeles Times](#) leads with worrisome [local unemployment reports](#).

The *NYT*'s assessment of the Iraqi security situation boils down to its opening questions: "What's going right? And can it last?" On the surface it looks like a military victory: The Iraqi army has quashed Shiite militias in a number of hot spots, driving violence to its lowest level in more than four years. But the article proceeds to elaborate the more unusual factors propping up the peace, including high recruitment for the Iraqi army, high oil revenues fending off inflation, tenuous deals with militias (including paying some insurgents to help keep the peace), and some very convenient assistance by American special forces. The *WP* is a [little more bullish](#) in its assessment of calm on the streets in Basra. The most striking element of both pieces is a sense of guarded optimism in the quotes from Iraqis.

The *WSJ* says many Democrats object to the FISA measure, but support from conservative Democrats and Republicans gave it enough votes to pass the House Friday. The paper says the leadership put the bill to a vote in order to protect Democrats in vulnerable districts. Enactment now seems inevitable, as the Senate takes up the bill next week. Sens. Barack Obama and John McCain each say they'll vote for the bill. The *WP* goes inside with its coverage of the FISA measure.

The Burmese government denied several offers of foreign aid for cyclone victims out of what the *WP* politely calls "xenophobia." The paper argues that the government is helping its own opposition, however, as Burmese people looking to aid each other are learning to band together, solve their own problems and develop a sense of community activism. Of course, the junta is opposed to these groups as well. In one town, people distributing food are ordered to stop because a local general

wants to be seen as the first to give out aid. Stories about people helping disaster victims are one thing—but the fact that the Burmese are trying to feed their starving countrymen over the objections of armed thugs takes the story to another level of inspiration. Meanwhile, *WSJ* runs a piece on Yangon, the country's old capital city, which the paper now calls a "[ramshackle city of fear](#)."

It might be a local story, but high unemployment in California doesn't bode well for the rest of the country. The state's unemployment rate rose to 6.8 percent in May, the fifth-highest rate in the nation. One analyst is quoted saying the state is already in a recession.

Meanwhile, the *NYT* off-leads with [news](#) that recent declines in homeownership have all but erased the gains made earlier in the decade. The decline in homeownership since 2005 amounts to 1.3 percent of all households, which sounds small, but the paper assures us is the biggest drop in 20 years.

And the *WP* offleads with a sobering assessment of the [budget headaches](#) the next president will face. The paper argues that the campaign promises being made today would only make the situation worse if they were enacted. The story starts off with a laundry list of current financial woes, many of which will get much, much worse over time, no matter what the next president does. The paper argues, however, that in the face of declining revenues and spiraling entitlement costs, both candidates' tax policies would swell the national debt and leave little funding for broad initiatives like a national health care overhaul. The paper finds Obama's tax policy less costly but reasons that McCain would be more inclined to cut spending.

The White House pursued its Guantanamo Bay detainee policy even though it knew there was a good chance the Supreme Court would [overturn it](#), says the *WP*. The administration knew it would have a better chance of surviving a legal challenge if the detainee system were done in a legislative framework, the paper says, but declined to get Congress involved. Sources say officials pursued the policy unilaterally as part of a strategy to strengthen the executive branch.

The *NYT* [writes](#) about Floyd Brown, one of the guys who produced the [Willie Horton](#) ad in 1988. Brown is now trying to raise money to go after Obama, but he's having a hard time attracting donors. The paper says this is partly because of legal changes to the limits of "527" or issue-advocacy organizations like the [Swift Boat Veterans for Truth](#), a group that helped defeat Sen. John Kerry in 2004.

Under the fold, the *WP* [covers](#) the much-ballyhooed discovery of ice on Mars. Of course, the paper notes that even if the white substance found by the Phoenix lander is ice, it doesn't answer the really big question of whether or not Mars ever sustained life.

The *LAT* [reports](#) on the success of rapper Lil Wayne's new album "[Tha Carter III](#)," which last week became the first album in more than three years to sell more than 1 million copies in a single week. The *LAT* argues that the album's success proves that commercial music is far from dead—but that this kind of success requires flexibility and a work ethic that few artists exhibit.

An estimated 4 million wild hogs are raising hell in 37 states—destroying property to the tune of \$800 million a year, [says](#) the *NYT*. For some states, the solution has been encouraging private hunters to go after the porcine troublemakers "with no weapon restrictions." But bagging a wild pig is a lot tougher than cornering [Wilbur](#). For some hunters, the challenge of tracking something that can outsmart you is precisely the point.

"[Winners don't quit and quitters never win](#)." In China, that phrase is taken all too literally, according to the *NYT*'s report on the unhappy fate of the successful Chinese athlete.

Starting in 2010, students who take the SAT multiple times will be able to [decide](#) which scores they want to send to colleges, according to the *LAT*.

The *WP* fronts a feature on the [last day of school](#).

The *LAT* fronts the made-for-TV-movie-ready story of an uptight English teacher who teaches lower income youth the [value of their own minds](#).

Ever wonder what people eat in Bhutan? The *WP* [knows the answer](#), but readers with weak stomachs might not want to find out. (Hint: It may make you wanna yak ...)

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## today's papers

### A Little Bit Racist

By Barron YoungSmith

Sunday, June 22, 2008, at 5:49 AM ET

Today's [New York Times](#) leads with the most detailed [look inside](#) the CIA's interrogation program ever released. The [Washington Post](#) leads with [news](#) that three in 10 Americans are admittedly racist—but a higher percentage is ageist. The [Los Angeles Times](#) leads with a Friedmansque [look](#) at how the falling dollar has affected people across the globe.

The *NYT* lead tells the story of Deuce Martinez, an unlikely CIA interrogator who helped break al-Qaida masterminds Abu Zubaydah and Khalid Shaikh Mohammed. It details the role of secret Polish prisons, "enhanced interrogation techniques," and counter-narcotics technology in the post-9/11 scramble to

prevent new attacks. The piece is agnostic on the utility of water-boarding and says the CIA determined the location for overseas prisons "based largely on which foreign intelligence officials were most accommodating."

A *WP/ABC* news poll says 30 percent of white Americans and 34 percent of black Americans admit they're racist. The paper says that this presents a challenge for Barack Obama, but it notes that about twice as many people have qualms about John McCain's age.

The dollar is rearranging the global economy as it falls. Companies that rely on exports to the U.S., like Chinese T-shirt makers and Indian outsourcers, are feeling the pinch. The *LAT* has a wide-ranging look at the misery—plus a cool interactive [feature](#).

The *WP* goes up high with a new [threat](#) to the financial system. As the economy weakens, consumers are failing to repay their business and car loans in record numbers—posing risks to smaller, regional banks that stayed out of subprime lending.

An *NYT* front [says](#) the Midwest flooding wouldn't be so bad if we'd acted on a 1994 Clinton administration report. After a devastating 1993 flood, it recommended replacing the administrative patchwork that governs Mississippi River levees with oversight by the Army Corps of Engineers. That never happened, and we're paying the price.

The *LAT* fronts a [look](#) at the flooding's economic impact. Some analysts think it will be as bad as 1993 and contribute to the global food crisis. But others think flooded farms will rebound quickly if the next few months remain dry.

The *NYT* goes up high with [news](#) of an agriculture crisis in India. The country could be the world's second-largest food exporter, but poor policy choices and systematic underinvestment have turned it into something of a bread-basketcase.

The *NYT* fronts a [look](#) at Barack Obama's plan to mount a massive national campaign, something John Kerry couldn't do in 2004 because he didn't have enough money. By the end of June, Obama will have paid staff members in all 50 states—and his ad campaign will grow "well beyond" his current 18-state buy.

The *LAT* fronts [questions](#) about Cindy McCain's beer empire. She's the chairwoman and majority private stockholder of a major beer wholesaler that often lobbies the government, and she hasn't explained how she'd solve the conflict of interest as First Lady.

The *NYT* fronts truly chilling [glimpses](#) of Robert Mugabe's election crackdown before the runoff in Zimbabwe. His party insists it's a war, not an election, in which "all state resources at

our disposal" will be employed in "the final battle for total control." They've launched a killing spree against opposition activists and they're herding voters into "re-education" meetings. The *LAT* [goes inside](#) with rough casualty numbers.

A *WP* front [says](#) Britain has set up a special office to stop Pakistani parents in the U.K. from forcing their children into arranged marriages. It's common for traditional parents to send their kids to Pakistan, where they're married off, often literally at gunpoint. But Her Majesty's Government thinks the practice is a human-rights offense, and it's interceding on behalf of the kids.

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