



# CEI UpDate

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## MILITARY READINESS THREATENED BY TENTACLES OF GREEN EXTREMISTS

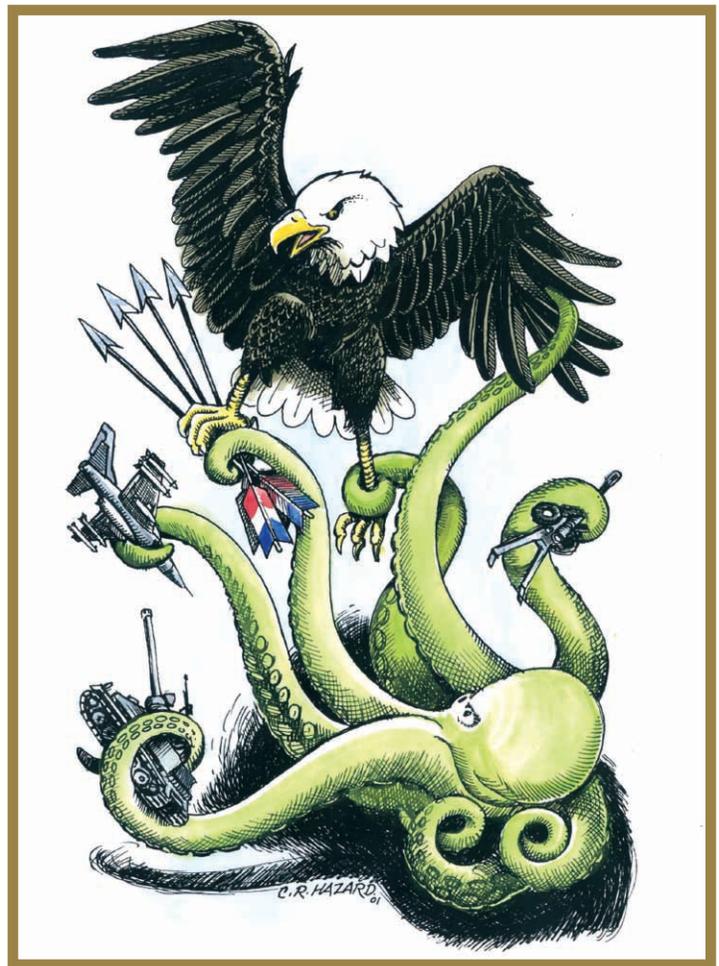
by Sean Paige

Marine Corps officials were alarmed not long ago to discover an infiltrator on their sprawling training complex at Camp Lejeune, North Carolina — one whose presence threatened to compromise the camp’s mission of preparing Marines to prevail in battle. The infiltrator, *Solidago Villosica*, a plant more commonly known as the coastal goldenrod, might to most Americans seem like just another wildflower or weed, with no apparent connection to national security. But to U.S. armed forces, who in recent years have seen their training exercises cut off or sharply curtailed by a barrage of restrictions on how and when they use their bases, each rare or possibly endangered plant or animal found at a facility represents a potential new obstacle to the mission of making ready for war.

From Vieques Island in the Atlantic Ocean to Farallon de Medinilla in the Pacific, and at numerous military training sites in between, soldiers, sailors and flyers who should be practicing to go on the offensive are instead hunkered down, on the defensive, and feeling besieged — not by any imaginary war game foil, but by government regulators, national environmental organizations, and civilian citizen groups seeking to stop or severely restrict training exercises they say are threatening endangered species or disturbing the peace.

Base commanders and Pentagon brass have suffered these mounting complaints and complications in relative silence, trying to disarm critics by being good neighbors to ever-encroaching communities and fostering a stewardship ethic among service branches that together manage 25 million acres of public land that is home to at least 220 federally

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## FROM THE PRESIDENT

WEIGHING RISKS TO CONFORM  
WITH NEW REALITIES

by Fred Smith

The world is now — and always has been — a risky place. But until now Americans haven't taken risks very seriously. Being relatively safe, we've instead focused on the trivial (silicon implants, PCBs in the Hudson, biotechnology) or the visible (the side effects of pharmaceutical remedies). We've neglected the more serious risks associated with technological stagnation, deep-pocket liability laws, and ... terrorism. Risk policy has been driven by the political saliency of some fears over others.

The result has been a vast array of laws and regulations that have flooded the system with false alarms, that have misdirected funds to low-value programs, and that have slowed risk-reducing technological and institutional innovations. Fearing everything, we've weakened our ability to address serious risks, becoming less resilient as a result.

The events of September 11 and the subsequent anthrax attacks demonstrate that there are real risks in the world — and provide us, therefore, with an opportunity to get serious, to rethink current policies, to strengthen our risk management abilities. Congress and the Administration seem to think they're doing exactly that — but how well are they doing?

Not so well as we might hope. Effective risk management requires the setting of clear priorities, the winnowing of the wheat from the chaff, and the clear assignment of responsibilities. Politics is not good at meeting these criteria and the measures moving through Congress reflect that problem.

Consider, for example, the expansion of the anti-money laundering laws, premised on the fact that many criminal activities will at some stage involve banking transactions. The problem is that trillions of dollars move around the modern economy. Holding financial institutions responsible for tracking criminals encourages them to treat every transaction as a potentially suspicious activity, to file another report. The result is that we find it difficult to discern the tiny number of criminal or terrorist needles in the resulting haystack of suspicious activity reports. Yet, the new laws encourage even more reporting, threatening to make that haystack even larger. More data does not mean more information — a fact that Congress doesn't seem to realize.

Congress also seems likely to federalize some or all of the airport security function. To date, the private airlines have hired and screened personnel, while the Federal Aviation Administration (the FAA) has supervised the process. At this writing, Congress is still considering a plan to bring all or some of these workers into federal civil employees. How this will make airports safer is unclear. In the last few weeks, a number of careless and incompetent airport screeners have been fired by their private employers. Would such disciplinary actions have been as easy if these workers had enjoyed civil service protections?

FAA policy has long discouraged arming either passengers or crews. Yet, there are tens of thousands of flights daily in the United States and only a handful of trained federal air marshals. Wouldn't it make sense to consider arming the crew or perhaps seeking volunteer air marshals from those Americans who've been trained as policemen or security agents? That people can play a major role in their own defense was demonstrated when passengers on United Flight 93 — once they realized the nature of the threat — organized themselves more quickly than did the nation's air defense system.

America is a great nation, but democracies are impatient. Crises create great pressures on the President and Congress to do "something." Few find it easy to follow the Founding Fathers implicit guidance for wise governance: "Don't just do something, sit there!" But Americans can take some solace in the fact that to date at least that "something" might have been worse. Though this first wave of laws threaten to make America less resilient, less able to bounce back after disaster, the weakening of constitutional safeguards is "sunset" and some of the worst provisions of the anti-terrorist proposals were sensibly removed.

CEI has long argued that the path to a safer world is to allow people to take prudent risks — not to mandate a risk-free world. We're right, and in this Risky New World, perhaps this point is more important than ever.

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# TRADE, TERROR, AND TRUTH

by Jack Kemp

In addition to America's battle plan for the war on terrorism, we have to develop a battle plan to combat recession.

Even before the terrible events of September 11, the economy was stumbling toward a deflationary recession because of deflationary monetary policy. Coupled with unnecessarily high tax rates on the factors of production and unwarranted regulatory encumbrances, the economy didn't have a chance.

We are at war with all the uncertainties and behavior-altering exigencies that war brings, piling even more dead weight on top of this struggling economy. And this time around, Rosie the Riveter won't be rushing out to the production line to make tanks and guns while GI Joe exits the labor force to join up. This time, we won't experience a short-run mobilization stimulus that pulls idle resources into production. This time we are likely to feel only the depressing economic effects of war unless we take concerted steps to reinvigorate this economy now while combating the terrorists.

An accelerated program of pro-growth tax cuts must play a pivotal role in economic revival, as must a non-deflationary monetary policy keyed to a price rule. America must reassure the world financial community of its commitment to the open flow of goods and services by giving President George W. Bush the "fast-track" authority he needs to negotiate free trade agreements.

This grant of presidential negotiating authority has to be as free and open as possible and unencumbered by regulatory restrictions. Already there are indications that protectionist forces on Capitol Hill, allied with proponents of global regulation, are reluctant to

grant trade negotiating authority without significant regulatory strings attached, especially in the fields of labor and the environment. Even the U.S.-Jordan free-trade agreement, a profound gesture of openness aimed at the Arab world, contains the seeds of a trade-based regulatory regime in its stipulations that competition in labor and environmental regulation may, in some circumstances, be deemed an unfair trade practice.

Free traders accepted that risk

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## Trade should be a front-line weapon against terrorism.

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because, as *The Wall Street Journal* noted, "The pact has been a priority of (Jordan's) young King Abdullah, who has recently expressed his support for the U.S. anti-terror fight."

How far to go in accommodating pro-regulatory political forces while moving forward with trade promotion authority is a judgment call. But while reaffirming our commitment to free trade, I believe the White House must not rush into a deal with Congress that undermines our long-term economic security by loading a ton of regulatory freight onto the global trade regime. That's not the right signal to send to financial markets, and it's not in America's interest.

Trade should be a front-line weapon against terrorism. Open trade not only strengthens us and our allies in the armed struggle against radical Islamic terrorism, it also gives us a field on which to compete against this vestige of pre-modern fundamentalism with the young people of the world who would become the next generation of terrorists.

Although the recently approved U.S.-Jordan free-trade agreement is flawed, it nevertheless illustrates how trade can create incentives for other nations, particularly moderate Arab states, to live in peace, harmony and commerce with the rest of the world.

Bush and his trade representative, Bob Zoellick, make an eloquent case that a congressional grant of trade promotion authority (formerly known as "fast-track" authority) would, in Zoellick's words, "send an unmistakable signal to the world that the United States is committed to global leadership of openness and understands that the staying power of our new coalition depends on economic growth and hope."

Our war on the terror network will be long and hard, but as Bush and Secretary of State Colin Powell emphasize, our quarrel is not with Islam, nor are we at war with Arab nations. In the long run our best interests and noblest aspirations lie with nurturing an Islamic renaissance — a 21st-century era of enlightenment that will enable what are now the most rigidly theocratic Islamic nations to develop a devotion to economic freedom under the rule of the law.

As Martin Wolf observed in the *Financial Times*, the endemic hostility to personal liberty and economic opportunity in too many of the Islamic countries both impoverishes and radicalizes people who, by rights, should have no quarrel with Western civilization. It's a good sign that the Bush administration is also seeking to improve our trade terms with Indonesia, the largest Muslim country in the world.

*Jack Kemp is a Distinguished Fellow of CEI.*

(Continued from Page 1)

listed endangered or threatened species. But as isolated brush wars have taken on the character of an all-out assault, closing important military training areas or threatening the continued use of others, and with no hope of truce in sight, some officers are beginning to speak out about what they euphemistically call “encroachment” issues, and warning about their potential effect on military readiness.

The issue has taken on even greater urgency, however, in the wake of the September 11 terrorist attacks, when the importance of well-trained sailors, soldiers and air crews is no mere abstraction, but a matter of potentially deadly consequence. The “war” on terrorism has led some of those who’ve been pushing to curtail use of live-fire training facilities at Vieques and elsewhere to beat a tactical retreat, understandably fearing that their activities, lawsuits, and protests would seem unpatriotic. But their strategic goals of closing or curtailing the use of military training facilities evidently remains unaltered, presenting potentially serious national security implications.

First ever hearings on the “encroachment” crisis were held by the Military Readiness Subcommittee of the Senate Armed Services Committee in March, and the House Armed Services Committee followed suit in May, though neither hearing generated the kind of media attention some experts believe the issue deserves. “Encroachment is often gradual and can go unnoticed, but its impact cumulatively erodes our ability to deploy combat-ready sailors and marines,” said Navy Vice Admiral James F. Amerault in remarks typical of the testimony presented. “Your Marines’ success on the battlefield depends on having assured access to training ranges and installations on the land, sea and in the air,” added Marine Corps Major Gen. Edward Hanlon, Jr. “However, our ability to train is being slowly eroded by encroachment on many fronts.”

The term “encroachment” describes only half of what appears to be

a two-pronged problem, however. One problem is the proximity of formerly remote military bases to “encroaching” civilian communities, and the growing intolerance of a substrata of citizens — sometimes referred to as NIMBYs for their “not in my backyard” mentality — for the noise, dust, and minor inconveniences that come with living near a military site.

But an even larger part of the equation clearly is ideological, and being driven by uncompromising environmental groups undoubtedly buoyed by the idea that in doing their thing to defend the interests of endangered species on

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## At Ford Hood, only 17 percent of the base’s 185,000-acre training area remains unencumbered by environmental restrictions.

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military bases they’re also monkey-wrenching the machinery of war. Says one House staff person who closely follows the issue, but declined to be identified: “Though the military is known for putting the best face on things, I suspect that there are instances when environmental rules are so limiting, or amending the training regime, that there has already been an impact on readiness which is only likely to grow in the future.”

It has recently been reported that the Navy has been considering asking Congress for a waiver of certain provisions of the Endangered Species Act, especially so-called “critical habitat” designations, that threaten the potential closure of bases because an endangered plant or animal might find the landscape habitable. Before September 11, green groups voiced strong opposition to any waiver. Whether their opposition would be as vociferous in the wake of Sept. 11 remains to be seen — assuming the Pentagon had enough political savvy to seize the opportunity and request one when opponents are temporarily on the defensive.

Community conflicts and environmental lawsuits “have really begun to put a choke-hold on the military, and

the problem is becoming unworkable,” adds a staff person on the Senate Armed Service Committee, who credits Oklahoma Sen. James Inhofe with pushing the “encroachment” issue to the fore.

Ground zero in the conflict has been Vieques, a formerly obscure island off the eastern end of Puerto Rico that has been the subject of heated protests and national headlines since April 1999, when an errant bomb killed a civilian security guard working at the U.S. Atlantic Fleet’s only live-fire training range. The death was seized on by headline-hunting politicians and environmentalists who claim the exercises

are ruining the environment and threaten the health of the island’s 9,000 inhabitants.

But Vieques is only the tip of the iceberg, and the Pentagon is

catching similar flak nearly everywhere it trains, dramatically altering training regimes not just there, but at such storied military institutions as Camp Lejeune, Fort Hood, Texas, and Camp Pendleton, California.

At Camp Lejeune, access to base beaches is severely restricted each year during turtle nesting season. And off-road maneuvers face similar restrictions inland, because of the presence of a threatened bird, the red-cockaded woodpecker.

At Fort Hood, only 17 percent of the base’s 185,000-acre training area remains unencumbered by environmental restrictions. Clean Water Act rules prohibit digging on nearly 70 percent of available training ground, meaning no breaking ground for foxholes or vehicle fighting positions. Clean Air Act rules prohibit the use of smoke, flares, chemical grenades or any other pyrotechnic devices on about 25 percent of the available training area. From March through August, military vehicles are prohibited from straying from paved roads due to Endangered Species Act strictures. Use of camouflage netting and bivouac is prohibited on 74,000 acres set aside as habitat for two species of birds. And

noise restrictions prohibit the firing of artillery or rocket launchers in some areas of the base.

And at Camp Pendleton, the U.S. Marine Corps' most complete amphibious training base, only about one mile of the facility's 17 miles of beach is available for exercises year round, due in part to endangered species restrictions. During one major exercise last March, the 13th Marine Expeditionary Unit was limited to using only 500 yards of beach because it was the breeding season of the California Least Tern. Off road maneuvering by military equipment is also highly restricted at Camp Pendleton, and digging is prohibited, severely limiting the ability of Marines to practice the construction of artillery and mortar firing positions.

These bases may be well known to most Americans, but training activities are facing similar constraints or prohibitions at facilities that few U.S. civilians may have ever heard of, but which have been playing a critical role for decades in preparing young Americans to face the rigors of combat.

Use of the Army's Makua Military Reservation in Hawaii has been curtailed since 1998 because of environmental lawsuits concerning, among other things, the protection of a tree snail (though in the wake of September 11, local protest groups have agreed to allow some limited use of the facility). Continued U.S. use of Farallon de Medinilla, a speck of coral near Guam that Seventh Fleet aviators use for bombing practice, is currently being challenged in court (by the same group that helped close Makua, the Earthjustice Legal Defense Fund) due to alleged violations of the International Migratory Bird Treaty Act. And Marine Corps training exercises at San Clemente Island, off the coast of California, are severely restricted due to the presence of the loggerhead shrike, an endangered bird, and a creature called the night lizard.

The presence of Sonoran pronghorn antelope on Arizona's Barry Goldwater Bombing Range has spurred protests, brought lawsuits, and could lead to closure of the facility. Protection for the Florida black bear and Florida scrub jay are two reasons why green groups oppose the Navy's continued use of the Pinecastle Bombing Range in Florida's Ocala National Forest. And the beaches where Navy SEAL teams train at the Naval Amphibious Base, Coronado Island, California, shrink by 40 percent for seven months out of every year because of the presence of an allegedly endangered bird, the Snowy Plover.

Though its hands are full trying to balance the missions of warrior and game warden, the Pentagon faces another serious threat from one species that actually seems to be proliferating, the disgruntled American NIMBY. NIMBY complaints are on the rise from residential areas not far from Camp LeJeune's recently-constructed Greater Sandy Run Gunnery Range, for instance, and the Onslow County Commission has demanded that the camp shut down another new training area, the \$6.5 million Combat Vehicle Crew Qualification

Range.

When live-fire training was curtailed on Vieques because of protests, Marine aviators turned for training to a bombing range in Pamlico Sound, near their air station at Cherry Point, North Carolina. But that raised a new round of protests — this time from local and state officials, as well as from the National Park Service, which reportedly objected to military overflights of national seashores along the outer banks.

A recent proposal by the Navy to increase the number of practice sorties it flies over Fort Hunter Liggett, near California's Big Sur, encountered an immediate wall of anti-aircraft fire from local people and some members of California's congressional delegation. And at Marine Corps Air Station Miramar, near San Diego, safety worries and noise complaints about helicopter overflights have led to lawsuits against the service by one area resident and the city of Del Mar.

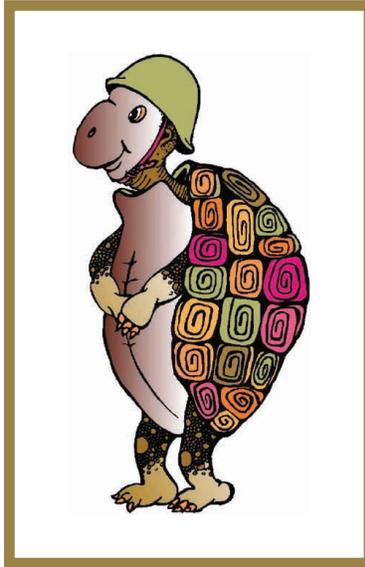
"We often hear the 'not in my backyard' philosophy," Air Force Major General Walter E. Buchanan, III, told Senators in March. "Some people say they want a strong defense as long as the Air Force flies somewhere else. However, if you look at a map of the United States, 'somewhere else' doesn't exist."

As a result of environmental restrictions that lessen the realism of military exercises, "we are training a generation of Marines who will have less experience in the intricacies of combat operations" than earlier ones were, added Marine Corps Major Gen. Edward

Hanlon, Jr. "If encroachment continues, many of today's junior leaders may initially face the full challenges of combat not during training, but during conflict."

The Marine Corps does not want a "rollback" of the Endangered Species Act and other environmental laws, Major Gen. Hanlon told senators, but at least some recognition on the part of rulemakers and regulators that the service "cannot be expected to shoulder a disproportionate share of environmental protection and still meet our readiness requirements." Hanlon also asked that members of Congress "consider the unique nature of military activities when developing or reauthorizing these laws."

Suddenly this September, Hanlon's message took on new and urgent relevancy, perhaps temporarily blunting the environmentalist advance on military training sites but thus far failing to address the issue on a comprehensive, common sense basis. Without reform of the Endangered Species Act and other environmental laws, and unless some kind of détente can be struck between military bases and encroaching communities, the future only seems to present the Pentagon with an endless series of legal battles, public relations skirmishes, and an ever-constricting horizon within which it can train U.S. troops.



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# LET'S NOT LOSE OUR COOL ON AIR CONDITIONER REGULATIONS

by Ben Lieberman

Though the recent terrorist attacks remain fresh on our minds, America is slowly getting back to business. In Washington, this means returning to the many bills and proposed regulations that were in the pipeline prior to September 11.

There is a new and often troubling twist to these renewed debates, however, as some special interests are exploiting the crisis by claiming that it somehow underscores the need to enact their agenda. Whether it is Amtrak proponents touting the need for better rail transportation, or environmental activists hyping the energy security benefits of solar and wind power, advocates for various causes are trying to use the tragedy to their advantage. Unfortunately, this also includes an attempt by some to resuscitate a Clinton-era energy conservation standard for air conditioners that was a bad deal for consumers before September 11 and remains so today.

True, government regulation of air conditioners may be the last thing on the minds of many Americans as autumn reaches maturity and winter approaches. But the issue's return to prominence is as inevitable as the change of seasons.

In one of the final acts of his administration, an outgoing President Bill Clinton enacted a new rule requiring central air conditioners to be 30 percent more efficient than the existing standard. The Department of Energy (DOE) estimates that the new rule, to take effect in 2006, will boost the cost of a new air conditioner or heat pump by \$335 to \$435. Others, including the National Association of Home Builders, fear even higher costs.

DOE admits that only a minority of homeowners can ever hope to earn back the higher up-front cost in the form of energy savings over the life of the system. Under one set of assumptions, DOE concludes that 58 percent of homeowners will experience net cost increases from owning an ultra-efficient air conditioner, with only 25 percent

experiencing net savings and the rest breaking even.

Worse yet, the agency found that the new rule would disproportionately burden low-income households, with nearly 70 percent of them ending up spending more to stay cool because of the proposed rule. And the higher equipment costs may price some homeowners out of central air conditioning entirely — a particularly troublesome prospect in light of several recent studies showing that air conditioning saves lives during heat waves.

Recognizing a problematic regulation that was likely to backfire during their watch, the Bush administration sensibly chose to take a second look at this last-minute Clinton rule, with a new team at DOE deciding that that an earlier proposal calling for a 20 percent efficiency increase was more reasonable. In July, the agency announced plans to revise the final rule.

As a consequence of this relatively minor change, several environmental and energy advocacy groups have gone on the warpath against the administration. A Natural Resources Defense Council (NRDC) press release described the adjustment as “not only illegal, but staggeringly shortsighted.” NRDC and other organizations immediately filed suit in federal court, seeking to reinstate the 30 percent standard.

Now, advocacy organizations have seized upon the recent disaster and the resultant worries about energy security to suggest that we need ultra-efficient air conditioners more than ever. For example, Andrew DeLaski, Executive Director of the Appliance Standards Awareness Project, recently stated that “there are increasing concerns about energy security, and energy efficiency is the one thing we can do to make energy more secure.”

This makes little sense. Oil is the only energy source potentially made less secure as a consequence of the terrorist attacks. And though it's true that Mid-

dle-eastern petroleum supplies could become less reliable in the months and years ahead as a result of the current crisis, air conditioners run on electricity, very little of which is generated by burning petroleum.

In sum, the terrorist incident is largely irrelevant to the debate over air conditioner standards. And, needless to say, the same consumer concerns that prompted the Bush DOE to propose a less stringent proposal have not lost their force.

There is no doubt that the recent tragedy has significantly changed the policy landscape. Nonetheless, a bad idea before September 11th is still a bad idea today. And the Clinton DOE's costly air conditioner regulation is a case in point.

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# IF PORK HAD WINGS...

by Chris Horner

That didn't take very long, did it? Dust hadn't yet settled on the Manhattan rubble field that used to be called the World Trade Center when Congressional offices began creating lists of lobbyists and corporations who have already come knocking, looking for opportunities to use the September 11 tragedies to cash in for their own narrow benefit.

Profiteering is always troubling, of course, but in this case it could set a new low in the annals of corporate welfare. Naturally, some industries — commercial airlines, for example — were legitimately harmed by the acts of war in New York and Washington, necessitating some government response. But unfortunately, it seems that dozens of other special interests not so directly impacted are fighting for space on the bailout bandwagon, to take advantage of the tragedy. What started as a limited bailout for one industry threatens to become a feeding frenzy that could cost taxpayers billions of dollars.

It is time to shine the spotlight on these corporate ambulance chasers. It's not enough for congressional staffers to keep lists; the offending corporations need a healthy spray of sunshine disinfectant to shame them into backing off of an incredibly offensive grab for dollars or special treatment.

So I hereby propose the creation of a "Corporate Ambulance Chaser" award similar to the "Golden Fleece" prize made so famous by Sen. William Proxmire. And allow me to name the first nominee who, sadly, is a corporate American icon: Boeing Corporation.

Boeing appears to be taking advantage of the tragedy by petitioning the government for relief from problems that began well before the terrorist attacks, as evidenced by September 5 predictions (reported by *Reuters*) by the company's chairman of a downturn in aircraft production. As such, it's simply the latest update in a long-running saga.

For years, Europe's Airbus has been cleaning Boeing's clock, gaining market share and winning away what traditionally would have been Boeing's customers worldwide. Boeing's numbers speak for themselves. By the end of August Boeing had booked net orders for only 202 airplanes, versus 377 for the same period last year, while Airbus had already announced 300 new orders by mid-July. According to *Forbes Magazine*, Airbus announced 155 new orders



alone at June's Paris Air Show, while Boeing announced only three. Before the September 11th attacks, market analyst SG Cowan predicted a significant drop in Boeing's orders unless it turned its business around.

Boeing's troubles clearly are not a consequence of the heinous attacks on America, nor is the company at death's door. It says it hopes to fill orders for over one thousand planes this year and next, and it has successfully branched out into satellite and military businesses. The company is still number one in producing tactical military aircraft, number one in producing airlift aircraft, and number one in helicopters — and the current emphasis on defense programs can only help its bottom line.

Yet, in the wake of the September attacks, and upon hearing several airlines announce major layoffs due

to a reduced number of flights, Boeing stepped forward to announce up to 30,000 layoffs. Ignoring the company's slumping pre-September sales figures, Boeing in a September 18 press release blamed the layoffs on "the impacts of the horrific attacks of September 11..." But Boeing's circumstance had nothing to do with September 11, press release intimations notwithstanding.

On October 3, however, *The Washington Times* reported that Boeing signed an agreement with China for delivery of 30 more commercial aircraft, in a deal which "was scheduled to be announced weeks ago, but was postponed because of Sept. 11 terrorist attacks," according to the paper. The announced layoffs, in contrast, hardly appear similarly delayed, but reek if anything of being curiously premature. Indeed, on the very same day Boeing announced its layoffs, the company's press office trumpeted huge anticipated potential in the Chinese market, a significant deal that had already been reached, but not announced.

On behalf of Boeing, policymakers have also been working to include more Boeing products and purchases in upcoming Pentagon appropriation bills, and publicly demanded that an upcoming defense contract for the Joint Strike Fighter be split, just in case Boeing lost the bid (which it did). That tactic threatened to turn what had been a healthy competition into a pointless exercise.

Boeing's behavior appears unmistakably opportunistic; indeed, the company appears to be taking advantage of the current crisis to lay the groundwork for a big government handout, grabbing for every dollar it can regardless of there being no relation between its circumstances and the terrorist threat. We should expect better behavior from an American icon.

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*Christopher C. Horner (chorn@cei.org) is a Senior Fellow at CEI. This piece is reprinted courtesy of The Washington Times.*



connected to radical environmentalist groups, they'd be more willing to scrutinize their results?

**SM:** Perhaps, but I prefer to start with debunking the science. That's really step one. Once the "science" has been debunked, then you might look behind the scenes at motivation. If we start with guilt by association, we're no better than the radical groups.

**CEI:** You point out that government regulators are "inertially driven to expand their authority and budgets." To help combat this phenomenon, you recommend that research "be designed, conducted, and reviewed by scientists totally independent of the regulatory agencies." By this, do you mean that independent

laboratories should play a greater role in evaluating potential risks?

**SM:** The real point here is that regulatory agencies have too great a potential conflict of interest to be trusted to do science properly. There is too great a

chance that they will rig the science to suit the outcome they want. Scientists should be impartial to the outcome of research.

**SM:** Appellate courts have been pretty good at knocking down junk science-based verdicts. Trial courts have been less successful. Thanks to the Daubert panels [scientific experts chosen by the trial judge to advise him on the nature of scientific evidence], though, federal trial courts are getting better. But now I think state courts need to develop a Daubert-like system.

## The environmentalists interpret "precautionary principle" to mean that no risk is acceptable.

**CEI:** Another possible way you propose to combat junk science is by enabling the public to challenge regulatory agencies in court. Do you feel that, histori-

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# ENVIRONMENTALISTS MAKE CLAIMS WITHOUT A KERNEL OF TRUTH

by Michael Mallinger

Environmentalists have of late been losing ground in their battle against bioengineered crops. There has never been much real evidence that the crops harm people, so they've instead hitched their wagons to the equally dubious claim that biotechnology will harm the environment. For that, they've found plenty of bad science that, used out of context, suggests that the environmental risks of improved crop varieties outweigh their benefits. However, environmentalists are increasingly seeing even this myth go up in smoke.

The use of bioengineered crops is an important tool for increasing crop productivity and reducing the environmental impacts of agriculture. Some varieties can even reduce the use of synthetic chemical pesticides, or provide protection against pests and diseases for which there are no good synthetic control agents. As plant scientists Michael Wilson, John Hillman, and David Robinson have pointed out, "[Genetic modification] technology is the only method currently available that can create genetic resistance to many devastating pests and agents of crop disease."

One of the most problematic pests troubling corn farmers is a caterpillar known as the European corn borer, which does nearly \$1 billion in damage to U.S. crops each year. Because the caterpillars actually bore into stalks and ears of corn they're difficult to control even with spray insecticides.

Scientists, however, have spliced a single gene from a common soil bacterium called *Bacillus thuringiensis* (Bt) into some varieties of corn, enabling the plants to produce a protein that is toxic to caterpillars, but not to birds, fish, mammals, or even many other kinds of insects. Engineering corn to produce the Bt protein boosts productivity dramatically, and has even allowed for a small reduction in the application of conventional pesticides. It's so effective that about 20 percent of the corn grown in the U.S. contains the Bt gene.

Importantly, though, Bt is also toxic to other caterpillars, including Monarch butterfly larvae. The controversy surrounding Bt corn began in 1999, when John Losey of Cornell University conducted a laboratory experiment in which he fed milkweed leaves — which often grow in and around corn fields, and which are the only known food of Monarch butterfly larvae — covered with Bt corn pollen to Monarch caterpillars.

When half of the caterpillars died, environmentalists claimed that biotechnology was dangerous and that Bt corn should never have been approved. They overlooked (perhaps consciously) the fact that Losey's experiment bore no rela-

tionship to real-world exposure. As Losey explained at the time, he didn't even know how much pollen actually lands on milkweed plants on farms. In other words, the study didn't utilize any real-world assessment of the risks that caterpillars encounter in actual corn fields. More importantly, the gloomy scenario predicted by Losey's research was clearly contradicted by several factors, not the least of which was that Monarch butterfly populations had actually increased since the 1996 introduction of biotech corn in the United States.

When the Environmental Protection Agency (EPA) published its preliminary analysis of the issue in September of 2000, it found that actual levels of Bt corn pollen encountered by caterpillars are minimal and concluded that "there is no reason to have undue concern of widespread risks to monarch butterflies at this time."

In time, the EPA's doubts about the dire implications of Losey's preliminary Monarch research were confirmed. In

September, six peer-reviewed papers were published in the highly respected *Proceedings of the National Academy of Sciences* describing two full years worth of intensive field research by 29 scientists (one of whom was John Losey), which should put the Monarch myth to rest.

One report, authored by Mark Sears of the University of Guelph in Ontario and others, concludes that: "In most commercial hybrids [of corn], Bt expression in pollen is low, and laboratory and field studies show no acute toxic effects at any pollen density that would be encountered in the field."

According to the authors' calculations, even if the planting of Bt corn increased by a factor of four, only 0.05 percent of the monarch butterfly population would be put at risk. Additionally, many scientists believe that even if Losey's findings had been accurate, the use of Bt corn would actually improve survival rates for caterpillars because it could reduce their exposure to conventional pesticides.

The dispute over Bt illustrates a recurring problem among environmentalists: highlighting modest risks of a technology, while ignoring the fact that new products could reduce or eliminate bigger risks. Assuming *a priori* that biotech products like Bt corn will pose net harms for the environment imposes real costs on consumers and the environment. The environmentalists know this. Why they continue to wage war against the science supporting it should be the question.



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# RUM WAR SPARKS SPIRITED DEBATE OVER INTELLECTUAL PROPERTY

by James V. DeLong



When high tech companies make up their Christmas wish lists, issues of free trade and globalization are perennially at the top of them. Trade with China, export of encryption technology, and international antitrust are all prominently listed. But for a continuing obsession, perhaps nothing tops the issue of protecting Intellectual Property (IP) in the hurly burly of the global marketplace. The U.S. economy pours computer software, movies, television shows, music, and patented technology into the global marketplace, and the U.S. government and companies are constantly negotiating, pleading, threatening, enforcing, and preaching about the importance of respect for IP and the rule of the law.

The latest high-profile conflict over IP is a bit different, however, because the aggrieved party is a French company, the alleged culprit is the U.S. itself, and the product is not some tech gizmo but the elixir that once inspired Britannia's navy to rule the waves — rum.

The facts are complicated, both legally and ethically. In pre-Castro Cuba, the Arechabala family manufactured Havana Club Rum. They fled to the U.S. when Castro took over, and did not renew their trademark in the U.S. when it came due in 1973. In 1976, a Cuban government company called Cubaexport registered a U.S. trademark on Havana Club, and made a deal with French liquor giant Pernod Ricard to market the brand worldwide. In 2000, about 1.25 million cases were sold, worth \$150 million, so Pernod Ricard has indeed put money behind the mark. It is not sold in the U.S. because of our embargo on Cuban goods, but Pernod Ricard wants to start selling it as soon as this becomes possible.

The big seller of rum in the U.S. is Bacardi. In 1994, long after Pernod Ricard had started its Havana Club business, Bacardi went to the Arechabalas and bought their rights (whatever they were) to the name. In 1995 and 1996 it dis-

tributed 921 cases of its Havana Club in the U.S., but it is not distributing the brand at the present time. Pernod Ricard sued in Federal District Court to block Bacardi's use of the name.

It's an interesting case, with complications and geopolitical implications. Castro's reign has been a 40-year tragedy for the Cuban people. But the Cold War is over and our trade embargo now seems like pointless malice. Also, the functioning of the world economic system requires that sovereign governments, however repulsive, be able to give good title to property. Except in the most compelling circumstances, if property was taken illegally the issue should be settled between governments, not through a patchwork of sanctions and special laws created by the world's 190 or so sovereign nations. So in this dispute, I root for Pernod Ricard.

But here is where it gets tricky. While the litigation was pending, Bacardi, skilled at political power games, got the U.S. Congress to add a midnight rider to an appropriations bill. Called "Section 211," it decrees that any trademark similar to a mark used in connection with assets that had been confiscated belongs to the original owner, and that no U.S. court can enforce any treaty rights to the contrary.

The European Union took Pernod Ricard's side and complained to the World Trade Organization about Section 211, resulting in a recent WTO split decision. The U.S. won a big point — it can reject trademarks connected with confiscated assets on the grounds of repugnancy to its basic values of respect for property rights. But it lost on the part of the law that deprives Pernod Ricard of all right to go to court.

However, U.S. trade officials may not be happy about the U.S. victory, which undermines the nation's support of global harmony and escalates political disputes. The U.S. has 14 trademark cases of its own pending at the WTO, and the "basic values" loophole is big. Castro says his may include not recognizing some U.S. trademarks, such as Coca-Cola.

The biggest problem is the way Bacardi achieved the win, and the willingness of Congress to act by whim, at the behest of a special interest, without hearings, and without any idea of the ramifications. This is getting habitual, and it is dangerous.

Even aside from any taste for rum, the high tech community has a stake in this one as well. What it needs most from government is that old-fashioned concept called the rule of law, which says that legislatures act in the open after full debate to make rules of general applicability.

Pernod Ricard is not quitting and so the rum war is far from over. They have deep pockets, and they are generating some formidable press attention to the rum war and the need to repeal Section 211. And the French, in the meantime, are taking glee in instructing the U.S. about the importance of respect for IP and correct legal procedures.

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# The Good, the Bad, AND THE UGLY

## The Good: When “Right to Know” Becomes Reason to Worry

What a difference in thinking an act of war makes. Until September 11, the U.S. government was an open book, busily posting all manner of information on the Internet as fast and furiously as the federal work ethic would allow — all based on the principle that the public has a “right to know.” But the bracing slap of reality delivered that day has cast shadows on some of the sunshine, and agencies are scrambling to remove from their web sites information that might prove useful to enemies of the state. Suddenly after September 11, for instance, past Environmental Protection Agency efforts to post on the Internet detailed profiles of 15,000 U.S. industrial facilities that use potentially hazardous chemicals — including likely casualty estimates in case of an accident at a plant — seems less a public service than an engraved invitation to Osama bin Laden. Other agencies pulling potentially problematic materials from their web sites in the wake of September 11 include the Department of Defense, Federal Aviation Administration, and Nuclear Regulatory Commission, which virtually stripped its web site clean on October 11 to undergo a thorough review after it was reported that the site may have inadvertently posted classified information. Besides the locations of commercial nuclear power plants, sites began to remove maps of gas and oil pipelines, major bridges, and hydroelectric dams.

## The Bad: California Governor Vetoes “Rigs to Reefs” Legislation

In a pander to anti-oil groups, California Governor Gray Davis recently vetoed a bipartisan measure that would have allowed obsolete, partially dismantled oil rigs off the state’s coast to remain in place as man-made reefs. It has long been recognized that the rigs over time become multi-storied magnets for all manner of marine life, serving the interests of fish and fish enthusiasts alike. But groups blinded by their antipathy for oil companies continue to object to turning old rigs into teeming reefs, and have condemned the legislation as a giveaway to oil interests.

But even as Gray Davis was turning his back on the idea of artificial reefs, perhaps the world’s largest was about to be born not far to the north, off the coast of British Columbia, where final preparations were underway for the October 20 sinking of the HMCS Cape Breton, a 10,000-ton, 394-foot merchant ship of World War II vintage. The wreck-turned-reef is a joint project of diving enthusiasts and the Artificial Reef Society of British Columbia, which took pains to ensure that the sinking would cause no harm to the environment. The 1997 sinking of the HMCS Saskatchewan, which lies only several hundred feet away from the Cape Breton, quickly became a draw for diving enthusiasts and reportedly provided a \$4 million annual boost to the local economy.

[Readers interested in learning more about the benefits of artificial reefs can view CEI’s “Fish Enough for All” CD-Rom at [www.privateconservation.org](http://www.privateconservation.org).]

## THE UGLY: FLORIDA COUNTY TO KEEP DETAILS OF LAND DEALS SECRET

Contrary to the spirit of Florida’s “sunshine” laws, Broward County Commissioners in October voted not to require one of the nation’s largest land trusts, The Trust for Public Land, to divulge details of their land transactions in the county, after the Trust threatened to pull out of the area if its inner workings became transparent to the public. The controversy erupted after questions were raised about whether the non-profit in fact made a healthy profit on one \$9 million purchase of a private parcel it then resold to the county for use as a park. Such transactions are of growing concern around the country, as a proliferating number of land trusts busily snatch up private holdings and sell them off to the government, where they’re barred from productive uses, removed from county tax rolls, and often destined to be mismanaged by government agencies supposedly charged with “protecting” them.

“When you are using public funds to make land purchases for the public, none of these things should be kept secret from the public — especially in a state like ours which has such strong public records laws,” one commissioner argued in support of greater transparency for such transactions. But when officials from the Trust for Public Land threatened to pull out of Broward County, six of eight commissioners caved in to the threats and voted to keep details of the group’s land deals from the public.

So what do land trusts fear from greater public scrutiny of their operations? Perhaps that the public will begin to recognize the land racket for what it is, and see that such deals only rarely serve the interest of their communities, but lead instead to an increase in government power and control over an ever-greater portion of the American landscape. The massive land transfers also play into the hands of environmental extremists, who through saturation litigation, agitation, and indoctrination have managed to wrest control of public lands policy away from government agencies and elected officials.

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### *Anthrax and Public Health*

As residents of Washington, D.C. have found out in recent weeks, the long-feared threat of biological terrorism has come to the United States in the form of anthrax, and many related government agencies are struggling to find a strategy to cope with the prospect of future attacks. Environmental Policy Analyst Jennifer Zambone has been sorting through the risks and response proposals, and spoke with the *Orange County Register* earlier this month, where she was quoted in one paper's editorial on the subject. Although use of Anthrax certainly warrants intensive investigation, "I would worry more about smallpox, which is highly communicable, germinates more slowly and against which almost no Americans are effectively vaccinated now," Zambone told the paper. Zambone has also been taking to the airwaves, discussing the anthrax issue on several radio programs.

### *Searching for Security and Profitability: The Future of the Airline Industry*

The U.S. airline industry continues to struggle in the wake of September's terrorist attacks, both to increase consumer confidence and to rapidly implement new security measures. Vice President for Policy James Gattuso has continued his efforts to clear up some of the questions raised by the need for greater airport security, most recently in an op-ed in *USA Today*. "Everyone agrees that action is needed to improve aviation security. In the wake of the September 11 attacks, there's no question about that," Gattuso wrote. "Each day it seems that attention shifts to some simple-sounding 'common-sense' solution. Policymakers should beware of those easy answers: Not only is there no magic bullet that will always foil terrorists, but missteps could actually hurt efforts to increase safety. Gattuso's recent op-eds on airline safety and solvency have been featured in over a dozen newspapers and he has been a guest on several popular radio programs.

### *New Briefings on Climate Change*

On October 2 the Cooler Heads Coalition and CEI hosted a briefing for congressional staff and press featuring Bjorn Lomborg, author of the much talked about book *The Skeptical Environmentalist: Measuring the Real State of the World*, and a professor at the University of Aarhus in Denmark. Published in the U.S. recently by Cambridge University Press, the book has already been acclaimed by reviewers in the UK and the U.S. *The Economist* called it "a triumph" and "one of the most valuable books on public policy — not merely environmental policy — to have been written for the intelligent reader in the last ten years." Lomborg's presentation in the Capitol challenged the pessimistic claims of the environmental establishment about the health of the planet. Cooler Heads and CEI also hosted a briefing on October 9 to discuss the problems with proposals to limit or tax carbon dioxide emissions featuring Ross McKittrick, Associate Professor at the University of Guelph in Ontario, Canada and Brian Fisher, Executive Director of the Australian Bureau of Agricultural and Resource Economics (ABARE) in Canberra, Australia.

### *CPC's Public Service Announcement Advertising Campaign*

Private conservation and its benefits are being touted in a new public service advertising campaign aimed at readers of wildlife, sports, fishing, and public policy magazines, among others. The Center for Private Conservation (CPC) has produced a series of full-color ads highlighting CPC case studies, including the Black and White Rhino in Southern Africa, the Wood Duck, tree farming, and Alabama's artificial reef program. The ads expound the virtues of private conservation and invite the reader to learn more by logging onto [www.privateconservation.org](http://www.privateconservation.org). To date, ads have been featured in *The Fisheries Institute's Fisheries Magazine* and the Cato Institute's fall issue of *Regulation* magazine. Look for more in your favorite magazine!

*By the way...*

## BY CEI AUTHORS

**Eileen Ciesla**, Warren Brookes Journalism Fellow  
"Terrorists Filled with Glee with Each Human Life Extinguished,"  
*Leader-Telegram*, September 25.

"Beware of Peaceniks Bearing Candles," *Jewish World Review Online*, October 25.

**James Gattuso**, Vice President for Policy  
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"Baby Bell Basher," *American Spectator*,  
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**Paul Georgia**, Environmental Policy Analyst  
"Eliminating Oil Dependence Isn't Advisable,"  
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"Energy Independence? It Doesn't Work,"  
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**Christopher C. Horner**, Senior Fellow  
"If Pork Had Wings," *Washington Times*, October 14.

**Jack Kemp**, Distinguished Fellow  
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distributed nationally by *Copley News Service*, October 24.  
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distributed nationally by *Copley News Service*, October 10.

**Ben Lieberman**, Senior Policy Analyst  
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**Sean Paige**, Editorial Director  
"Under Siege: One Reason Our Military's Readiness is Down —  
We Won't Let Them Train," *American Enterprise*,  
October/November 2001.

### Targeting Retailers a New Staple of Green Extremists?

In an effort to take their protest activities retail, anti-logging extremists have of late been targeting large chain stores they accuse of selling environmentally-incorrect products. One target of the tactic has been office supply giant Staples, whose parking lots and stores have been the scenes of street theater as groups attempt to dictate consumer choices by limiting what the chain can stock and sell. Staples officials have tried to placate activists by meeting with them, pointing to the large quantities of recycled paper products the chain already stocks, and even agreeing to study whether the company can comply with protestor demands that it stop selling any product derived from materials taken off U.S. national forests.

But there's apparently no appeasing vocational malcontents. "As the largest and fastest growing office-supply store in the world, Staples needs to be pressured by consumers in order to institute responsible paper procurement policies to protect public lands," said one recent call-to-arms issued by a coalition that declared Nov. 13 "National Staples Action Day." In a press release, the groups make the following suggestion to would-be protestors: "Perform a skit, present an award to Staples for being the #1 forest destroyer, do a press conference, hold a silent vigil in solidarity with the death of our forests."

### Roadkill Adds \$1 Million to the Cost of Rail Extension

An investigation by the California Department of Fish and Wildlife into the roadkill death of a single garter snake reportedly delayed for more than two weeks construction of an extension of the Bay Area Rapid Transit system (BART) to San Francisco International Airport — costing taxpayers an estimated \$1.4 million in lost time and extra wages. The investigation, required because the snake is listed as endangered by the state, fingered no culprit in the death. "Nobody has ever been able to find out what happened to the snake," a BART spokesman told a California paper. "There was no evidence that the [construction] contractor or anyone was directly at fault." BART also reportedly spent \$6 million to comply with other environmental laws during construction, including the capture and temporary relocation of 77 snakes that might have been disturbed by the work. A requirement by the California Department of Fish and Game that blackberry bushes along a number of area canals be cleared by hand, in an effort to minimize potential harm to snakes and red-legged frogs, also reportedly delayed work for 13 days, adding another \$754,000 in cost overruns.

### They Don't Call Them Green for Nothing

*Sacramento Bee* reporter Tom Knudson drew accolades and opprobrium earlier this year for a five-part investigative series that stripped away the environmental movement's warm and fuzzy veneer to take an unflinching (and thus unflattering) look at its political, fundraising, and misinformation machinery in action. More recently the reporter

returned to the theme, revealing how already well-funded environmental groups have been tapping into the U.S. Treasury to subsidize their frequently anti-government activities.

Exactly how much federal funding such groups receive is unknown, Knudson reports, because it comes in the form of grants from as many as two dozen different agencies. But it is substantial even by Washington standards, according to Knudson, who estimates that about \$137 million in federal grants went to 20 major environmental groups last year (an average of \$377,000 a day), which marked a 27 percent increase over 1999 funding. Since 1998, more than \$400 million in federal money has gone to green groups, Knudson reports ... some of it undoubtedly used to defray the costs of suing the daylights out of the same agencies from which the largesse flows.

### Americans Split on Need to Federalize Airport Security

A recent poll on the question of whether to federalize airport security reveals nearly an even split among Americans, between those who reflexively look to the government to solve every problem and those who know from experience that government does

very few things well, and virtually nothing with any economy and efficiency. Forty-nine percent of respondents surveyed by the Ipsos-Reid polling firm indicated that they thought airline security workers should work for private companies, while 44 percent said they should be employed by the federal government. Democrats said they preferred federal involvement by a 50 percent to 43 percent margin. Republicans favored use of private sector employees over public by a 53 percent to 42 percent margin.

### Pentagon Puts Out Call for Anti-Terrorism Technology

Attention all backyard Benjamin Franklins and basement Thomas Edisons! Here's a once-in-a-lifetime opportunity to rush your invention into production with the assistance of the U.S. Department of Defense, which, in an effort to conscript American ingenuity and know-how into the war on terrorism, recently put out a public call ("Pentagon Seeks Ideas On Combating Terrorism" read the reassuring news release) for gizmos, gadgets, or any other bright ideas that will help U.S. spies and soldiers prevail. But not just any old invention will do. In particular demand are technologies that can help see or listen through walls, remotely detect biological or chemical or nuclear weapons, automatically translate Pashtu, Urdu, Farsi, and other exotic languages into English, and detect deceptive responses to questions. The Pentagon is especially interested in those inventions that can be "developed and fielded" in 12 to 18 months. And a special bonus will be paid to anyone who has an "Afghan Cavern Crusher" sitting around the attic or garage somewhere, collecting dust, while he or she waits for the right moment to bring it to market.

## END NOTES

### Glacier Expansion in Rockies May Challenge Global Warming Dogma

In this era of politicized science, heaven help the scientist or researcher whose work runs counter to the politically-correct currents of the moment. As a case in point take geologist Jonathan Achuff, who drew immediate brickbats from many colleagues recently for reporting that the number of glaciers in the Rocky Mountains may in fact be increasing — a finding that, if confirmed, would seem to refute evidence of receding glaciers worldwide, allegedly due to global warming. Achuff's survey of Rocky Mountain National Park found as many as 120 features that he categorized as glaciers when previous research had only identified 20 permanent glaciers, six of which have been named. As usual, the resulting controversy may hinge on how one defines the term "glacier," and some researchers were quick to dismiss Achuff's findings as a case of mislabeling. But news that glaciers might actually be increasing in the Rockies, and the blow that such a finding might deliver to global warming theorists, has put Achuff on the hot seat as colleagues line up to take their shots at him.

### Tree Sitters Made Aware of the Gravity of the Situation

Environmentalists like to wax rhapsodic about the Earth's alleged frailties. But one anti-logging activist who recently learned nature — gravity in particular — can be just how hard and sturdy the laws of nature — gravity in particular — can be. According to reports, Michael Scarpitti, AKA "Tre Arrow," suffered a fractured pelvis and broken bones after taking a plunge during a tree-sitting protest in Oregon's Tillamook State Forest. Scarpitti was arrested last year after perching 11 days on an upper story ledge of a protesting a timber sale in the Mount Hood National Forest.

## END NOTES

Ironically, Scarpitti's tree-hopping antics and concerns for his safety prompted law enforcement officials to cut down many of the trees surrounding the one in which he was finally trapped. Rescue climbers were at one point called in to bring the protestor down. But gravity and apparent exhaustion eventually did that, after Scarpitti spent a cold and stormy night stranded in a tree top. Protestors were quick to blame the tree-sitter's high-impact hug from Mother Earth on the local sheriff's office, which tried numerous tactics — including a promise not to prosecute — if the protestor voluntarily came down. Said Clatsop County sheriff John Raichl: "I think we went beyond what was reasonably expected to get him out of the tree." Stupidity and gravity did the rest.

And in other tree sitting news, in search of crime scene evidence the Ohio Department of Natural Resources (ODNR) recently had to cut down two trees in which several anti-logging activists perched for seven days in September, protesting forest thinning activities in the state. Cutting down the trees in which the protestors had erected platforms was the safest way to obtain fingerprints and other evidence required to prosecute two of the them and apprehend another, law enforcement officials say. The state intends to charge the suspects \$152 for loss of the trees. "We commonly seek restitution for damage to state property in cases of vandalism," said a state prosecutor. "By their actions, the protestors necessitated the cutting of those two trees, which ironically would not otherwise have been cut."



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