



# CEI UpDate

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## SECURITY vs. CIVIL LIBERTIES:

### AT A TIME OF CRISIS CAN A BALANCE BE STRUCK?

by James V. DeLong

The National Press Club recently saw the most unusual mélange since the bar scene in *Star Wars*. In Defense of Freedom, an ad hoc group composed of 130 groups of wildly varying basic views, released a 10-point statement on the importance of defending civil liberties in this time of crisis.

Naturally, unanimity was possible only because the statement was all lofty generalizations. “We need to consider proposals calmly and deliberately with a determination not to erode the liberties and freedoms that are at the core of the American way of life,” it said. “We must have faith in our democratic system and our Constitution, and in our ability to protect at the same time both the freedom and the security of all Americans.”

These lofty sentiments are universally shared, but they provide little specific guidance to legislators, government officials, or law enforcers as they attempt to strike a balance between the needs of security and civil liberty. Suppose five people with Middle Eastern names board an airplane and the guard more closely scrutinizes their bags — is that racial profiling or common sense? The FBI wants wiretaps to cover a person rather than a single telephone — is this a minor adaptation to the wireless era or an octopus-like expansion of state power? Should information on financial transactions collected by the government to cut off economic support to terrorists be passed on to the IRS or the drug enforcers?

Authorities are charged with two different tasks, and, to anyone of common sense, the balance between liberty and order is different in each context.

One task is the investigation of crimes such as the recent attacks. This is a criminal case, and the normal principles (Continued on Page 4)



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## FROM THE VICE PRESIDENT



by **James Gattuso**

## AFTER SEPTEMBER 11TH ...

**L**ike other Americans, we at CEI will not soon forget September 11. In our D.C. offices that morning, time seemed to stop as we — along with millions of others around the country — watched with horror the unfolding events in New York City. Then came reports that Washington, too, was the target of terrorism.

From our building in downtown D.C., we could see plumes of smoke rising from the Pentagon, across the Potomac River. That enduring image of the nation's capital under attack — though slightly surreal — brought the reality of the situation suddenly and uncomfortably home.

No CEI staffers were injured in the day's events, but nearly 6,000 others lost their lives — more than in any other single day in American history. In the immediate aftermath, the economic policy debates that we have been engaged in somehow looked less significant. With the nation threatened, and a war on terrorism beginning, how significant are economics and regulation?

Very significant, as it turns out. This is not just because of the very real fears of an economic recession. More deeply, the principles of economic liberty and free markets are fundamental to this conflict. While the specific motives of the terrorists are not known, clearly one driving force is an intense resentment of the prosperity of America and the West. Like many others in history, they view wealth as corrupt, even sinful. Because of repressive regimes in much of the Muslim world, wealth creation is not understood. It's something to be feared, even destroyed. (Paradoxically, Osama bin Laden is himself heir to a fortune, though he wouldn't be the first wealthy man to pursue an anti-wealth agenda.)

Strangely, many Westerners respond to these resentments with guilt and apologies. But, as CEI has long argued, wealth creation, and the system of economic liberty behind it, is morally good. Rather than harming others, it is perhaps the best hope for improving the well-being of average people around the world. Reclaiming this moral high ground is critical to the battle ahead. This is the principle at stake in this battle, and we should not hesitate to defend it.

At the same time, the economic and personal liberties we enjoy can be key assets in the fight against terrorism, giving the nation the vitality and resources to fight a protracted struggle. Yet, the first impulse of policymakers has been to expand the role of government. It's an old pattern — in times of crisis and war, the U.S. government has almost always grown.

And it may happen again. Congress has so far approached the crisis with an open wallet, including a rushed \$15 billion bailout of the airline industry. Massive new appropriations for other industries and government programs may be on the way. (Some of these defy explanation. While the airline industry received money because of a decrease in business, Amtrak may receive more money due to an increase in business.) New regulations, including privacy restrictions with troubling implications for civil liberties as well as the economy, were also quickly proposed.

Not all such initiatives are harmful — defense and security needs necessarily require money and, unfortunately, some new restrictions. But wherever possible, America should play to its strength, fostering free markets, not expanding the government. First steps should include cutting taxes, thereby encouraging investment. Then we should clear the regulatory decks — reducing restrictions on energy production, rethinking ill-considered antitrust regulations, and conducting a top-to-bottom review of other regulations.

It is often said that the battle ahead for the United States will be unlike any before. Perhaps this different battle requires a different approach: unleashing the private sector, rather than just expanding the government.

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by Jack Kemp

Great leaders often come to us when we least expect them but need them the most. Abraham Lincoln, Franklin D. Roosevelt, Harry Truman and Ronald Reagan are examples. History will assess the greatness of George W. Bush as president, but there is no doubt he is providing great leadership at this critical moment for our nation. His speech to a joint session of Congress was one of the greatest speeches I have ever heard, and I've heard a few.

Great leaders reach the pinnacle with great rhetoric: Winston Churchill's "blood, toil, tears and sweat," FDR's "Day of Infamy," John F. Kennedy's willingness to "bear any burden ... in defense of freedom," and Reagan's demand to Soviet leader Gorbachev to "tear down this wall." Bush's speech had perfect pitch for the occasion and the times, defining the effort we must undertake because of the terror we have suffered. The terrorists and their fanatical political theology, the president said, will follow in the path of fascism, Nazism, and totalitarianism, ending "in history's unmarked grave of discarded lies."

Americans needed to be told who these terrorists are and why they would slaughter thousands of innocent people going about their daily business. Bush, a quietly religious man, did not flinch when he explained they are religious fanatics consumed with hatred for anyone who does not believe as they do. In the president's words, "The terrorists practice a fringe form of Islamic extremism" and believe they have a mandate from God to "kill Christians and Jews, to kill all Americans and make no distinctions among military and civilians, including women and children."

Why? They hate our free and democratic way of life, and they want to destroy it. As the president said, "They want to remake the world and impose

## BUSH EMERGES AS LEADER FOR HIS TIME

their radical beliefs on people everywhere." He pointed to what the Taliban has done to Afghanistan as the model for what they would impose on the world.

To this I would add that they also hate our democracy, our liberal markets and our abundance of economic opportunity, at which the terror attacks were clearly directed. The president recognized this fact when he said, "Terrorists attacked a symbol of American prosperity. They did not touch its source." But the attack did add incredible new stress to an already weak economy, making it vital that lawmakers move posthaste to cut tax rates and take whatever steps are necessary to ensure that the vital industries affected by this act of war do not suffer irreparable damage.

This assault on freedom will not stand, the president had said on the very day of the attacks. Then, standing before the Congress, he reassured the country: "We will direct every resource at our command — every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence and every necessary weapon of war — to the disruption and to the defeat of the global terror network," he said. "We will starve terrorists of funding, turn them one against another, drive them from place to place, until there is no refuge or no rest."

Yet, in the passion of his call to arms, the president also demonstrated maturity and calm restraint. He controlled his righteous fury and directed it with precision toward the evil foe we confront: "The enemy of America is not our many Muslim friends; it is not our many Arab friends," he said. If there was ever a question about whether Bush is "up to the job," he dispelled it when he said, "We are in a fight for our principles, and our first responsibility is to live by them. No one should be singled out for unfair treatment or unkind words because of their ethnic background or

religious faith." These are the words of a statesman.

The president has set the stage. Now we, the American people — Christians, Jews, Muslims and all the diverse religions and ethnic groups that comprise our great nation — must join together and stand shoulder to shoulder to remove this cancer from the world and replace it with freedom, hope and liberal democratic values.

For the most part, America has been spared home-grown terrorists, in large part because our system of democratic capitalism, undergirded by constitutional guarantees of free speech and freedom of religion, provide even the poorest among us with hope and opportunity. The closest we've come to a home-grown version of today's militant Islamic terrorists were the Ku Klux Klan, who were motivated by racial hatred and resentment and killed and terrorized in the name of a warped higher ideal.

We rooted out the Klan by standing together while continuing to secure for all Americans their God-given rights to free expression, personal privacy and freedom of association. And, just as American "whites" had to risk disapproval and opprobrium from some of their own to stand in solidarity with African-Americans against Ku Klux Klan terror, they bravely did so and effectively stamped out the Klan. So, too, must Islamic Americans now stand shoulder to shoulder with non-Islamic Americans to stamp out the cells of terror that infect this nation. As the president said, "Either you are with us, or you are with the terrorists." There is no room for moral equivalence, equivocation or hesitation.

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(Continued from page 1)

apply — however horrendous the crime, it is as important that the innocent not be punished as that the guilty be called to account. Even here, however, our principles begin to bend. What might be regarded as probable cause for a warrant in the case of another crime, even a serious one, is not necessarily the same as probable cause in this case, as any sensible judge deciding on a warrant would recognize.

A second task is a combination of the prevention of further attacks and the conduct of foreign affairs. We are at war, but we are having a problem figuring out who with. It is the job of the security agencies to find out. We also have good reason to believe that our foe is planning further actions. Most of us would rather not die, and if capturing the deep links on emails will save us, we would like to get the information, and be damned to the minutiae of civil liberties law. As anyone who did not go to law school understands immediately, prevention presents different issues than does prosecution.

What one thinks of any proposal depends on which function one has in mind. Clearly, at the moment we need to focus on prevention, but we need — and lack — both legal doctrines and law enforcement practices that recognize the extraordinary nature of the situation, and that allow some information to be collected and used only for prevention, or, if used for prosecution at all, used only in the context of terrorism.

In this context, the first imperative is for the government to recognize that prevention is indeed a different and special function, a state of mind that is not so far evident. For example, analogizing the anti-terrorist effort to other criminal justice “wars,” such as the War on Drugs, is a mistake. How can one trust people who are indifferent to the distinction between preventing terrorism and preventing pot, or who refuse to recognize what a civil liberties disaster that war is?

Nor has the government recognized the importance of keeping the law enforcement community from using ter-

rorism to expand its powers generally. The first-draft of the anti-terrorist bill was Christmas tree-ed with items seemingly unrelated to terrorism. It would have expanded asset forfeiture, which is already a cesspool of corruption, in all criminal cases, regardless of the connection to terrorism. The draft would also have made into special terrorist offenses some crimes that have nothing to do with terrorism, such as illicit computer entry or firearms violations.

We also need to focus on institutional competence. Anyone who has worked for the government knows that every agency assumes its own competence and dedication. All failures are

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## We are at war, but we are having a problem figuring out who with.

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due to insufficient power or money. A crisis provides the chance to get more of both, immediately.

This dynamic is already operating. FBI personnel were aware of suicide bombings in Israel, in possession of multiple reports of people connected with terrorist cells taking flight lessons, fully informed of a 1995 plot to blow up a number of airliners, and even familiar with the Tom Clancy novel in which a kamikaze pilot crashes an airliner into the Capitol. Yet officials given a specific report from a flight school that a man with known links to terrorists wanted lessons on how to steer a 767, but not to take off or land, “had no context in which his odd request made sense,” according to the *Washington Post*.

The Bureau’s immediate response to the disaster is that it needs more driftnet power to collect more information about e-mail, computer keystrokes, or encrypted messages, and needs to shed irksome restrictions on warrants and wiretaps. This argument is unpersuasive, when the agency cannot coordinate and process what it already has. Deep concern about the basic competence of other agencies is also in order.

Again, emergency prevention

powers may be needed; we are stuck with the organizations we have, and prevention is urgent. But nothing long-term should be granted until there has been thorough organizational reform. Any new power should be limited by time and use restrictions.

A focus on prevention also highlights a need for error correction. For example, it is clear that people of Middle Eastern descent, especially non-citizens, will receive closer attention. This is common sense, not racial profiling. If the IRA becomes active in the U.S., the Irish too will receive special scrutiny.

We can ask those subjected to this extra scrutiny to tolerate it, but there is a quid pro quo. They must be treated courteously, efficiently, and apologetically, not only because of the demands of human decency and democratic values, but out of pragmatism. Middle Easterners are vital to the struggle because of their special knowledge. Many are in the U.S. because they prefer this society to that of their origin, and their experience makes them acutely aware of the stakes.

Those who get caught in the net unjustly should also be compensated generously for any harm they suffer. If the government holds someone as a material witness, all right — but pay his salary to his family. And if it ruins his business, pay him for it. Continuing judicial review of detention should ensure that investigators do not bury their mistakes by keeping them in jails.

At a recent discussion, one participant commented: “I hope all of you who are so concerned about the details of civil liberties are aware that we are about one incident away from having very few.” He is right. And that makes it imperative that we hunt down and kill every vapid cliché and get serious about protecting civil liberty.

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# RATING THE LIKELY RESPONSES

by Solveig Singleton

This is an evaluation of proposed anti-terrorism measures in the wake of the recent attacks on America. CEI's hope is that the executive and legislative branch will effectively defend our nation consistent with our tradition of limited government. In rating proposals, we ask:

- Is the measure consistent with our constitutional tradition of due process and limited government, particularly the Fourth Amendment?
- Does the measure mark a significant shift in the balance of power between law enforcement and U.S. citizens?
- Does the evidence support the view that the measure would be necessary or effective to combat terrorism?

## Proposals That Get a Green Light.

A "green light" doesn't mean "pass the law without reading it," or without questioning it. Proposals that get a green light may in our judgment be passed without posing a critical threat to limited government.

### **The nationwide search warrant.**

This would allow police to get a single federal warrant for surveillance of message traffic in multiple jurisdictions, rather than multiple warrants across every jurisdiction. The warrant would be issued by the district judge where the terrorist act occurred. However, judicial oversight of the warrant after it has been issued should continue. And if the warrant is issued in New York but someone wishes to challenge it in California (for example, a non-suspect whose phone is under roving wiretap), the objection should move forward in a California court.

### **Allowing ISPs to volunteer information to prevent death.**

This would amend the law to explicitly allow communications service providers to disclose customers' records or the content of e-mail to authorities to prevent injury or death.

### **Expanding authority for "roving wiretaps."**

Roving wiretaps allow the police to listen to a person's phone conversations even if he is attempting to evade surveillance by switching to pay phones and cell phones. Current law allows the police some authority to use roving wiretaps. But some additional uses of roving wiretaps in cases of terrorism may be consistent with the Fourth Amendment. Appropriate time limits should be placed on the duration of a tap on a non-suspect's phone after it is no longer being used by the suspect.

### **Allowing investigators to use subpoenas rather than court orders to obtain credit card numbers of ISP or phone customers.**

Currently, investigators must get a court order to compel ISP or phone companies to turn over a customer's credit card number. This information is often important to discovering the customer's real identity. Our present understanding of this provision is that it would not allow the content of credit reports to be viewed without a warrant. But this proposal does mark a significant departure from current practice is, likely to be reviewed closely by the courts, and almost rates a yellow light.

### **Caution: These Proposals Get a Yellow Light!**

A proposal gets a yellow light if it represents a significant departure from current surveillance practice, especially if there is reason to question that that it would improve our security from terrorists.

### **Expanding wiretap authority to computer crimes.**

This component of the proposal has nothing to do with terrorism, but covers any computer crime.

### **Tracing internet traffic without a warrant.**

This proposal would allow law enforcement to trace Internet e-mail and surfing traffic without a warrant. This is a signif-



icant departure from current practice, because tracing Internet traffic gives investigators far more information than tracing phone traffic with a pen register. An ex-parte order from a court would be required. Just how much does a warrant requirement delay starting a trace, given that law enforcement may proceed in an emergency without a warrant, judges rarely refuse warrant requests, and emergency warrants are available? If passed, this provision should at least have a sunset provision, or be limited to terrorist investigations, and have a higher standard than the pen register's "relevancy" standard.

#### **Empowering the FBI to require business records in investigating terrorism.**

This broad provision would empower the FBI to subpoena businesses to produce "records, papers, documents and other items" that are "relevant" to an investigation of international terrorism. This is a significant departure from current Fourth Amendment law. Courts will take a very close look at this, as it lends itself to endless "fishing expeditions" at the cost of innocent private businesses.

#### **Support of terrorism through "expert advice or assistance."**

Could this provision be used to charge lawyers representing suspected terrorists in legal proceedings with offering "expert advice or assistance" to terrorists? Doctors that give them medical treatment? This question requires clarification.

### **Stop! These Proposals Get a Red Light.**

The following proposals represent a critical threat to civil liberties. Note that these powers would come into play after an investigation has been completed. It is questionable, therefore, that they are as important to preventing terrorist incidents as additional investigative powers or surveillance might be.

#### **Expanding forfeiture powers against assets not traced to the crime.**

Law enforcement already has the authority to seize terrorist assets without trial. They are now demanding expanded power to seize assets without trial for

any alleged crime. This tempts police to enrich themselves through forfeiture by planting evidence. It also may prevent alleged terrorists from defending themselves in court by depriving them of funds necessary to hire an attorney. Innocent parties who are wrongly accused rarely, if ever, get their assets back. A nationwide rule granting a judge the power to freeze the assets of suspects awaiting trial prevents suspects from fleeing without the threat of corruption. Differences between the circuit courts on these issues reflect a real need for further debate by our best legal minds, and should not be terminated by administrative fiat.

#### **Expanding the Presidential power to seize property in an undeclared war.**

The President has broad power to seize the property of enemies in the United States during wartime. The bill proposes to expand this power to times of undeclared war. This overbroad proposal, of questionable utility, threatens to obliterate the important line between military and police action. As of this writing, it is our understanding that a compromise approach is being worked out, but no further information is available.

#### **Detaining suspected terrorists indefinitely.**

This provision would give the Attorney General the power to keep those individuals believed to pose a threat to national security in custody until they are removed from the United States or he determines they no longer pose a threat. There seems to be no particularly good reason to empower the Attorney General to hold even suspected terrorists in custody for indefinite periods of time; some provision should be made for judicial review.

#### **Redefine ordinary computer crimes or gun possession as terrorism.**

Originally, and for no reason related to terrorism, the Anti-Terrorism Act of 2001 would have made several ordinary crimes into "terrorist" offenses. As of this writing, it is our understanding that this measure has been improved by providing that these ordinary offenses are only "terrorism" if done with the intent of changing U.S. government policy and to cause serious injury or death

#### **Confining habeas corpus review of terrorist detentions to District of Columbia courts.**

There is no strong reason to remove the power to make *habeas corpus* rulings concerning the detention of terrorists the exclusive jurisdiction of the District of Columbia. Such a decision is likely to result in a decline in the quality of judicial discourse concerning the vital right of *habeas corpus*. The differences between circuits on this issue exist because these are hard issues that benefit from discussion among many legal minds. While this would be more convenient for law enforcement, it would be a hardship for defendants to arrange travel to D.C. and hire additional D.C. counsel in addition to his local attorney. A habeas proceeding takes place after the suspect has been detained. This provision is therefore of limited relevance to preventing terrorist attacks by improving law enforcement's investigative powers. And it raises the issue of forum shopping. Do law enforcement officials perhaps think they will receive more favorable decisions in the D.C. Courts?

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# “RIGHT TO KNOW” VS. PUBLIC SAFETY

by Angela Logomasini

Events in recent weeks served as a horrible wake-up call, alerting Americans to the need to seriously reevaluate and upgrade our security systems. In the months ahead, policy makers, media pundits, and others debating how best to address security issues are likely to find few easy answers. But while much about the future remains uncertain, it is clear what we should not do — namely, allow our own public policies to inadvertently assist terrorists or increase their threat to public safety.

In light of that imperative, it's time that policymakers reevaluate one “right-to-know” law that makes information potentially useful to terrorists publicly available. At issue is a 1990 amendment to the Clean Air Act that required thousands of industrial facilities to develop risk management plans (RMPs) and submit them to the Environmental Protection Agency (EPA) by June of last year, as a way of helping plants and local first responders prepare for accidental chemical releases. However, one troubling section of each RMP includes an “off-site consequence analyses” (OCA) that details the potential impacts of a catastrophic accidental chemical release, including a “worst case scenario.” These OCAs even include the number of potential fatalities that an accidental release could cause in nearby communities.

The law then demands that EPA make this information available to the public, under the assumption that citizens have a “right to know” about the risks of chemical facilities. Back in 1999, the agency indicated that it would post this information on the Internet. But security experts — at the FBI, CIA, International Association of Fire Chiefs, and elsewhere — became alarmed. They feared that Internet posting would give terrorists easy access to an anonymous, searchable database of potential targets, including even likely fatality figures. When EPA sensibly backed away from Internet posting, “public interest”

groups said that they would access the information under the Freedom of Information Act and post it online themselves.

Congress responded with legislation requesting that the Department of Justice (DOJ) and the EPA issue a rule governing the process for releasing the data to minimize security risks. Unfortunately, the agencies produced a rule that instead makes the information readily available and does not prohibit outside groups from posting it on the Web.

The rule makes the information available in at least 50 “reading rooms” throughout the nation, meaning that individuals who merely show their identification can review 10 files per month and take notes. The EPA and DOJ say this approach makes it difficult to collect and post the information online, but in reality, it isn't that difficult. The EPA posted the bulk of the RMP information online, including a large portion of the OCA data, leaving less data for outside groups to collect and post.

Greenpeace has already begun collecting information and using it in studies to scare the public about “risks” from corporate America. The first few reading rooms opened in January 2001 and, by March, Greenpeace had already compiled data from 50 plants in Louisiana, which it used to produce a study. In this study, Greenpeace even highlighted the fact that a release from one plant, which it named specifically, could put 370,000 people at risk.

If Greenpeace can collect this data, why should anyone think that a terrorist organization—or someone interested in selling the information thereto—would not do the same? The most difficult “security measure” in place is the requirement for an identification card. And as any teenager can tell you (and FBI investigators on the trail of terror suspects have learned), phony IDs are not difficult to acquire or forge.

Given the potential risk, the federal government should shut down these



sites and make permanent the EPA's post-attack decision to remove this information from the Internet. The government should then reevaluate, in the light of current circumstances, whether it makes sense to ever make this information public again.

Ironically, supporters of providing this information claim that it will educate the public about risks and encourage them to seek policies that reduce them. But most people can't make heads nor tails out of all the technical information OCAs contain. Making the information public is only useful to groups that seek to frighten the public about chemical risks; or worse yet, those who might use it for selecting targets.

The most constructive use of such information can be made in local exchanges between industrial facilities, community organizations, and emergency planners. Through this process, facilities can exchange information with concerned citizens and communities via public meetings, plant tours, and the like, in a manner in which citizens can not only learn what the likely risks are, but how to respond to them in an emergency.

Our age of innocence is over and now we realize that even seemingly small oversights and lapses in judgment can have profound implications. With our new frame of reference, we need to reexamine our own public policies to assure we don't inadvertently assist our foes.

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# R.J. SMITH ON THE KLAMATH WATER CRISIS

*Recently, Senior Environmental Scholar R.J. Smith traveled to the Klamath Basin, the center of controversy over water policy and the Endangered Species Act. Mr. Smith was interviewed by Eileen Ciesla, CEI's 2002 Warren Brookes Journalism Fellow.*

## What are the origins of the Klamath Basin farming community?

There's been a farming and ranching community for over 100 years in the three counties of the Klamath Basin, two in northeastern California and one in southern Oregon. After WWI and WWII, the government enticed veterans to settle the area.

It's a high desert region, so agriculture depends on irrigation. In the 1880s, private irrigation companies diverted water from the Klamath River through a system of privately financed canals. By 1900, 30,000 acres were under irrigation. In 1902, the federal government created the U.S. Bureau of Reclamation, which initiated the Klamath Reclamation Project in 1905, converting existing wetlands into agricultural lands. These "reclaimed" lands were opened to homesteading.

## What created the current crisis?

Almost all of the 1,400 farmers and ranchers have water rights and irrigate a quarter million acres of private lands. Their water has been cut off since April due to a drought. The government contends that delivering water for farming endangers the sucker fish in Upper Klamath Lake. Without water, the farmers can't plant or obtain loans and must survive on savings, charity and fire sales of their livestock. Fourth generation families are facing bankruptcy. The economic viability of the entire region is threatened.

## Who owns the water rights?

That's a complex issue. Many farmers had contracts with the government to receive water from the Bureau of Rec-

lamation Project. The project was fully paid off three decades ago. Some say the farmers don't have any water rights because it was a contract the government could break at any time. Others argue that a fully vested Reclamation project should revert to the irrigators. Since the water users paid for the project, there's no subsidy. It's further complicated by the fact that many war veterans who settled there have deeds — signed by various U.S. Presidents — granting them and their heirs water rights in perpetuity.

In the 1980s, radical greens began using the Endangered Species Act (ESA) to attack water rights, realizing that if you control the water you control the land. They searched for water-dependent plants and animals with small populations for possible listing as endangered. Once listed, they could stop people from using the water.



*Once a vital marsh at lower Klamath Wildlife Refuge, now bone dry.*

## So the Endangered Species Act played a big role in the current crisis?

Absolutely. It's the key to the entire crisis: using the ESA to take private property and shred the Bill of Rights, instead of protecting wildlife.

There are two species of sucker fish in the Klamath Basin: the Shortnose Sucker and the Lost River Sucker. A sucker is a three foot-long, virtually inedible, bottom-feeding fish. Surveys done in the '80s suggested the two species were in precarious condition. In 1988, they were listed as endangered, requiring the Bureau of Reclamation

to manage water levels throughout the basin to protect the fish. On April 7, 2001, the Bureau cut off all irrigation water to the farmers.

## How did the farming and ranching community react?

Rallies were held throughout the summer at the headgates, where the diversion canals begin. The first drew 7,000 people, mainly from the community. Then local chapters of People for the USA proposed a "Bucket Brigade." Between 15,000 and 20,000 people from across the West formed a mile-long human chain passing buckets of water from the lake to the canal, as a sign of protest and as a "reclamation" of their water rights. As the movement mushroomed, property rights advocates, takings victims, as well as local, county, state, and national elected officials joined the cause. The issue gained nationwide media attention.

## What other legal or legislative actions have been taken?

Lawsuits are underway, as are state and federal legislative efforts. Sen. Gordon Smith (R-Ore.) introduced legislation to override the decision to cut off the water. That didn't pass. The Pacific Legal Foundation petitioned the Department of Interior to convene the God Squad.

## What's the God Squad?

It was created by the first amendment to the Endangered Species Act. When the ESA was passed, Congress was asleep at the wheel, so Green staffers wrote a law with no exceptions. After the TVA's Tellico Dam was halted by a tiny fish, the Snail Darter, the case went to the Supreme Court, which ruled that it was the clear intent of Congress that every species listed must be protected, no matter what. Once Congress realized the absurdity of the Act, they devised a mechanism that could override it in the event of a crisis: a seven-person Endangered Species Committee, called the God Squad. It includes cabinet-level officials from the executive branch of the federal government and the governor of the state involved. The God Squad can

decide whether any given crisis is sufficient to override the ESA.

### Was the God Squad convened for Klamath?

No. Neither of the Democratic governors, California's Gray Davis nor Oregon's John Kitzhaber, had any interest in doing that. They were delighted that two Republican congressional districts were being destroyed, so they could drive out the predominantly conservative farmers, ranchers and small businesses and change the political map of their states.

### What action has been taken by the Department of the Interior?

On July 17, 2001, Secretary Norton said there was more water in Upper Klamath Lake than previously thought and released 75,000 acre feet of water. Ordinarily, farmers receive 450,000 acre feet of water annually, so they're getting one-sixth of that. Many in the community felt this was an empty gesture to shut them up. It was enough water for some farmers to green-up pastures and to grow a crop of alfalfa.

### Is this a case of greens versus profit-seeking farmers, as many have put it?

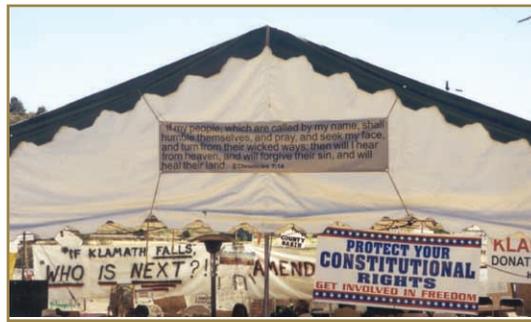
Many want to cast the situation in those terms. However, cutting off water to farmers to preserve the two sucker fish threatens the existence of the entire Klamath Basin ecosystem. Hundreds of other wildlife species, some endangered, depend on the irrigation water. The cutoff eliminates water for two major federal wildlife refuges, the Lower Klamath National Wildlife Refuge and Tule Lake National Wildlife Refuge.

These refuges comprise the most important waterfowl sanctuary on the Pacific Flyway. Each year up to 90% of all migratory waterfowl in the Pacific Flyway stop there during the fall and early winter, utilizing the open water in the federal refuges and feeding in the irrigated fields. The Basin also hosts the largest winter population of Bald Eagles in the lower 48 states. As many as

1,000 Bald Eagles gather, feeding on the waterfowl and small mammals thriving in the irrigated farmland. This autumn these species face a dried-up, cracked-mud moonscape. Interior faced a trade-off: Bald Eagles versus the sucker fish. They chose the sucker fish. Naturally, the greens were delighted to sacrifice all the wildlife in order to depopulate the Klamath Basin.

### What is the current status of the sucker fish?

Dave Vogel, a fisheries scientist who spent 14 years with the U.S. Fish and Wildlife Service, was a key witness at the U.S. House of Representatives field



Protestors at tent city gathered at the Upper Klamath Lake headgates.

hearings in Klamath Falls on June 16, 2001. He gave disturbing testimony on the two species of suckers. Vogel testified that the initial scientific "research" justifying the endangered listing claimed the 1987 population estimate for Shortnose Suckers in Upper Klamath Lake was "only 20 seen." For Lost River Suckers the population was unknown. However, once the two species were listed and federal money was available for detailed recovery surveys, the picture changed. The 1996 survey found 252,000 Shortnose Suckers and 94,000 Lost River Suckers. This vast discrepancy was even more mysterious because the pre-listing surveys claimed there had been no spawning for the last 18 years. Vogel testified that "[t]he species were either inappropriately listed as endangered because of incorrect or incomplete information or the species have rebounded to such a great extent that the fish no longer warrant the 'endangered' status."

Apparently this is another depressing example of a species being listed

in order to achieve cost-free federal land use control, only to discover, once thorough population surveys were done, that the species should never have been listed. It may now qualify for delisting as an "original data error" — bureaucratic for "whoops."

### What's the Klamath community doing now?

Trying to survive. On August 29, there was a courageous act of civil disobedience. Klamath Basin agricultural families — husbands and wives, children and the elderly — climbed over the fence along the headgates canal to peacefully reclaim their water. Eventually, some 300 people went over the fence. A tent city that had been outside the fence for four months was re-erected inside the fence. Armed Department of Interior law-enforcement officials and unarmed protestors eventually arrived at an uneasy truce. It stayed that way until the September 11 terrorist attacks. The protestors, in a display of national unity, voluntarily withdrew. They've agreed not to go back inside the fence until January 2, 2002. Meanwhile, the community is persevering and hoping that by next spring they'll have the water returned to them and to the Basin's wildlife.

### Cooler Heads Coalition

[www.globalwarming.org](http://www.globalwarming.org)

Learn about global warming, the Kyoto Protocol and more. Our newsletter is online at our web site. To subscribe to the newsletter and e-updates please send an e-mail to Myron Ebell, Director of Global Warming Policy at: [mebell@cei.org](mailto:mebell@cei.org).

# PITFALLS IN PURSUIT OF OIL INDEPENDENCE

by Paul Georgia

The terrorist attacks of September 11 have once again raised fears about U.S. dependence on Middle Eastern oil. It seems that nearly everyone agrees that if the U.S. could reduce its dependence on foreign oil it would reduce its vulnerability to oil shocks that arise from OPEC manipulations, political instability, and war.

Some argue that the U.S. should increase domestic oil production by opening the Alaskan National Wildlife Refuge (ANWR) and increasing offshore oil drilling. Indeed, opening ANWR might now be politically feasible after years of fierce opposition, due in large part to the recent tragedies. Others are likely to argue that the U.S. should spend even more money on developing alternatives to oil.

There is nothing wrong in principle with increasing domestic oil production, as long as it makes economic sense. The U.S. Department of Energy estimates there are 16 billion barrels of oil available in ANWR, equal to the amount of oil the U.S. would import from Saudi Arabia for the next 30 years. If cost-effective, there's no reason why the U.S., and Alaska in particular, shouldn't benefit from this resource. But this was true before September 11.

Alternative energy sources, such as wind and solar power, have never made economic sense. Tens of billions of federal research dollars have already been wasted on alternative energy boondoggles that have yielded little-to-nothing in return. But the special interests that benefit from renewable energy subsidies are likely to use the fears of oil dependency sparked by the terrorist attacks to justify further subsidies.

But is oil dependency really a problem? The U.S. is dependent on foreign supplies for many things. Indeed, as a

nation (or a person, for that matter) becomes wealthier it becomes more dependent on an ever-widening range of sources for the goods it demands. Oil is no different. It simply doesn't make any sense to rely on domestic sources of energy when it can be purchased more cheaply abroad.

Moreover, energy independence is largely unattainable. Oil prices are determined by supply and demand fac-



*The portion of ANWR closed to drilling, but which environmentalists always misrepresent as being at risk.*



*The featureless coastal plains of ANWR where drilling might occur.*

tors in international energy markets. Any change that affects world oil prices similarly affects U.S. oil prices. There is simply no way to insulate the U.S. from foreign supply shocks without totally isolating our energy markets from the rest of the world. That is exactly what former President Jimmy Carter attempted through the imposition of price caps on gasoline. The cure was worse than the disease, however, as the price caps led to severe gasoline shortages and gas lines.

This is a dangerous time for the U.S. Politicians have always used times of war to gain support for bad policies by claiming they will advance the war effort. Energy independence has been invoked many times in the past, and may now carry even more emotional appeal. But bad energy policies are likely to make things worse rather than better.

Many policies that have been sold on the basis of energy independence have made the U.S. more dependent on foreign oil, not less. Because the U.S. is such a large user of oil, policies that sup-

press energy use in this country lower the world price for oil. High cost producers of oil, such as those in the U.S., are hurt more by lower prices than low cost producers, such as those in the Middle East and Latin America.

One such policy, known as the Corporate Average Fuel Economy (CAFE) standard, which requires automobile manufacturers to meet a fixed fuel economy standard, hurts domestic oil producers and shifts part of the U.S. market share for oil overseas. Yet, environmentalists support raising CAFE standards even higher in the name of energy independence.

Unfortunately, sound policies are also often sold on the basis of faulty economic reasoning because such arguments often carry greater emotional appeal than hardnosed economic reality. In the long run, however, appeals to energy independence will lead to greater political mischief.

The Bush Administration must avoid this trap. Its national energy plan, for the most part, provides sound remedies for many U.S. energy problems, which stem largely from lack of supply and a lack of energy infrastructure, such as transmission lines and refining capacity. The plan stands on its own merits and the Bush Administration, in selling it to the public, must avoid giving credibility to the faulty but politically powerful rhetoric of energy independence.

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# The Good, the Bad, AND THE UGLY

## The Good: White House Demands Stricter Scrufiny for New Regulations

Kudos to John D. Graham, head of the Office of Information and Regulatory Affairs in the White House's Office of Management and Budget, who recently put federal agencies on notice that new rules and regulations will be carefully scrutinized and reviewed using cost-benefit analyses, extensive peer reviews, risk assessment, impact studies, and other "scientific tools" to weigh their value and propriety. Rules that haven't undergone stringent review, or been weighed against more cost-effective alternatives, will be sent back to the agencies from whence they came. That would be a vast improvement over the previous administration, whose primary method for evaluating new regulations seemed to be political calculus.

Graham, the founder of the Harvard Center for Risk Analysis, said that the goal "is to improve the regulatory process, adopting cost-effective rules when they are needed, modify existing rules to make them more effective and/or less costly, and rescind outmoded rules." In a sure sign that Graham is on the right track, he has cultivated a gaggle of critics in Congress, among them Sens. Joseph Lieberman (D-Conn.), Richard Durbin (D-Ill.), and Robert Torricelli (D-N.J.). "When I look at this man's record, I think this could be the most dangerous appointment we could make with regard to public health and the environment," Durbin said at the time of Graham's appointment. If that isn't a sign of science and sanity being returned to the regulatory process, what is?

## The Bad: On a Day of Terror, Paper Lionizes Terrorist

This year's Pulitzer Prize for terrible timing (not to mention taste) goes to the *New York Times*, in recognition of its September 11 feature story — titled "No Regrets for a Love of Explosives" — in which a former member of the Weathermen, a radical 1960s protest group, fondly recalls his own involvement in terrorist acts, including bombings. The piece respectfully profiled Bill Ayers, who worked for peace in Vietnam by bombing the Pentagon. "Everything was absolutely ideal the day I bombed the Pentagon," Ayers is at one point quoted as saying. Other chilling Ayers quotes include: "I don't regret setting bombs," and "I feel we didn't do enough" — demonstrating that while the techniques of terror may change, the mindset of its perpetrators does not.

CEI's president, Fred Smith, commented after reading the article: "Gordon Allport in his famous book, 'The Nature of Prejudice,' noted that the legitimization of hatred begins with small steps — racist jokes, favorable treatment of racist attitudes in respectable publications. This article demonstrates that linkage well — the Weathermen and their terrorist acts were treated with great respect. They wanted a better world and were willing to kill others to achieve that result."

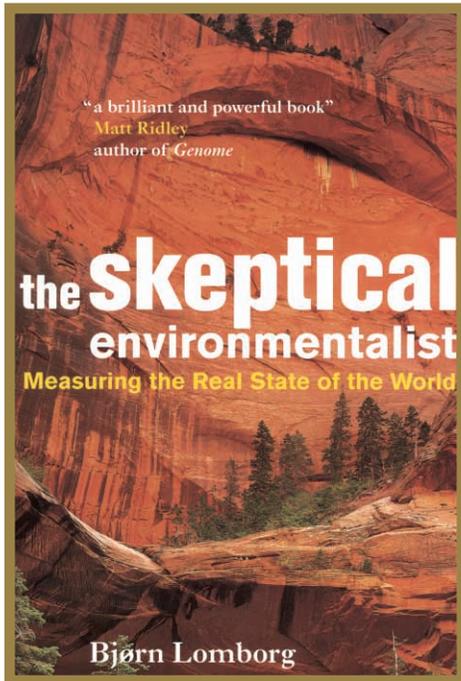
## THE UGLY: ENDANGERED SPECIES ACT IMPERILED FIREFIGHTERS

Delays in helicopter water-drops caused by the Endangered Species Act were not directly responsible for the July 10 deaths of four firefighters in Washington's Okanogan National Forest, according to an investigation by the U.S. Forest Service, but they did contribute to a day of catastrophic misjudgments that has angered families of the victims and raised new questions about federal fire management policy. The report does not dispute, however, that concerns about endangering fish delayed by several hours helicopter water drops that might have helped control a minor fire that suddenly turned deadly. It found that the delay was an "influencing" factor in unfolding events, but not a "causal" factor in the deaths themselves. Reports of the delay have led to calls on Capitol Hill for possible revisions of a law that critics say puts the interest of animals above the interests of human beings.

July 10 represented the worst loss of life since a 1994 forest fire at Colorado's Storm King Mountain claimed 14 firefighters. Families of some of the Okanogon victims called the Forest Service's investigation and conclusions — which blamed much of the tragedy on misjudgment and human negligence — a whitewash. "There's no accountability," said Kathie FitzPatrick, mother of 18-year old firefighter Karen FitzPatrick, who perished that day. "There's no accountability. It does not exist, and we do not know if it will exist — ever."

# JULIAN SIMON VINDICATED: A REVIEW OF BJORN LOMBORG'S THE SKEPTICAL ENVIRONMENTALIST

by Michael D. Mallinger



Bjorn Lomborg's new book *The Skeptical Environmentalist* provides a comprehensive debunking of the environmentalist movement's major claims. A professor of statistics at the University of Aarhus in Denmark, Lomborg follows in the footsteps of the late economist Julian Simon in analyzing environmental trends. Unlike Simon, Lomborg believes areas exist in which stringent government regulations are necessary to produce positive outcomes. However, he still offers a scathing rebuke of key leaders of the environmental movement, whom he believes manipulate statistics to deceive the public into supporting their cause.

He wastes no time in attacking his critics. On the very first page, he targets the flagship publications of the environmentalist machine the Worldwatch Institute's annual *State of the World* book series. Although he credits *State of the World* for being "one of the world's best-researched and academ-

ically most ambitious publications," Lomborg shows that they ultimately fall short of the goal of providing an accurate portrait of the world's most critical environmental problems. This, he states, is due to the games its authors play with numbers.

Understanding data is crucial to obtaining an accurate picture of global environmental trends, according to Lomborg, and using global figures forces scholars to account for both positive and negative trends for any given issue. In other words, if food production simultaneously rises in one country and falls in another, a global analysis is necessary to determine the overall trend over time.

But this is what many environmentalist groups, including the Worldwatch Institute, fail to do, writes Lomborg, citing numerous examples of short-term negative trends that have been exploited by environmentalists to scare the public. He believes that to understand any international environmental trend we must be willing to investigate data covering the entire globe over long periods of time.

In the book, he applies this principle to every major environmental issue, including population growth, food production, natural resource depletion, chemical risk analysis, and global warming — leading to some surprising conclusions. "Whether we are talking about food, raw materials or energy, no shortages of resources seem to be forthcoming, no serious problems for the continued growth of production and welfare are in the offing," Lomborg writes. "We have seen that problems with pollution do not give us reason to believe that economic growth is in the

process of destroying the Earth — rather the contrary."

For example, in the area of population growth, he documents how infant mortality has declined steadily around the globe since the 16th century. In the area of food production, he points out that the number of people starving throughout the world has continued to drop despite the fact that population in developing countries has doubled. He asserts that no "wall" limiting higher agricultural yields appears to be in sight, and that starvation rates in most developing nations will continue to fall in the coming decades.

Echoing a point made years ago by Julian Simon, Lomborg points out that prices of almost all raw materials have dropped over the last century despite enormous increases in economic growth and production. More importantly, he notes that many resources are actually more abundant than ever due to discoveries of new supplies and substitutes. He calls this expansion of resources the development of "capital goods," high-

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**...the number of people starving throughout the world has continued to drop despite the fact that population in developing countries has doubled.**

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lighting the ability of society to use certain goods to expand its knowledge of resources and use them more effectively. Thus, although he believes the use of fossil fuels imposes costs on consumers, Lomborg notes that our society is unequivocally better because we choose to use them.

The author applies this principle to the regulation of chemical pesticides as

well. He points out that if environmentalists succeed in banning all pesticides, they will impose high costs on society in the form of reduced agricultural output. In addition, such a ban would impose unseen costs in the form of foregone opportunities to address more serious environmental problems.

In other words, to the extent that regulation contributes to environmental benefits, imposing strict rules in the wrong areas creates a society in which fewer people will survive.

Lomborg's criticisms are not limited to environmentalist methods; he also questions their motives. For example, he accuses authors of United Nations' Intergovernmental Panel on Climate Change reports of using climate policy as a "justification for charting an alternative course of development." He points out that the body's demand that people alter their lifestyles falls well outside its established mission of conducting scientific analysis of climate change.

He accuses many of his personal critics of playing the same game. He recalls instances during lectures in which students implored him not to teach people about positive world environmental trends because it might cause them to

behave differently. He notes the undemocratic nature of their demands and states that such attempts to keep the truth in the hands of an elite few will only end up harming the environmental movement in the long run.

*The Skeptical Environmentalist* is exactly that, the work of a scholar who took the time to examine the data and found that most environmentalist claims simply do not hold water. But Lomborg is still far from being a free market economist. Despite his critique of the UN's climate studies, for instance, he declines to question the motives of many regulators who stand to gain authority and influence by exaggerating various problems. However, his critique is a valuable amendment to the trail-blazing

work of Julian Simon and other proponents of true statistical analysis. Those seeking a fresh look at the state of the planet would do well to heed his words.

**...to the extent that regulation contributes to environmental benefits, imposing strict rules in the wrong areas creates a society in which fewer people will survive.**

*Michael D. Mallinger (mmallinger@cei.org) is a research associate at CEI.*

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## The Future of the Airlines

The terrorist attacks have had a dramatic impact on the state of the U.S. economy, the airline industry being especially hard hit. Many observers predicted widespread bankruptcy and Congress passed a large-scale bailout for the industry. Vice President for Policy James Gattuso has analyzed the bailout package on the op-ed pages of more than 20 papers across the country, including the *Washington Times*, *Chicago Tribune*, *Detroit News*, and the *Kansas City Star*. “Congress, racing to do something, anything, about the problem, rushed through a \$15 billion bailout for the industry,” James wrote in the *Chicago Tribune* on September 28. And he raised these questions in the *Washington Times* on September 23 writing: “With barely a week’s deliberation, many troubling questions remain. How are losses to be defined? Will taxpayers end up paying airlines for economic losses they were already sustaining? How about lost business from a general economic slowdown? Moreover, how will the money be distributed? Will it go to those most in need, rewarding airlines that were badly managed before the tragedies? Or will it be divided among firms without regard to need, raising other troubling issues?” Gattuso concluded with a balanced recommendation for assistance: “Congress should act to provide relief to airlines, no question. And some compensation, such as direct losses due to the FAA-ordered grounding of flights, may be appropriate,”

By the way...

he wrote. “But Congress should concentrate on lightening the load government itself has placed on airlines.”

## Return of the Shark Attacks

A provocative explanation for last summer’s surge in shark attacks by former Warren Brookes Fellow and current Editorial Director Sean Paige has continued to generate interest. Focusing on the previously ignored possibility that federal and state fishing restrictions may be affecting the rise in shark attacks by allowing populations near coastal waters to increase, Paige’s work has been noted and carried by publications across the country. In a September 6 op-ed for the *Houston Chronicle*, Paige wrote: “It could be that shark populations are up because the state of Florida and the National Marine Fisheries Service have been working aggressively since the early 1990s to increase shark populations — mainly by regulating the U.S. commercial shark industry into extinction.” In addition to the *Chronicle*, Paige’s columns on the shark phenomenon have appeared in the *Calgary Herald*, the *Pittsburgh Post-Gazette*, and *National Review Online*. He has also been quoted by dozens of newspapers and news services, including the *New York Times*, the *Los Angeles Times*, *Gannett News Service*, *Agence France Presse*, the *Arizona Republic*, the *Dallas Morning News*, and *Investor’s Business Daily*.

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### Remote Control the Answer to Population Control?

The Indian government has a new idea on how to curb population growth: encourage people to watch more TV at night. Reuters reports that the nation's Health Ministry is going to make TV sets cheaper so couples become intoxicated by the tube instead of pursuing other nocturnal activities. We're not sure if there's a direct link between watching more television and decreased population growth, but subsidizing TV sets definitely isn't a good idea.

### The Fire Down Below

Seems like an activity replete with risk, but Eli Tyler took the challenge anyway. According to the *San Diego Union Tribune*, Mr. Tyler suffered severe burns on his feet during a fire-walking ceremony ... and it gets better ... while vacationing at a nudist convention. Though he was warned of the dangers and agreed not to sue if hurt, Tyler has filed a lawsuit anyway, contending that the hosts used the wrong kind of wood, started the fire walk before ash was formed, and didn't have emergency medical personnel present. Perhaps firewood will in the future come with a label: Warning: Hot Coals can be Hazardous to the Feet of Fire-Walking Nudists.

### One Biohazard Burger Please, with Fries

According to *CNSnews.com*, the Physicians Committee for Responsible Medicine, an "animal rights and health safety group," wants the federal government to stamp "biohazard" labels on meat and poultry products. They say the USDA doesn't explicitly warn consumers about the possibility that some products may contain trace amounts of fecal material. Though the USDA's Food Safety and Inspection Service says it has a zero-tolerance policy regarding any visible contaminant and warns consumers to thoroughly cook meat in order to kill bacteria, the Committee says it's not enough. If issued, the labels are sure to have their intended effect: grocery store conversions to vegetarianism.

### Sympathy for the Shark

In a rare concession to reason, PETA decided to shelve a recent advertising campaign urging people to have sympathy for sharks ... but only after two fatal attacks occurred over Labor Day weekend. The PETA posters asked, "Would You Give Your Right Arm to Know Why Sharks Attack? Could it be Revenge? Go Vegetarian, PETA." Compounding the campaign's bad taste, billboards with the message were to appear in Pensacola, Fla., near the beach where eight-year-old Jesse Arbogast had his arm ripped off by a Bull shark earlier this summer. "Our message is that humans kill billions of fish, including sharks, each year in the most hideous of ways, and sharks really aren't to blame, because unlike us they don't have choices when it comes to what they eat," said Dan Shannon, a spokesman for PETA.

### "Rigs to Reefs" may become Reality

California's state legislature recently approved a bill allowing oil companies to convert abandoned offshore drilling platforms into underwater reefs, overcoming objections from environmentalists whose hatred of anything remotely related to oil drilling or exploration apparently has led to the abandonment of reason. The state would assume ownership of obsolete offshore drilling platforms, leaving them in place to become man-made reefs, under the new law, instead of requiring that they be dismantled and hauled away. Oil companies will be responsible for removing the uppermost section of the structure, leaving the rest as a metropolis for sea life.

The so-called "rigs-to-reefs" legislation would come with one hitch, however, since no government action, no matter how commonsensical, can come without some strings attached. Oil companies will be required by the state to place between \$300 million and \$400 million into accounts to

be used for the "restoration" of marine resources. Typical of the irrational objections heard to the plan, State Assemblywoman Hannah-Beth Jackson alleged that "these rigs don't do anything to enhance habitat. Sure, the fish are there now. But if you remove the rigs, the fish will go someplace else." And state Senator

Jack O'Conner called it "the worst anti-environmental bill that passed this session."

### ... And the Regulators Jumped Over the Moon

In the effort to comply with the Clean Air Act, California state regulators are taking aim at an unsuspecting culprit — the dairy cow. That's right, in their search for ways to comply with federal clean air standards, California officials are demanding that dairy operations in Southern California and the San Joaquin Valley — where an estimated 450,000 dairy cows live — control the dust and manure generated by their operations. The dust from thousands of cows shuffling in corrals and munching feed puts particulates into the air, state regulators complain, and emissions from manure, including ammonia, contribute to smog. "The areas downwind of the dairies have some of the highest particulate pollution in the country," one eco-enforcer recently told *The Los Angeles Times*. The U.S. Environmental Protection Agency (EPA) and California legislature are eager to require that dairy farms obtain air pollution permits, opening them up to increased regulatory control and scrutiny. They're also reportedly hoping that escalating land values and urban sprawl will drive dairy operators out of certain areas. "If the reduction is not achieved by dairies moving out of the basin, (we) would look at a proposal aimed at directly reducing emissions from the dairies themselves," one regulator told the Times.

Dairies only account for about one percent of the emissions resulting in smog, the state's air quality agency acknowl-

## End Notes

edges, but the region's inability to meet federal standards has regulators desperate for scapegoats and dairy cows make far more docile targets than rush hour commuters. If California chooses to do away with its dairies, it should also go without milk — in that way, the trade-offs in such an udderly idiotic policy would be made clear to the public.

### The Sum of All Fears

Terrorists had just flown two passenger jets into the twin World Trade Center Towers, causing collapses that left untold thousands dead, maimed, or missing. A city and a nation — its capital also attacked — reeled in shock and uncertainty. And the President was nowhere to be seen, reportedly holding war councils at the headquarters of the Strategic Air Command in Nebraska. But in a moment that says a lot about the inability of some Americans to discern real and immediate threats from largely imagined ones — or at least put them in some kind of rational perspective — a reporter at New York Mayor Rudolph Guliani's first press briefing on the unfolding tragedy was asking about the threat from ... asbestos.

Though the collapse of the twin towers, testing conducted by the EPA by the destruction presented no serious contrary, some engineers have suggested and lives might have been lost, due to 1 was fire-proofed with asbestos up to Tower 2 was built without any at all, as experts believe that the towers would question is, would using asbestos throughout the structures have slowed the fire enough to delay their collapse, allowing more people to escape. But the public's attention, typically, was drawn to the allegedly life-threatening risk from asbestos, rather than its potentially life-saving benefits when used responsibly.

## END NOTES

towers blanketed the area in a fine gray found that smoke and dust generated health hazard to New Yorkers. On the that the city might have suffered unduly, a *lack* of asbestos. Trade Center Tower the 40th floor only, while Trade Center a result of anti-asbestos hysteria. Few have survived even with asbestos, but the

### Federal Judge: USFW Didn't Give a Hoot about Economic Impacts

A federal judge in Phoenix, Ariz., recently blocked the U.S. Fish and Wildlife Service (USFW) from designating 730,000 acres in the state as critical habitat for the cactus ferruginous pygmy owl, accusing the agency of not giving a hoot about the economic impacts of its regulatory actions and requiring that it reconsider the matter. The pygmy owl is to the Southwest what the spotted owl was to the Pacific Northwest — a convenient way for environmental groups to halt all development. The designation was challenged in court by several associations of home builders, who argued that the owls were actually much more plentiful than USFW indicated and that the agency low-balled the economic impacts of setting aside 730,000 acres of land (including 135,000 of private property) for the owl, when studies have shown that the designation could potentially cost billions of dollars.



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