CEI UpDate

June/July 2002 Competitive Enterprise Institute Volume 15, Number 6

DANIELS IN THE LION'S DEN
OMB DIRECTOR KEEPS COOL ON THE HOTTEST SEAT IN WASHINGTON

by Sean Paige

Mitchell E. Daniels undoubtedly ranks among the least popular figures in official Washington. Cabinet officials dread his scrutiny and dodge his phone calls. He is the bane of government bureaucrats and regulators. His testimony before Congress regularly stirs tempests. And certain members of Congress have been known to have meltdowns at the mere mention of his name.

All of this assured Daniels — director of the Office of Management and Budget (OMB) in the Bush White House — of a warm and enthusiastic reception as featured speaker at the Eighth Annual CEI Dinner, held on May 22 at the Capital Hilton. More than 400 of Washington's finest and feistiest turned out to hear Daniels, hail CEI, and posthumously honor two other noted challengers of conventional wisdom, journalist Warren T. Brookes and economist Julian Simon.

The evening was by all accounts a smashing success. *National Review*'s Kate O'Beirne, serving as mistress of ceremonies, dished up some piquant political commentary — "Happily, Mitch Daniels is *no* Dick Darman," she deadpanned — as attendees supped on allegedly endangered Chilean Sea Bass (chosen to comport with the event's tradition, politically-incorrect tenor). Mary Lou Forbes, legendary editor of the *Washington Times'* Commentary pages, shared memories of the late, great Warren Brookes, whose incisive writing and analysis was highlighted in her pages. CEI president Fred Smith lampooned the lunatic excesses of ecological extremists and gleaned social relevance from this summer's blockbuster movies, *Star Wars: Revenge of the Clones* and *Spiderman*. And this year's table favors — "Enviro-Car" and "Enviro-Bus" wind-up toys — were a hit with the crowd as always (thanks

(Continued on Page 3)

The Honorable Mitchell E. Daniels, Jr. keynotes CEI's Eighth Annual Dinner.

In This Issue

From the President

FEDERALIZED SKIES ARE LESS FRIENDLY SKIES

by Fred Smith

America's airlines are experiencing great difficulty this summer travel season. But their problems predate the terrorist attacks of last September, and the "help" that's being offered by Washington will likely make matters worse.

Deregulation in 1978 freed the airlines, allowing them to become more user-friendly. It also democratized air travel. During the resulting expansion, airlines sought to maintain air travel quality, but airports and airways (the other components of the air transportation system) were still under political control and adjusted less well to the expanded demand. Airlines faced internal problems as well. Decades of regulation had insulated them from the evolutionary forces of the market. Entry to, and exit from, markets was difficult. Prices were set at rate hearings rather than by market forces. Airlines were protected from insolvency but were blocked from expansion. Labor costs were too high, work rules too restrictive. Airlines owned and operated too many aircraft types; airfields were often poorly sized to meet market demands.

Even prior to last September airline reformers encountered opposition. Antitrust authorities prevented a proposed merger between United Airlines and US Air. National ownership requirements made it impossible to create global airlines; officials blocked a British Air and American Airlines alliance. Finally, the Railway Labor Act (the law which governs airline labor relations) made it difficult to rationalize work rules and wages within the industry.

But airlines were moving to address these problems. For the last two decades, they have revised their routes, created hub-and-spoke networks, and acquired more suitable aircraft for regional routes. Some airlines went out of business, others merged to provide more national service. And shifting airports and airways to local jurisdictions or private corporations was finally receiving serious consideration. Canada, America's northern neighbor, provided a model by creating a private corporation to manage air travel.

But then came September 11 and all progress came to a halt. Fear of flying reached new heights, reducing airline revenues. But that response was temporary; the more serious blow was the panicked decision to federalize airport security. Thousands of sometimes-careless but easily-fired local airport security personnel will now be replaced by sometimes-careless, impossible-to-fire federal employees. Congress called for billions of dollars to be spent on new scanners and detection equipment. Such federal meddling will raise costs and delay transit through airports. It is doubtful that it will make travel any safer. Efforts to make air travel safe rather than *safer* are risky. Federalized skies are less friendly skies.

Congress also rushed through the Air Transportation Safety and System Stabilization Act, and quickly disbursed $5 billion to offset airline losses associated with the closing of American airspace. However, the Act also made available $10 billion in loan guarantees to "distressed airlines" — air carriers with no readily available creditors who would use the money for "prudent" purposes are eligible for such loans. However, they would be approved only when necessary to maintain a safe, efficient, and viable commercial aviation system. Under these guidelines, few airlines would be eligible for guaranteed loans. This is good! Cost control is difficult. Market forces provide the needed incentives to undertake these painful reforms. In contrast, loan guarantees encourage delay, allowing the firm, its labor unions, and its creditors to avoid hard choices.

Moreover, the "safeguards" that the lending agency imposes (to protect the public) create additional problems. The Board approved the first applicant, America West, for a $380 million guarantee. In return, the Board demanded a 5 percent equity stake. But government ownership creates a conflict of interest. Is it wise to allow one government agency to lobby other government agencies on America West's behalf?

Terrorists made the skies less friendly last September. Tragically, government seems determined to make that condition permanent.

Fred Lee Smith Jr

CEI UpDate

Publisher:
Fred L. Smith, Jr.

Editor:
Sean Paige

Assistant Editors:
Maggie Skoller
Michael Mallinger

Contributing Editor:
Richard Morrison

CEI UpDate is produced 10 times a year by the Competitive Enterprise Institute, a pro-market public interest group dedicated to free enterprise and limited government.

CEI is a non-partisan, non-profit organization incorporated in the District of Columbia and is classified by the IRS as a 501 (c)(3) charity. CEI relies upon contributions from foundations, corporations and individuals for its support. Articles may be reprinted provided they are attributed to CEI.

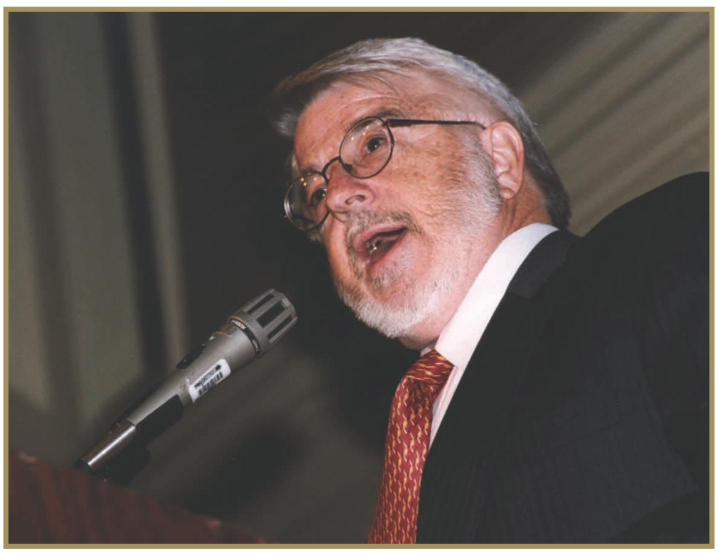
Phone:
(202)331-1010

Fax:
(202)331-0640

E-mail:
info@cei.org

ISSN# 1086-3036

Julian Simon Award recipient Robert L. Bradley Jr., (center) with niece Anne Lummis (left) and Dr. Rita Simon and Daniel Simon.



CEI President Fred L. Smith, Jr. during remarks at the Eighth Annual Dinner.

National Review's Kate O'Beirne (center) makes a point to Cliff May, president of the Foundation for the Defense of Democracies (left), as Fred Smith listens.

(Continued from Page 1)

to the creative genius of CEI general counsel Sam Kazman).

Energy economist Robert L. Bradley Jr., recipient of the second annual Julian Simon Memorial Award, explained why the doomsayers are wrong on the subject of sustainable development, exuding the optimism and belief in unlimited human ingenuity for which Simon was famous. Bradley said he shared Simon's views that "the energy Malthusians are wrong" and that "the hydrocarbon-based energy economy is sustainable and becoming more so in market settings around the world." And taking a page from master prognosticator Simon, Bradley predicted that the "hydrocarbon age" is still relatively young and that emerging technologies will lead to an "enhanced hydrocarbon era" in which fossil fuels will be used with maximum efficiency and minimal environmental impact. The optimism of the "energy realists" is eclipsing the pessimism being peddled by Paul Ehrlich, John Holdren, and other "energy depletionists" and "climate alarmists," according to Bradley.

A genial, mild-mannered Mitch Daniels hardly seemed like a man capable of whipping up such political firestorms. But in a world in which consistency on budgetary and regulatory issues is a rarity, Daniels has stood apart, and rankled some, with his determined efforts to put the "M" (meaning management) back in OMB, reign in the government's regulatory excesses, and question the value of continually funding "the same old tired programs." However, Daniel's refreshing candor and in-your-face courage have best been displayed when confronting freespenders in Congress, as he's taken them to task, right in their own hearing rooms, for porking-out and piling on the spending in the wake of September 11. Daniels seems unfazed by the boos and brickbats hurled his way by The Powers That Be — and in fact, he seems to accept them as a sign that he's doing his job.

Daniels told guests that he views himself and his office as being the government equivalent of consumer protectors, shielding everyday Americans against the encroaching power and increasing costs of the federal government. "We know with some degree of precision that, conservatively estimated, regulations on the books of the federal government inflict six to eight hundred billion dollars in costs on the American economy every year," Daniels told the audience. "It's wrong to put it the way I just did, though, because such costs are not inflicted on abstractions like economies, but on each of us, on everyday citizens, with ultimately every dollar of that falling on a purchaser of a good or service, either in a direct cost, the unavailability of that product, or the loss of the freedom of our choice consequent to some regulatory restriction." It is OMB's job "to make sure that if and when a regulation does obtain the force of law, that the consumer gets a fair bargain, a square deal," as Daniels sees it. It's a "noble mission" that "is so very easily distorted, or even impugned," as Daniels fully knows.

Building public confidence in OMB's consumer protection mission requires three steps, Daniels said:

(Continued on Page 6)

Q & A WITH JOHN D. GRAHAM:
THE MAN WHO REGULATES REGULATORS

Dr. John D. Graham is one of the world's foremost experts on risk analysis. President Bush appointed him administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget on March 6, 2001. Prior to joining the Administration, Graham served as professor of policy and decision sciences at the Harvard School of Public Health and was founding director of the Harvard Center for Risk Analysis. He is author or editor of many peer-reviewed journal articles and books on risk analysis, including Risk vs. Risk: Tradeoffs In Protecting Health and The Environment *and* In Search Of Safety: Chemicals and Cancer Risk.

CEI: Could you briefly describe what OIRA does, why it is necessary, and how your mission and approach to your job differs from your predecessors' approach?

Graham: Well, the principle mission is to promote higher quality regulatory analysis in support of rulemaking decisions at federal agencies. We have been using the carrot and stick to promote better performance at agencies. The carrot has been the offer of more deferential OMB review of agencies in cases where agencies voluntarily subject their analyses to independent peer review of qualified experts. The stick has been the revival of the dreaded "return letter." We have returned roughly 20 rules to agencies in the 10 months since I was confirmed, which, remarkably, is more than the total number of returns in the entire Clinton Administration's eight years. So I think that the dynamic between OMB and agencies is reestablishing a healthy tension that is necessary to generate quality in regulatory packages.

CEI: That tension — how is that felt? How do agencies deal with it when they get a return letter?

Graham: The responses of agencies vary enormously from constructive improvement to bunker mentality. We are aggressively trying to outreach to the agencies to encourage the constructive response.

CEI: Through its *Ten Thousand Commandments* reports, CEI has encouraged policymakers to take a big picture view of the costs of the regulatory state. Although these costs are frequently difficult to measure, do you feel the general public is starting to understand that regulations have become almost as burdensome as direct taxation?

Graham: We have a major communications challenge ahead of us. Many citizens don't realize that OMB's regulatory review process is really a form of consumer protection. The costs of regulations are really a kind of invisible tax that ultimately is paid by the consumer in the form of higher prices for goods and services in the economy.

CEI: In your writings on risk analysis, you've stated that federal agencies need to be managed with a better understanding of risk tradeoffs – when a countervailing risk is generated by an intervention to reduce a target risk. Have you been able to make any headway in educating officials about what these tradeoffs are or how they can be reduced or managed?

Graham: We have a lot of work to do in that arena. Supreme Court Justice Stephen Breyer, in his book *Breaking The Vicious Circle,* spoke of the tunnel vision of agencies where they focus on aspects of an issue that are central to their agency's mission, but do not always look at the broader ramifications of their actions. OIRA has tried to be more vigilant in this area, but we have a long way to go to accomplish a broad, comprehensive approach to regulatory review.

The most gratifying aspect of the job is seeing a regulation become more effective, less costly, or less intrusive as a result of the review of OMB.

CEI: One of the biggest problems in the regulatory realm is regulation that occurs under the table – when agencies enact rules without going through the formal rulemaking process. Upon assuming command at OIRA, you immediately sought to improve the group's transparency. Has that example fostered increased transparency in other areas of the federal rulemaking process? What headway is being made in addressing the problem of under the table regulation?

Graham: To open up the rulemaking process, the Administration's E-Government initiative has sought to put innovative agencies in the lead. Some, such as the Department of Transportation and EPA, have made major strides toward electronic rulemaking. We're hoping to export that progress to other agencies. The role of the informal guidance document – often issued by agencies – has been a priority for OMB oversight and reconsideration. In fact, we have initiated an open public comment process where we have sought examples of agency guidance documents that were masquerading as regulations. In particular, we're looking for nominations of such guidance documents that need to be put through some form of public comment or peer review process. That public comment process ended at the end of May. We will share the results of those nominations with the interested agencies.

CEI: Environmentalists were quick to attack you for reviewing and rejecting some of the Clinton administration's eleventh-hour regulations – claiming that all of these rules went through the standard public review process before you chose to take a second look. How do you respond to such criticisms? What can be done to prevent the promulgation of bad rules at the last minute by outgoing administrations in the future?

Graham: I don't know that we're ever going to be able to prevent this kind of problem. I think every new administration – Republican and Democrat alike – when they come into office wants to make sure that recently adopted regulations do in fact reflect the policy and priorities of the incoming administration. A recent GAO report, which examined the actions of this administration, noted that they were very similar to the types of reviews that occurred in previous administrations.

CEI: In the debate over Corporate Average Fuel Economy Standards (CAFE), you've commented in the past on the unwillingness of the National Highway Traffic and Saftey Administration (NHTSA) to acknowledge CAFE's impact on the safety risks facing drivers of smaller, less crashworthy cars. Do you feel any progress has been made in bringing this issue to public scrutiny or debate during the recent Senate debate on CAFE?

Graham: We owe a tremendous debt to CEI for the pioneering work they did through litigation and drawing attention to the unrecognized adverse safety effects of CAFE standards in the passenger car arena. In the future, we have to focus more on the question of what impact CAFE standards might have on light trucks for safety. As the recent National Academies of Sciences report noted, the safety issues with light trucks are going to be even more complicated than they were for passenger cars.

CEI: In your speech before the European Commission's Group of Policy Advisors in January, you said that the Bush Administration considers the Precautionary Principle to be "a mythical concept, perhaps like a unicorn." Could you elaborate on that? What is mythical about the Precautionary Principle?

Graham: In the U.S. regulatory system, we have embedded layers of precaution in both how we assess risks scientifically and how we protect the public from risks beyond their personal control. Yet these layers of precaution are tailored to the specific facts of foods, chemicals, environmental protection, housing, or so forth. In the United States, we do not pretend to suggest that there is some universal principle of precaution that would be applicable in all circumstances. Frankly, the suggestion of any such principle — coupled with the American legal profession — is quite frightening.

CEI: Are you enjoying your role with the Bush administration? What's the most fun that you've had so far?

Graham: I am enjoying it. The most gratifying aspect of the job is seeing a regulation become more effective, less costly, or less intrusive as a result of the review of OMB.

We owe a tremendous debt to CEI for the pioneering work they did through litigation and drawing attention to the unrecognized adverse safety effects of CAFE standards in the passenger car arena.

Simon Award honoree Bradley explains why the "energy depletionists" and "climate alarmists" are wrong.

(Continued from Page 3)

conducting the regulatory process with "maximum openness," striving for "technical excellence" in the analysis of the costs and benefits of proposed regulations, and learning "to speak the vocabulary of consumers everyday in assuming our duty." In pursuit of the latter goal, Daniels said OMB could learn much from both Warren Brookes and Julian Simon, who each had a knack for popularizing and personalizing the costs and consequences of government actions on economic development and personal liberty.

Since arriving at OMB, Daniels is credited with pushing for greater use of e-government, incorporating performance ratings of agencies in the president's budget blueprint, trying to hold agencies more accountable for results, advocating the privatization and outsourcing of many government jobs and functions, and demanding reform of civil service hiring and firing practices. Rather than selling the administration's government reform initiatives as an over-blown and undeliverable "reinvention," Daniels has pushed for more modest, nuts-and-bolts changes that have the virtue of being attainable.

He has been the bearer of bad budgetary news, and a voice for restraint and sobriety, as surpluses evaporated in the orgy of congressional spending in the wake of September 11. He raised the hackles of powerful congressional appropriators by calling them on everything from commonplace pork-barrel pilfering to trying to take advantage of the crisis to cut themselves in on a piece of the administration's "war on terrorism." And he hired Dr. John Graham (see Q&A, pages 4-5), one of the nation's foremost authorities on regulatory analysis, to ride herd on runaway regulators as head of the Office of Information and Regulatory Affairs (or OIRA).

But Daniels also serves as a loyal foot soldier in an administration that has a propensity to take a softer line. When the White House produced a post-September 11 budget that guaranteed a return to deficit spending, for instance, Daniels the budget hawk was forced to rationalize the return of red ink. He removed from the bargaining table any possibility of a government shutdown in the event of a budget impasse. An early pledge to slash 40,000 government managers has been abandoned. And Daniels has had to back off on occasions when his straight talk invited open war between the White House and top congressional leaders — as when he said that Congress should have as its motto: "Don't just stand there, spend something."

"In Indiana we say that farmers tend to be capitalists on the way up and socialists on the way down," Daniels told the audience — joking in an aside that the recently-passed Farm Bill, which will result in unprecedented spending on agricultural subsidies, may have permanently nullified the first half of the observation. And similarly, he said, "there are elements of the American enterprise system which are capitalist on the way up, and socialist once they reach the top. And there is a temptation, and a constant invitation, to find previously undiscovered merit and virtue in regulations that serve as barriers to entry, that serve as protectors of those who have achieved wealth and market position or power." Daniels applauded CEI's "honesty" and "independence" for "never flinching from pointing out those occasions on which perhaps potential patrons even were falling prey to that temptation."

Keeping the individual citizen, rather than powerful agencies, corporations, or advocacy groups, as the focal point of one's activities and mission holds the key to success of both CEI and OMB, said Daniels. "You are our model, and in our way we'll try to do likewise."

In a meeting of the minds, OMB director Daniels confers with CEI's Fred Smith.

Sean Paige (spaige@cei.org) is Editorial Director at CEI.

Media Mentions

Senior Fellow Marlo Lewis, Jr. raises the alarm about new legislation aimed at leading the nation down the path of energy suppression and higher prices:

Today the Senate Environment and Public Works Committee will hold its fourth hearing on the "Clean Power Act" (S. 556) proposed by Sen. James Jeffords, Vermont Independent. This bill, and its House companion, Henry Waxman's "Clean Smokestacks Act" (H.R. 1256) would establish new controls on power plant emissions of sulfur dioxide (SO_2), nitrogen oxides (NO_x), mercury and carbon dioxide (CO_2).

CO_2 is the inescapable byproduct of the carbon-based fuels that supply 70 percent of U.S. electricity and 84 percent of all U.S. energy. CO_2 is also the principal "greenhouse" gas targeted by the Kyoto Protocol, the non-ratified U.N. global warming treaty. The Jeffords-Waxman bills aim to make the Kyoto agenda of climate alarmism and carbon suppression the central organizing principle of U.S. energy policy.

—*Washington Times,* June 12

Editorial Director Sean Paige takes federal and state officials to task for regulating recklessly and trying to entice Floridians and tourists into potentially unsafe waters:

A conference on shark attacks in Tampa this week is intended by its sponsors, the National Marine Fisheries Service and the Florida Fish and Wildlife Commission, to reduce the jitters generated by last year's "Summer of the Shark" and reassure residents and tourists that it's safe to go back in the water.

But what if such reassurances are government-sponsored spin, meant to lull the public into complacency about a real and growing danger, and the event itself an effort to paper over circumstantial evidence linking government regulations aimed at protecting sharks, and increasing their numbers in the Atlantic Ocean and Gulf of Mexico, with rising numbers of attacks?

—*Tampa Tribune,* June 9

Warren Brookes Fellow Eileen Ciesla highlights the peril of expanding international regulation:

Ministers with the Group of 8 will meet in Alberta later this month to discuss increasing foreign aid to Africa and forgiving Third World debt. There is one item on the agenda not likely to get much media attention, but it will have a substantial effect on U.S. interests. The head of the Organization for Economic Cooperation and Development (OECD), Donald Johnston, will ask the ministers to consider a new mission for the OECD. He would like to expand the OECD to become the world's global regulator — a mission that promises to seriously undermine U.S interests via protectionism and international bureaucracy.

—*Orlando Sentinel,* June 9

Environmental Policy Analyst Paul Georgia takes exception to irresponsible corporate advice in a letter on global warming:

Corporate pandering to hysterical environmental campaigners simply because their antics may inflict some short-term financial harm is a myopic and ultimately destructive business strategy ("Activists at the gates", June 5). Michael Skapinker endorses a Campaign ExxonMobil report that recommends that ExxonMobil embrace Kyoto-style global warming policies, which is exactly the strategy employed by Enron before its demise. In Kyoto, Enron saw an opportunity to profit at the expense of its rivals and lobbied fiercely for its implementation. Parroting Enron's reasoning, the report says that Kyoto-style policies present an opportunity for ExxonMobil. Such policies would cripple the coal industry, one of ExxonMobil's main competitors. In addition, the company would be able to take advantage of emissions trading, a mechanism through which certain companies, the "carbon cartel," would be able to extract rents (unearned wealth) from other companies and the economy as a whole.

—*Financial Times,* June 7

Director of Food Safety Policy Gregory Conko explains the faulty arguments behind new European Union rules on biotech foods:

Yesterday, the European Parliament's Environment Committee voted to expand the EU's labeling requirement for Genetically Modified foods. The measure, in the form of a proposed regulation put forth by the European Commission last summer, will go next to the full Parliament for a final vote. The regulation has been promoted as a way to ensure that consumers have information they need to make informed choices about the food they eat. In truth, the measure will do no such thing. The Parliament should vote down the proposed regulation when it comes up in plenary session this July.

Both the existing labeling regulation and the proposed new one only require certain categories of GM foods to be labeled. Some are subject to the labeling rules; some are not. Thus, to truly make an informed choice, shoppers must still rely upon other sources of information, including consumer-driven label statements and advertising by food producers who must battle for customer loyalty and earn their trust.

—*Wall Street Journal Europe,* June 5

...END NOTES

Dog-Dazed New Jersey Weighs Ban on "Debarking"

In a move that threatens to bite off another piece of our civil liberties, the New Jersey state senate is considering a bill, passed by the state's assembly, to ban the "debarking" of dogs. Proponents of the measure say the surgical procedure involved is used by drug dealers to create silent watchdogs that they use as "stealth weapons." Critics claim the ban would prevent owners of pesky pets from quieting them down. Under the bill, veterinarians who perform the operation without "just cause" could face up to five years in prison and a $15,000 fine. No word yet on whether "third-way" advocates will suggest "tradable barking permits" as a "market-based" alternative.

Government Springs for Singapore Flings

While the era of big government will likely never really be over, calls for a "kinder, gentler" state seem to be resonating internationally. The Social Development Unit of Singapore's government recently published a manual containing tips to help young people plan the perfect date. Its other strategies to combat low population growth include offering tax breaks to women who get married and organizing parties and events to help young singles mingle. Whether or not such strategies raise the ire of anti-population growth alarmists at the United Nations remains to be seen; perhaps the international body will insist on sending in blue-helmeted chaperones.

A Rare Case of Regulatory Restraint

In what could well be a first, a leading government agency with responsibility for public safety has actually recommended against – you heard right: *against* – heaping yet another safety mandate on the mountain of regulations meant to insure that accidents don't happen and everyone lives happily ever after. In a report to Congress, the National Highway Traffic Safety Administration (NHTSA) recommended against requiring seat belts in most school buses, actually suggesting — in another possible first — that the costs did outweigh the benefits. Lap belts on school buses were found to have "little, if any, benefit" in reducing serious or fatal injuries in serious head-on collisions, and in some cases might actually increase the risk of injury to small children.

Argentine Recession Forces "Police Academy" Style Measures

The International Monetary Fund's flawed monetary planning scheme, the likely cause of the economic depression plaguing Argentina, is starting to have some odd unintended consequences. Budget cutbacks for the police force have become so severe in the town of Junin that local residents – showing the true spirit of volunteerism — are loaning cars to embittered officers. "We had this crime wave, and when we talked with police they said they didn't have enough cars or money for gasoline," one resident told a local radio show. "So I said I'd loan them my car."

COMPETITIVE ENTERPRISE INSTITUTE
1001 Connecticut Avenue, N.W. Suite 1250
Washington, DC 20036