



# CEI UpDate

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## U.S. TRIUMPHS IN BONN PRESIDENT BUSH REJECTS KYOTO TREATY

by Chris Horner

*CEI Adjunct Policy Analyst Chris Horner attended the July conference in Bonn on the Kyoto Protocol and reported the events in his daily dispatches. This article appeared in The Washington Times on July 23.*

Word has it a historic agreement emerged from the negotiations in Bonn, Germany over how to implement the Kyoto “global warming” accords. Listening solely to professional climate negotiators vested in proclaiming such victory, one can hardly be blamed for believing this was the case. I observed something different.

Let’s review this breathlessly reported achievement, described without proportion by chief New Zealand delegate Peter Hodgson as, “probably the most comprehensive and difficult agreement in world history.”

There is a running, universal understanding at such sessions that, barring some major faux pas, at the proclaimed hour whatever can be agreed upon will be hailed as major progress. The press bites every time.

Bonn negotiators addressed the specifics of some of the numerous Kyoto provisions requiring narrowing before actually meaning anything. Certain provisions were indeed moved toward comprehensibility. In truth, however, a preponderance of those agreements consists of vague palliatives with a promise to continue talking about the issue. That is, for the most part there were merely agreements to agree at a later date.



**Pro-U.S. demonstrators rally for President Bush in Bonn, Germany.**

Still, the reason we are told of significant ground broken at this particular session is actually quite illuminating, both into the farcical process and Orwellian European Union pettiness. In order to have any document to triumphantly wave, the EU abandoned rigidity on certain issues that for the past year they maintained were essential for the treaty to possess “environmental integrity.”

This intransigent contractual revisionism torpedoed last November’s talks in The Hague. There, the EU sensed U.S. negotiators’ desperation that Al Gore would not prevail in his courtroom challenge to the  
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## FROM THE PRESIDENT



## MARKET MECHANISMS AREN'T MARKETS

by Fred Smith

What could be wrong with a market-inspired solution to CO<sub>2</sub> emissions? In this case, a great deal. The Bush Administration, after rejecting Kyoto, is now being pressured to adopt measures that would have companies "voluntarily" reduce their CO<sub>2</sub> emissions. It's a contradictory policy that would ultimately have the same effect as the Kyoto Protocol.

The measures, also known as 'cap and trade,' set a U.S. target for CO<sub>2</sub> emissions, granting rights to plants that emit CO<sub>2</sub> and "encourages" each company to "voluntarily" meet that goal. The plan has an escape hatch. Since it's uncertain how much reduction in CO<sub>2</sub> can be obtained, and at what cost, companies may opt to expand their emission rights when costs exceed benefits.

The first problem is in conceding that CO<sub>2</sub> levels need to be cut, the Bush Administration surrenders its argument against Kyoto: that current science doesn't warrant action against global warming. Not to mention, if CO<sub>2</sub> levels are too high, why create programs that make fossil fuels cheaper?

Cap and trade sounds reasonable. It's gotten support from environmental groups and economists who recognize that command-and-control regulations don't work. It's also been tried before. To combat the acid rain problem, the previous Bush Administration created a sulfur-dioxide emissions trading program. Over \$500 million was spent on a National Acid Precipitation Analysis Program that found the costs of controlling sulfur-dioxide emissions were high relative to the benefits. Many economists supported the legislation, without asking whether decreases in sulfur-dioxide were worth the cost. Making this mistake with CO<sub>2</sub> will have far greater consequences.

The problem is in the implementation. Setting emissions goals isn't easy. Whose limits do we accept? How do we discount carbon sinks (forest and plants that remove CO<sub>2</sub> from the air)? How do we allocate emission rights to firms that have adopted cleaner technologies? The hazards multiply when we consider trading rights internationally. How do we monitor emissions in China or Russia?

A Kyoto-style cap and trade system would create huge value in CO<sub>2</sub> suppression (some estimate more than \$2 trillion) increasing incentives to cheat, and encouraging opportunistic behavior by business. The value of emission 'rights' depends upon their scarcity, giving rise to lobbies out to protect their investments.

An example is the New York City taxicab medallion system. Despite the swell in traffic since the 1930s, taxicab owners have managed to block increases in medallions. The number of cabs is frozen because the medallions are tradable and are worth billions. A cap and trade system for CO<sub>2</sub> would create the same lobby for carbon-based fuel scarcity, but on a grander scale.

Over the next decade, it's likely that our understanding of global warming will shift dramatically. If we find that reducing CO<sub>2</sub> is no longer justifiable, then logic dictates dismantling a CO<sub>2</sub> emission program. Yet, reform would be difficult after the system is in place. Firms that owned rights, and planned on selling them, would resist any reduction in their value.

Market mechanisms are not markets. They are schemes to impose taxes and quotas to reach politically determined objectives. Encouraging anti-fossil fuel programs will make things worse for the Bush energy plan. And a politically-driven CO<sub>2</sub> program would destroy the Bush Administration's chances of creating broad business support for its energy policies.

Instead of creating an impossible-to-reform emission trading program we should put our energies into economic growth. An economically resilient society is the best insurance against whatever future problems, including global warming, might occur. Squandering resources for an uncertain benefit isn't any more desirable just because we do it through something that looks like a market.

*Fred Lee Smith, Jr.*

## CEI ViewPoint

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## SECOND WIND FOR THE GLOBAL ECONOMY

by Jack Kemp

Even as the world faces the threat of a global economic downturn, government regulators here and abroad go about the business of destroying wealth, jobs, and opportunity, and stifling business and technological innovation. The regulatory burden has to be relaxed quickly, and the United States has to lead the way.

Regulations are a tax on the way we live, work, and do business in the same way that the income tax and tariffs are. To sustain long-run economic growth, we must not only get tax and monetary policy right, but also regulatory policy. Government regulation has a legitimate and important role to play in modern society (although arguably less so in the Internet Age), but few regulations really pass the simple test of cost-effectiveness.

Even well-intentioned regulations can cost lives. Fuel economy standards, for example, have driven automakers to build lighter, more efficient cars that give a lot less crash protection and cause literally thousands of deaths per year. Regulatory overkill, therefore, is about much more than just dollars.

The latest edition of "10,000 Commandments," a comprehensive analysis of regulatory costs in the United States put together by Wayne Crews of the Competitive Enterprise Institute, demonstrates that regulations cost our nation \$788 billion in the year 2000 alone, or 7.9 percent of GDP. In human terms, Crews points out that "regulatory costs now

exceed spending for every item in the average family's after-tax budget," more than for medical costs, food, or transportation. Based on 1998 tax data, regulations cost the typical family of four \$7,410.

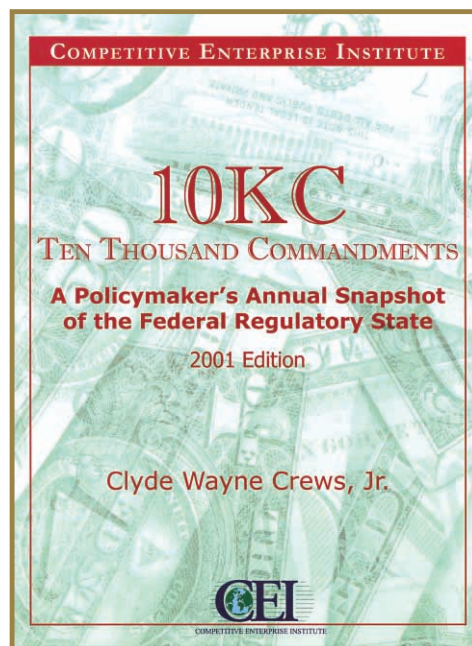
The unchecked growth of regulation on both the national and global level not only distorts eco-

lar design goal, not other product improvements that would make life better for us all.

Unfortunately, business doesn't always have clean hands itself when it comes to gaming the regulatory system. As Susan Dudley of the Mercatus Center at George Mason University points out, "Disappointed that consumers are not buying their high-end washing machines, [manufacturers] convince the administration to ban the popular low- and moderate-priced models. Then, not satisfied with making consumers pay about \$250 more for machines with attributes they don't want, manufacturers get their friends in Congress to give them tax credits."

In this case the tax credits have indeed been proposed, but thankfully not enacted. Still, it's clear that intrusive regulation does more than cost us wealth and opportunity, it becomes a corrupting tool of business "competition." And that kind of competition will always be weighted in favor of the rich, established, diversified companies, not the smaller producers or start-up innovators.

What can be done? The Bush administration has begun to stem the rise of regulatory costs. It has rejected a number of President Bill Clinton's midnight regulations and toned down others, and it has done so in the face of massive distortion by the media. For example, the administration is being hit hard by environmental groups for proposing a modest change in Clinton's proposed air-conditioner efficiency standards (asking for 20 percent improvement



nomie decision-making, it demoralizes entrepreneurs and innovators in every field of endeavor. When the European Union's Mario Monti, for example, can block the G.E.-Honeywell merger just to protect competitors in the European market, it sends a signal to businesses large and small that they had better worship more often at the altar of global regulation. When the United States prescribes arbitrary new efficiency standards for appliances like washing machines and air conditioners, it forces manufacturers large and small to work toward that particu-



rather than 30 percent).

Still, the administration has taken a few tentative steps to slow the growth of regulation in some areas. In other areas, lamentably, the administration is increasing the regulatory state. It has endorsed price controls on electricity in California, for example, even while electricity prices are falling on their own, and it has restricted drilling for oil in the Gulf of Mexico even more than the Clinton administration proposed. Also disappointing, the administration says it believes steel prices are too low and is suggesting they be artificially raised by the creation of a de facto steel cartel that would restrict steel output in the same way OPEC keeps the price of oil up by restricting the production of crude oil.

The United States should develop a comprehensive regulation proposal to review regulations and reduce them wherever possible. Not only would eliminating unreasonable regulations help revive a faltering U.S. (and world) economy, it would also help to eradicate the corrupting influence of overblown and unaccountable regulatory bureaucracies and head off the natural impulse of bureaucrats, both here and abroad, to find new fields in which to intrude.

The stakes for the global economy are high, but the stakes for freedom and democracy and helping the global consumer are even greater.

*Jack Kemp is co-director of Empower America and Distinguished Fellow of the Competitive Enterprise Institute.*

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## AND THE WAR GOES ON . . .

by James V. DeLong

In early August, Microsoft filed a petition for certiorari asking the Supreme Court to review *United States v. Microsoft*. The prosecutors and the press yawned, spinning it as a Hail Mary pass and a stalling tactic and expressing a firm conviction that the Justices will reject it summarily.

In fact, the petition is a finely-crafted job that presents the Court with a focused issue of overwhelming importance, a clear conflict in the lower courts (always persuasive to the Supreme Court), and a warning that the true stakes involve the legitimacy and integrity of the legal system. They are not limited to issues that lawyers regard as secondary, such as the functioning of the new economy or basic justice to Microsoft.

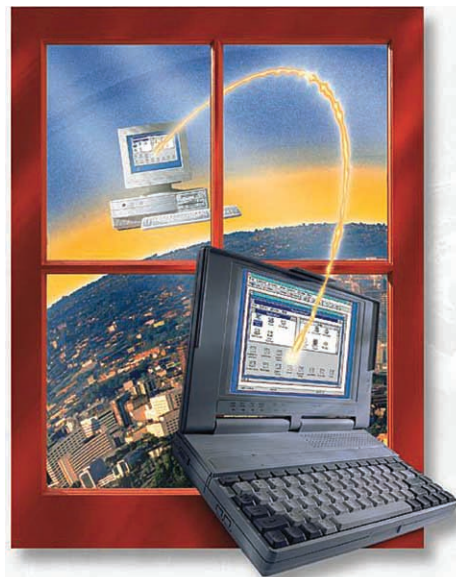
The petition ignores the intricate substantive issues of monopoly maintenance and tying. Instead, it focuses tightly on the timing of the disqualification of Judge Jackson.

There is no question that Jackson had to be removed from the case. The D.C. Circuit Court noted that his secret contacts with reporters violated ethical precepts and that “the violations were deliberate, repeated, egregious, and flagrant.” But they made this removal effective as of the time he imposed a remedy. Microsoft, citing decisions in other circuits, argues that disqualification should be retroactive to when the illicit contacts began, which was before entry of the Findings of Fact and Conclusions of Law. If the Supreme Court agrees, then these orders will be nullified.

This would require retrial, an unwelcome outcome. But the alternative is worse, because if the Supreme Court does not take the case and toss out Jackson’s findings of fact, then it goes back for some unlucky trial judge to develop a remedy based on them. And the problem is not that they are a product of bias, which they obviously are, but that they are a mess. The state of these findings is the elephant in the living room that no one wants to talk about.

There are 412 of them. Only 211 were mentioned in the Findings of Law, and even those were cited in sweeping broadsides of 40 or 50 at a time. None of the factual findings cite material in the trial record — the reader must take on faith that support exists. The faith is misplaced, because many have no support in the record, and many others are based only on casual observations and guesses by biased witnesses. Jackson admitted to reporters that he was gaming the system, trying to make his decision review-proof.

Economist Alan Reynolds, who has done the definitive study of this topic, notes that many are not facts at all, but “erroneous technological theories, speculations, and forecasts.” Others are of the variety that admin-



istrative lawyers call “legislative facts” — general statements about the condition of the world, of the type that provide a basis for legislation, not specific facts leading to a conclusion on a charge that someone violated an existing law. The distinction is between a finding that “traffic lights can reduce accidents” and one that “John went through the red light.”

A well-documented example of their slipshod nature concerns the supposed 70,000 existing programs for Windows that constitute “the applications barrier to entry” for any rival. This fact, solemnly found by Judge Jackson and repeated by the D.C. Circuit Court, was a guess by a CEO of another company. It included thousands of obsolete DOS offerings, multiple versions of programs, and other double counting. The actual number of productivity-related programs for Windows is nearer 1,000, plus another couple of thousand games, reference works, and other froth. This is still quite a few programs, but it is not 70,000, and the number of programs that a rival system would really need to overcome any applications barrier to entry is about five — word processor, browser, spread sheet, database, and utility package, so the whole “fact” of an applications barrier to entry is shaky. The casual judicial adoption of such error provides disturbing insight into the legal process in this case

This is one instance. There are a multitude of others, as Reynolds shows.

So if the case goes back to the district court, the elephant must be noticed. How does a judge craft a remedy for a violation premised on a set of factual findings that are fictional? Must he or she persist in relying upon them, adopting remedies that would work if these facts were true even though everyone knows they are false? What about the 150 private cases pending against Microsoft? Are plaintiffs to collect damages because the factual findings say they should be out of business even though they are palpably prospering?

From the beginning, the millions spent by Microsoft’s competitors to push former Assistant Attorney General Joel Klein and company into litigation have created an unpleasant whiff of manipulation of the political system and illicit influence. If the Department of Justice were sensible, it would endorse Microsoft’s cert petition. But the antitrust establishment has taken over, with its overwhelming interest in pretending that that system is rational, and it is elevating stubborn refusal to correct error into a matter of principle.

It is time for the Supreme Court to step in, and to save the legal system from getting even deeper into the Big Muddy.

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presidential election. They rejected U.S. pleas that countries be permitted to use “sinks” (forests, etc., consuming greenhouse gases), and trading in emission “credits”, to an appreciable degree toward satisfying treaty obligations, as clearly contemplated by Kyoto.

Soon the U.S. realized that the EU would accept only complete surrender, and the talks stalled. Europeans crowed that the U.S. sought to degrade the treaty’s “environmental integrity.” In truth, the American objective consistently remained pursuing the supposed goal of reducing greenhouse gas concentrations while the science develops over whether that is advisable and if so to what degree.

Now EU abandonment of those demands “a worthwhile price to pay,” per their environmental minister, presumably because it now involves no concessions to the wretched U.S. Still, EU childishness chased the world’s largest economy, and thus largest emitter of greenhouse gases, out of the deal. For this we can only be thankful, and learn from the experience.

**Other lessons**

\* Allies Japan, Canada and Australia demonstrated no faith in U.S. promises of a Kyoto alternative, more equitable and consistent with the state of climate science. They disdained pleas to hold tight in the name of some form of “no regrets” package - covering, unlike Kyoto, the bulk of the world’s population and likely greater emission reductions with far fewer human consequences. While their closing rhetorical cheer-leading in Bonn is a far cry from ratification, they embarrassed President Bush by not at least stressing the persistent desirability of an alternative.

\* When claiming to abandon something, abandon it. Walking-the-

talk by removing our signature from a treaty we claim to have “left” demonstrates our refusal to be pressured into Kyoto. This would dramatically reduce others’ motivation to pursue, e.g., the ad hoc Bonn session, moving the world toward an achievable, reasonable, compromise. Instead, there remains a valid, legally obtained U.S. signature on file at the United

**EU childishness chased the world’s largest economy, and thus largest emitter of greenhouse gases out of the deal. For this we can only be thankful.**

Nations committing us to Kyoto. While not ratification, it does carry obligations until some dispositive step notifies the world that the document no longer bears the U.S. imprimatur.

Rhetoric doesn’t count. The President can simply rescind the signature. We pleaded for this step, and why the Administration refused is mystifying.

\* The next step is clear. The U.S. asserts that its continued formal participation as an “Annex I” country -- to a treaty it has no intention of inflicting on its citizenry - impedes others from achieving their express goal: bringing Kyoto quickly into effect. That requires ratification by countries totaling at least 55 percent of the covered emissions. Rescinding our signature removes our contribution of over one-third of the (present) total, permitting others to move forward with far fewer required ratifications. The U.S. then proceeds with its commitment to continue the world’s foremost investment in understanding the climate system and Man’s possible impact.

A win-win deal, right? In reality,

after their ritual hysteria, EU countries will likely instead fabricate further reasons to continue their four-year boycott of ratifying Kyoto.

Should U.S. politicians opposing the treaty join the EU shrillness? Prior to actually rescinding the signature the President, of course, reserves the right to ask for a Senate ratification vote. His political supporters must understand, however, to abstain. The Constitution specifically contemplates not all Senators voting on every treaty, requiring in the relevant section unlike elsewhere, that two-thirds of those Senators voting yields ratification.

Expose the cheap virtue of complainers demanding something they presume could never be ratified — most Republicans would vote “nay,” while most Democrats assure us they’d save the planet if only the mean Republicans would let them. Bring this abhorrent wealth transfer to the Senate floor. Should no Bush supporters vote, the document will be pulled from the floor, or lose outright. The Democrats will not allow Kyoto ratification to be in their hands. But adept maneuvering - leadership - and President Bush could “saddle” them with the great achievement: “Democrats kill Kyoto.”

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**Cooler Heads Coalition**

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# ALCOHOLIC BEVERAGE HEALTH CLAIMS CASE HEADS TO U.S. COURT OF APPEALS

by Ben Lieberman

It has been a decade since a 1991 *60 Minutes* segment first introduced millions of Americans to the research showing that moderate consumption of alcoholic beverages reduces cardiovascular risk and increases average longevity.

Armed with that knowledge, many adults have chosen to incorporate a glass or two of wine or other alcoholic beverage into their daily routine. Others are still unaware of the link between light drinking and health, in part because the federal Bureau of Alcohol, Tobacco and Firearms (ATF) has succeeded in keeping this information off product labels and advertisements.

In 1996, CEI and Consumer Alert (CA) filed a lawsuit challenging the constitutionality of this policy. On June 18th, after nearly five years, U.S. District Court Judge Thomas Penfield Jackson decided that the controversy is not yet ready for review. CEI and CA have filed an appeal.

Throughout this case, the ATF has engaged in a number of delaying tactics in order to avoid this politically thorny issue. Most recently, it decided in 1999 to conduct a rule-making regarding the use of health claims on alcoholic beverage labels, thereby promising to settle the issue-administratively. However, the ATF has yet to publish its final rule, and in a June 14th hearing before Judge Jackson, the agency conceded that it may take another year to do so. In the meantime, the ATF stated that it will approve no labels containing health information until it finalizes its rule.

Despite the chilling effect on speech — several winery owners and

other industry members have submitted affidavits attesting to their present desire to use health statements on labels and ads — Judge Jackson decided that the Court

nondrinkers.”

In the past year alone, new studies have confirmed that light drinking reduces the risk of strokes as well as heart attacks, and that the health benefits extend to those suffering from diabetes, hypertension, and a prior history of heart disease. Even the federal government's newest edition of the *Dietary Guidelines for Americans* acknowledges that “drinking in moderation may lower risk for coronary heart disease, mainly among men over age 45 and women over age 55.”

The case law is also piling up in our favor. The Supreme Court recently decided, in *Lorillard v. Reilly*, that the First Amendment protects tobacco product advertising. This is the latest in a long line of Supreme Court decisions striking down state or federal bans on so-called commercial speech, including two that involved limits on alcoholic beverage labels and ads.

Indeed, CEI now takes this case to the U.S. Court of Appeals for the District of Columbia Circuit, a court with a strong First Amendment record, including a recent decision upholding the right to use certain health claims on dietary supplement labels.

It is unfortunate that we made so little progress in five years before the District Court, but we now head to the Court of Appeals with a solid factual and legal case for permitting truthful health information on alcoholic beverage labels and ads.

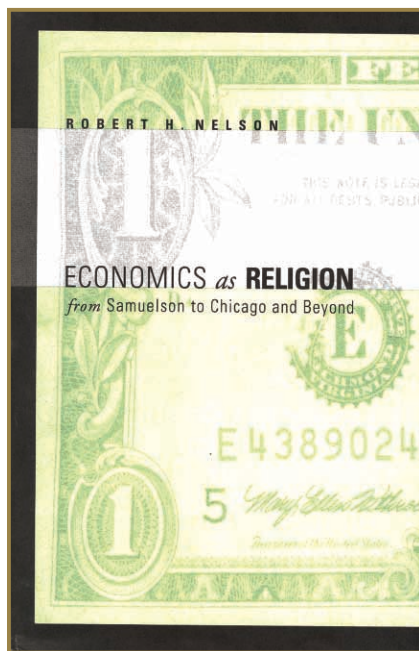
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should stay out until the agency finishes its final rule.

Rather than wait, we asked for and received a ruling that allows us to appeal. The good news is that, while this case was pending, the already-strong body of medical research has been bolstered by additional evidence linking moderate alcohol consumption to reduced cardiovascular risk and mortality. This includes a 1997 *New England Journal of Medicine* study of nearly 500,000 adults, which concluded that “those who consumed up to one or two drinks of alcohol daily had lower overall mortality rates than

## Q & A WITH ROBERT NELSON



Penn State Press, 378 Pages, \$35.00

Robert H. Nelson, professor in the School of Public Affairs at the University of Maryland and CEI Senior Fellow, talks with UpDate about his latest book, *Economics as Religion*. The work is a continuation of his 1991 book, *Reaching for Heaven on Earth: The Theological Meaning of Economics*, which looked at the interplay of economics and religion from ancient times to World War II.

In *Economics as Religion*, Nelson examines the economics profession since World War II. He finds that economists are starting to recognize the need for understanding the role religion plays in the market. Nelson suggests that economists, who view themselves as 'value-neutral,' must acknowledge their role as 'priests in the religion of progress.' The future of the market, he believes, will rest on how religions resolve, or fail to resolve, the place of self-interest in society.

**CEI:** You begin the book by saying that economists are really the intellectual heirs of Thomas Aquinas and Martin Luther, not Einstein and

Newton. How so?

**RN:** Economists are the priests of economic progress. In fact, progress is the secular religion of the modern age. Since the second half of the 20th century, progress has become suspect, not because people don't want to have nice things, but because it's no longer the root of salvation, or the means of achieving heaven on earth.

**CEI:** What is the origin of that religion? You develop a parallel between Roman Catholicism and American Progressivism, and between Calvinism and free market thought.

**RN:** In the later part of the 19th century, there was still a strong Calvinist strain in America, especially with the idea of Social Darwinism. Businessmen were seen as selected by the competitive process. They were the agents of God on Earth, predestined agents of progress. This was a small group, the captains of industry: Andrew Carnegie, Cornelius Vanderbilt, and so on.

By the 20th century, the Progressive movement, which had closer affinities to Catholicism and the idea of natural law, began to dominate in American thinking. American Progressivism (really a watered down version of European socialism) had to reconcile itself with powerful democratic traditions in the U.S. For instance, industries weren't nationalized, but they were regulated, like transportation, communication and power. The government began to tell businessmen what to do without taking actual possession of their property.

**CEI:** You mention the importance of the market paradox and different

attempts at resolving it. What is that paradox?

**RN:** For the market to function, you must have people who are aggressive at pursuing their self-interest. But if self-interest is pursued in an uninhibited way, by getting rid of competitors, the market can be undermined. For the market system to work, people must be motivated by a set of considerations higher than themselves. To do business with strangers it helps to believe that person is going to be honest.

The paradox is that you need a society that encourages both honesty and the pursuit of self-interest. It creates a tension that was most successfully resolved in Calvinism. In Calvinist thinking, success is a calling, an indication of salvation, but Calvinism also condemns lying and cheating. It's a tension that's yet to be resolved in Russia, most of Africa, and in many other nations.

**CEI:** What is an economic theologian?

**R N :** An economic theologian can be one of two things: an economist who's functioning in the social role of priest, as an expert in the religion of progress. He's helping to provide a normative foundation, or a social value system.

It can also be someone who studies economics from a theological perspective. In that respect, I consider myself something of an economic theologian.

**CEI:** Who are some of the most influential economic theologians?

**RN:** If you look at Marxism, it's unbelievable that people didn't recognize it as a theology. It's got all



of the characteristics of one: predestination, strong moral categories, it sees history in a linear way, and leads to heaven on earth. Keynes also speaks of economic salvation in his writings. In his essay, "Economic Possibilities for our Grandchildren", he talks of solving the 'economic problem' after which we will enter into an age when we can develop 'our higher selves.'

After WWII, Paul Samuelson's *Economics* textbook became the closest thing to an economic bible we've ever had, even though he viewed as the introduction to the 'scientific' study of economics. Samuelson's religion is progress. Scarcity is the source of evil. Achieving progress is the means of bringing about heaven on earth, and economists are the priests who 'hold the keys' to economic salvation. Samuelson was really synthesizing the progressive-era vision of the scientific management of society with the neo-classical view of the market.

In the 1960s, you have a new school of economic thought challenging Samuelson and MIT. The University of Chicago suggested that the priests, the economists themselves, were subject to the same rules and also motivated by self-interest. Chicago really harkens back to the Protestant Reformation and a 'priesthood of all believers.' They forwarded the idea that a government in which all participants pursue their own self-interest is a dysfunctional one. That led the school in a libertarian direction.

Milton Friedman, part of Chicago's second generation, has had an incredible impact. He was the first to put into the public view floating exchange rates, abolition of the draft, school vouchers, negative income taxes, and deregulation.

Later Gary Becker, from Chicago's third generation, extended the idea of pursuing individual interest

into "non-market" domains: marriage, family, and crime. That leaves a question though — how does a market system work without the support of social institutions that depend on altruism, such as the family?

**CEI:** Economists, for all of their sophistication, have not been very

## Economists are trained to ignore cultural factors. They consider them illegitimate.

good at explaining the last century of economic progress by means of growth in capital investment. Is that a reason for including religion and culture in their analyses?

**RN:** Economists are trained to ignore cultural factors. They consider them illegitimate. If you're forced to explain something by resorting to culture, then you've failed as an economist--the exception being economic historians and developmental economists

Economists who've tried to understand economic progress by just looking at capital growth have hit a wall. For example, Zambia has not had any per capita growth since its independence in 1964. Yet, if they had taken all the foreign aid since then and invested it under a normal return, per capita income would be \$20,000 per year. Something's going on there that a model built solely on capital accumulation is not capturing.

**CEI:** Are economists starting to include cultural factors?

**RN:** There are an increasing number of articles that look at religion. But they're doing it in ways I don't think will work. Either they try to fit religion into a formalistic model, or they take religious preferences as a given. Yet, when you assert that reli-

gion is central to economic progress, it follows that if you want to stimulate economic progress, you're talking about changing the religion.

Most economists don't know what to make of that argument. However, if you see what the World Bank does in Africa, it's obvious they're proselytizing a set of values to provide support for modern economic 'rule.'

**CEI:** What would you like to see happen within the study of economics?

**RN:** I'd like an abolition of the division of the social sciences into economics and sociology. I envision that being replaced with something like

the humanities or history, with those who focus on economics. A model of that approach was the work of German sociologist Max Weber. He looked at the role religion played in providing economic motives, developing the idea of the Protestant Work Ethic. I'd like people to look at economics in more integrated ways. But I'm a better critic. I'm not the preacher of a new faith. I'll leave that to someone else.

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# IT'S OFFICIAL (AGAIN) — CAFE KILLS

by Sam Kazman

This is the third time that CEI's *UpDate* has run this headline.

The first time was in 1990, when the National Highway Traffic Safety Administration opposed a bill to make CAFE even more stringent than it already was. The connection between CAFE (Corporate Average Fuel Economy — the federal new-car fuel economy standards) and vehicle safety seemed relatively obvious to its critics (CEI included) CAFE forces cars to be downsized. But downsized cars are less safe than larger, heavier cars. Nonetheless, before 1990 NHTSA refused to admit that CAFE had any effect on traffic fatalities. That year, faced with a move in Congress to raise CAFE from 27.5 mpg to 40 mpg, the agency held a press conference actually attacking the bill for "trading body bags for oil barrels." The bill was defeated, CAFE remained at 27.5 mpg, and NHTSA went back to pretending that the program was harmless.

The second time we ran this headline was in 1992, when we and Consumer Alert won a federal appeals court ruling that NHTSA's whitewashing of CAFE violated federal law. The court ruled that NHTSA's position was based on a combination of "fudged analysis," "statistical legerdemain," and "bureaucratic mumbo-jumbo." NHTSA took another year and a half to reconsider its position, after which it came to the same conclusion using new and improved reasoning. We sued again. This time, in 1995, a different appellate panel upheld the agency's approach, but noted that its treatment of the CAFE/safety issue was "troubling". Given the judicial deference that agencies usually receive, the court's observation

was a good indicator that NHTSA's position was fishy, but not fishy enough to be overruled.

CAFE remained in force. In the years since, the CAFE/safety issue helped win a series of Republican-led congressional battles to keep the program from being expanded under the Clinton Administration.

But with Clinton replaced by

Photo Courtesy of M. Gilliam



Driving SUVs to extinction? If CAFE has its way,

Bush, we now face the prospect that CAFE will be expanded after all. This is due partly to Republican anxiety about appearing to be insufficiently conservation-minded, and partly to the politics on getting the Bush energy package enacted. And so, this brings us to the latest development — the July 30th report from a panel of the National Academy of Sciences, finding that CAFE is indeed lethal. In the panel's view, in a single year alone, CAFE contributed to 1,300 to 2,600 highway deaths, and from 13,000 to 26,000 incapacitating injuries. Given that CAFE has been in full force since the mid-1980s, its total death toll may well be in the range of 20,000 to 40,000 lives.

The panel also found that, given a lengthy enough time period, CAFE could be tightened without further adverse safety effects. That finding is highly suspect, because there will be a trade-off between fuel economy and safety regardless of what tech-

nologies are developed. If you take the most high-tech car imaginable and add a few pounds to it, you end with a new car that is slightly safer and also slightly less fuel-efficient. Nonetheless, it the technology aspect of the CAFE study that was highlighted in most news reports. You had to do some digging to find the actual fatality statistics.

If CAFE were some product that had been found to cause a dozen deaths, politicians would be scrambling to ban it. But since it's a federal policy, it's evidently subject to some very different rules.

The report might make things a bit more difficult for CAFE's proponents. In the past they have steadfastly rejected any possibil-

ity that CAFE kills. In their view, CAFE is a win-win situation that reduces fuel consumption and spurs technological innovation. Plus, making the standards higher would alleviate gasoline sticker shock and prevent global warming. But their approach to the safety issue is best illustrated by a Sierra Club brochure that asks, "Can we improve fuel economy without sacrificing safety?" Its answer: "Absolutely. Long time safety advocates such as the Center for Auto Safety and Ralph Nader support increasing the CAFE standard ... and point out that we can do so safely."

If you reserach what these consumer advocates said before large cars become so politically incorrect, though, you find a very different story. In 1972, Mr. Nader and the Center for Auto Safety collaborated on a book critiquing the Volkswagen Beetle; one of their major claims was that the car's "small size and light weight impose inherent limitations on the degree of safety that can



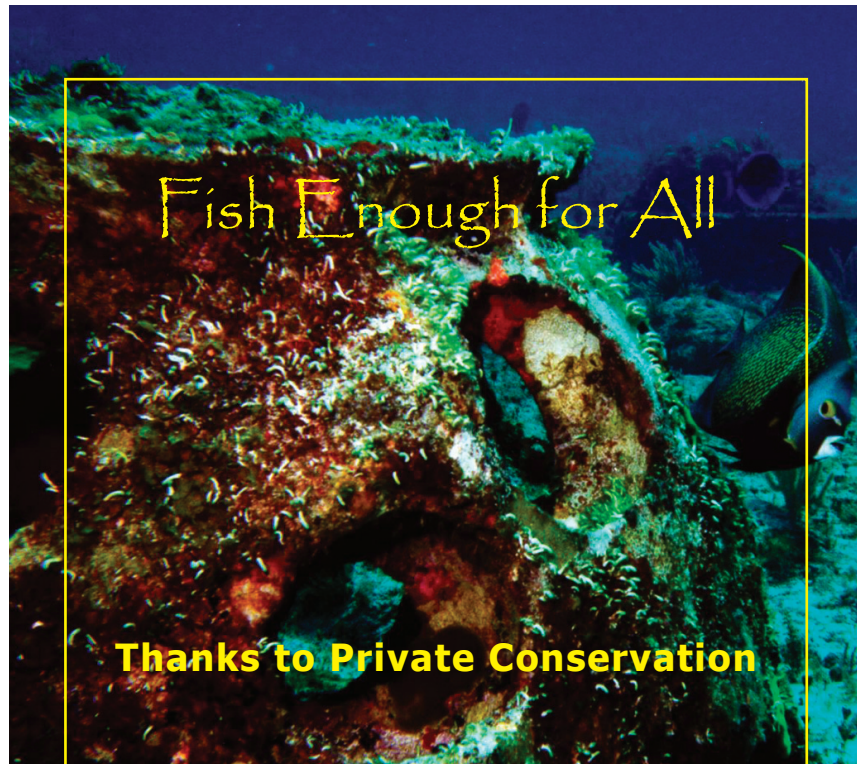
be built into” it. And in 1989, Mr. Nader declared in an interview that “larger cars are safer — there is more bulk to protect the occupant. But they are less fuel efficient ....”

In recent years, the CAFE debate has been clouded by images of large SUVs demolishing small cars. CAFE proponents argue that higher standards, especially for SUVs, would actually promote safety by reducing this mismatch. But, as the Insurance Institute for Highway Safety points out, deaths in car-SUV collisions constitute only a small fraction of fatal accidents. For this reason, in the Insurance Institute’s view, the issue of small car-SUV incompatibility is greatly exaggerated. The biggest safety payoff, according to the Institute, would come from “getting rid of the lightest cars on the road.” CAFE, however, is a major reason for the presence of those cars in their current numbers, and those numbers would only increase if CAFE were made more stringent.

Advocates of higher CAFE standards claim overwhelming public support for their goal. The polls they rely upon, however, typically make no mention of CAFE’s safety costs, and the public itself has little awareness of this issue. The Academy’s study points out that CAFE’s deadly toll has been concealed by advances in vehicle safety technologies; in its words, CAFE’s “safety costs have been hidden from public view by the generally improving safety of the motor vehicle environment.” As CEI found in its own polls, once the public learns about the general CAFE/safety issue, its support for the program falls below 50 percent. And when the public is given actual statistics on CAFE-induced deaths, support for the program plummets to below 20 percent.

So, will the news about CAFE’s lethal effects be overshadowed by the media spin that CAFE can be expanded harmlessly? If you believe in truth and justice, of course not. But I’m not taking any bets, and I’m not sure that I’ll be allowed to use the “It’s Official-CAFE Kills” headline again this decade.

*Sam Kazman (skazman@cei.org) is General Counsel for CEI.*



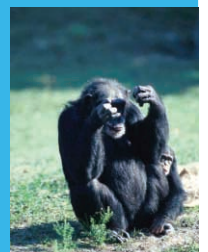
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## Stewardship Chronicles

If you’ve never seen or even heard of a long-nosed potoroo or a southern hairy-nosed wombat, you’re certainly not alone. These species are native to Australia. But sadly, many Australians haven’t heard of them either. To find out more, CEI’s Center for Private Conservation invites you to subscribe to its newest venture: Stewardship Chronicles, a weekly commentary about private conservation. You can subscribe by entering your e-mail address on the Center for Private Conservation’s homepage, [www.privateconservation.org](http://www.privateconservation.org).





## The Good, t he B ad, AND THE UGLY

### **The Good: The Bush Administration Says No to Kyoto**

President Bush got it exactly right in Bonn. Standing up to international pressure to ratify Kyoto, the President nixed the scientifically weak and economically devastating treaty. Green groups and environmental ministers tried to cloak their disappointment with grand statements. "We have delivered probably the most comprehensive and difficult agreement in human history," said New Zealand delegate Peter Hodgson.

Not quite. Nothing specific was agreed to. Just promises to reach future agreements in Marrakesh in November. The little secret is that although the global warming treaty was negotiated in Kyoto, Japan in 1997, most of the difficult and contentious provisions, such as enforcement and what counts as compliance, have never been settled. Thus the endless round of further negotiations.

But the end is in sight. The U.S. is out, and without the U.S., Kyoto goes into an irreversible coma. This is great news for people living in poverty around the world, who are still waiting for the brighter, more comfortable, and more mobile future that affordable energy brings.

President Bush has pursued the best course. Refusing to sign puts the burden of proof on science to measure the impact of human-made warming, which many scientists believe is inconsequential. As astrophysicist Dr. Sallie Baliunas noted, "By standing firm, Bush can lead the world toward sound science and solutions that make more sense than the fatally flawed Kyoto Protocol."

### **The Bad: Congress Masquerading as Energy Vampires**

This July, as the tech sector continued to battle a bear market, weak sales and layoffs, Congress was busy concocting new regulations to hurt the ailing industry. As part of its energy plan, the House of Representatives proposed to limit stand-by power on consumer electronics to one watt. Devices affected include televisions, personal computers, cell phone chargers, stereos and VCRs.

To what end? Supporters insist that the 6.1 watts that keep the clock running inside of your PC is an energy-sucking vampire. Cutting it down to one, they say, will save wasted 'stand-by' energy for other uses. On the contrary, the one-watt provision will do little except to cripple the performance of programmable devices and stifle product innovation.

The proposal is part of the regulatory legacy of the 1987 National Appliances Conservation Act. Since its passage, energy standards have been raised on nearly every low-tech household appliance. And in some cases, that's meant worse performance, less reliability and higher prices for consumers. Thanks to energy-saving rules adopted earlier this year, washing machine prices will increase by \$250 and central air conditioner prices by \$335.

Consumer electronics use some 3 percent of the nation's energy, and a tiny fraction of that comprises the energy used in stand-by power. For such trivial energy savings, one wonders why Congress wastes so much of its own energy devising regulations that have no demonstrated benefit, but will only cost consumers and weaken a faltering economy.

### **THE UGLY: WHAT LIES BENEATH AT THE ENVIRONMENTAL PROTECTION AGENCY**

The administration's latest concession to environmental groups will put into motion the biggest dredging plan in U.S. history. The EPA (Environmental Protection Agency) has ordered General Electric to pay \$50 billion in order to dredge a 40-mile stretch of the Hudson River, north of Albany, NY.

The decision is part of a Clinton-era plan to remove polychlorinated biphenyls (PCBs), legally discharged into the river by GE between 1940 and 1977.

But, scooping up the chemicals in the nation's largest Superfund site may be worse than letting the river continue its sedimentation process. To begin with, many scientists say there is no hard evidence that PCBs cause health problems. Dredging will only stir up and release downstream thousands of pounds of PCBs already encapsulated in silt.

In spite of the scientific evidence, the objections of local businesses, farmers and environmental groups, EPA Administrator Christine Todd Whitman is going forward with a costly project that may expose the local community to unnecessary hardship, while providing little help to the environment — and possibly even damaging it.

## HORNER IN BONN



The latest round of United Nations negotiations on global warming in Bonn, Germany generated a great deal of interest from activists who were hoping that the United States would enter into some kind of emissions-limiting agreement. Despite President Bush's decision not to embrace the energy-suppression mindset of the Kyoto Protocol, pressure from European Union's representatives was unrelenting, sufficient to get even heavily industrial Japan to sign on. Analyst and counsel Christopher Horner was in Bonn on behalf of CEI and the Cooler Heads Coalition, where he observed the irrelevance of science to these intensely political proceedings and the amusing distractions of a few counterintuitive protests: "College Students Protest Climate Negotiations," is the headline equivalent of 'Sun Rises in the Morning'. But wait. The 40 bookworms taking to the streets of Bonn this week screamed their support for George W. Bush and objection to the UN Kyoto Protocol. These aggrieved 'Collegians for a Constructive Tomorrow' drew a large crowd and even the attention of gathered international media. The latter fact so enraged the Left that they demanded a debate. That's right, student protesters from Greenpeace insisted they share the stage with that 'other' perspective. Central casting came through with the six debaters: On the Left, a racially and sexually diverse cast from Harvard, Berkeley, and the Fletcher School; on the Right, three white males from small Christian institutions such as the colleges of Cedarville and Patrick Henry ('give me affordable energy or give me death')." Chris scored hits with *United Press International*, CNN, the *Washington Times*, *National Review Online*, and CBN News, among others.

## SHARK ATTACK



The frequency and number of shark attacks have been on the rise in recent years, reaching record levels in 2000. During the same years that the number of attacks has been rising, severe restrictions on the number of sharks that can be caught by both commercial and sport fishermen have dramatically increased the shark population in coastal waters. Warren Brookes Fellow Sean Paige has been pointing out the connection, much to the chagrin

of those who think sharks can do no evil. "More than mere happenstance may lie behind the sudden, shocking return of the shark," Sean wrote. "In a curious juxtaposition of trends, shark attacks last year reached record levels in the world (79), in the U.S. (49), and in Florida (34) — even as scientists and government officials are claiming that the animals are being chased toward extinction by fishermen looking for thrill kills. Shark attacks in the U.S. have increased dramatically since 1993 - which is when the federal government began mandating deep cuts in the number of sharks that could be caught for sport or profit." Sean's analysis was featured in *National Review Online*, Fox News Channel's: *O'Neilly Factor*, *Hannity and Colmes*, and the *Edge with Paula Zahn*, the *USA Radio Network*, online news provider *E-Press*, the *Washington Times*, and *C-SPAN's Washington Journal* among others.

By the way...

## THE DEADLY EFFECTS OF FUEL EFFICIENCY REGULATIONS

The federal government's fuel efficiency rules for new cars, the Corporate Average Fuel Economy (CAFE) standards, have been the focus of furious debates in Congress and the summer, pending possible inclusion in President's energy legislation. While promoting CAFE stringency for the advantages of conserving gas, CEI General Counsel Sam Kazman has been busy emphasizing the deaths that result when car manufacturers must make their cars lighter and less crashworthy in order to comply with the standards. "CAFE is a dangerous and failed program by any public health standard," wrote Sam. "A product that caused this many deaths would have consumer safety advocates issuing dire threats of boycotts and lawsuits against the manufacturer. We should hold the federal government at least as accountable." Many publications have highlighted CEI's work on CAFE in recent weeks, including the *Wall Street Journal*, *USA Today*, the *Christian Science Monitor*, the *Boston Globe*, the *Boston Herald*, and the *Atlanta Journal-Constitution*. Sam also appeared on *MSNBC*, debating former NHTSA Administrator Joan Claybrook.





**FIGHTING THE  
'CONFISCATION  
AND RELOCATION  
ACT'**

The federal government's biggest threat to private land ownership in years has made its comeback this legislative session (see Rep. Don Young's appearance as Sellout of the Month in the June 2000 issue of *UpDate*). The Conservation and Reinvestment Act (CARA) is currently making its way through Congress, being ably opposed by coalition groups representing taxpayer, conservative, property rights, free market, and allied constituencies. Environmental Policy Analyst Allison Freeman has been leading CEI's efforts, writing the recent *OnPoint* policy brief "Conservation and Reinvestment Act: The Same Old Story," which highlighted its fiscal irresponsibility, illogical funding formulas, and threats to property owners. "The federal government owns and mismanages more than enough land as it is," writes Allison. "Instead of adding to its estate, it should make existing commercial or recreational federal land units self-sufficient and adopt a policy of 'no net loss of private property,' selling off-setting portions of land before engaging in any further acquisition. In his first major speech on the environment, President Bush called for 'a new spirit of respect and cooperation' and a 'new environmentalism' in which 'citizens and private groups play a crucial role.' Those who live and work on the land know better how to care

for it than bureaucrats thousands of miles away." Her analysis of CARA has been featured on the *FOX News Channel's Special Report with Brit Hume*, in the op-ed pages (with Director of Land & Natural Resource Policy David Riggs) of the *Washington Times*, and on *KTSA*

**Our New Look**

Welcome to CEI's new look, debuting with the September 2001 issue of *UpDate*. This is the first step in our re-launch. Soon, our website and other publications will also have an updated layout and design. CEI will continue to bring you the same insightful analysis from our policy experts on environmental, high-tech and other regulatory issues from a free-market perspective.

To go with the new look, we think *UpDate* needs a new name. Have any suggestions? If so, mail your ideas to [pubs@cei.org](mailto:pubs@cei.org).

We hope you enjoy the new format.

**BY CEI AUTHORS**

**Gregory Conko**, Director of Food Safety Policy, and **Henry I. Miller**, Adjunct Fellow  
 "Dangerous GM Gets Off Scot-Free," *Wall Street Journal Europe*, August 1  
 "People Are Too Safe for Their Own Good," *Detroit News*, July 12

**James V. DeLong**, Senior Fellow  
 "Old Law v. the New Economy," *Reason*, August/September 2001

**Allison Freeman**, Environmental Policy Analyst, and  
**David W. Riggs**, Director of Land & Natural Resource Policy  
 "Placing Private Property Rights at Risk," *Washington Times*, July 25

**James Gattuso**, Vice President for Policy, and **Michael Rupert**,  
 Research Assistant  
 "Mass.: Go Slow on Disconnecting Drivers," *The Sun* (Lowell, Massachusetts), July 8

**Christopher C. Horner**, Adjunct Analyst  
 "A Heated Letter from Bonn," *Washington Times*, July 29

**Ben Lieberman**, Senior Policy Analyst  
 "Clinton's Legacy," *National Review Online*, July 26

**Angela Logomasini**, Director of Risk and Environmental Policy  
 "Activists Did a Number on the Truth," *Spokesman-Review*, July 12

**Henry I. Miller**, Senior Fellow  
 "Plants are Not Pesticides," *National Post* (Ontario, Canada), July 20

**Sean Paige**, Warren Brookes Fellow  
 "The Jaws of Government," *National Review Online*, August 8

**Fred L. Smith Jr.**, President, and **Robert Crandall**, Brookings Institution  
 "CO<sub>2</sub> Controls Are a Bad Idea, 'Voluntary' or Not," *Wall Street Journal*, July 31



### There's No Such Thing as a Free Flight.

The perks keep on coming. *The Washington Post* reports Federal employees will now be able to keep the frequent-flyer miles they rack up while traveling on government business. Representative Connie Morella (R-Md.) says it's a good way to reward hard-working public servants. Currently, government workers hand in their miles to reduce the cost of future trips. But the House has decided to be more generous with taxpayers' dollars. "It will help boost morale," says Senator Dan Coates (R-Ind). We'll remember that next April 15.

### Citizen's Arrest in Cyberspace?

A new law in South Carolina requires IT workers to report computer users with child pornography on their machines to authorities. It sounds like well-meaning legislation. According to *Informationweek.com*, one of the bill's co-sponsor's, Senator Phil Lev-entis, who missed the IT reporting requirement in the 17-page amendment, disagrees with the idea. "It begs the question, who qualifies as a technician? Is it someone who reads a manual?" Not to mention: Should IT workers be given police badges?

## END NOTES

### Un-amused in Turkey

Officials in Kemer, Turkey have imposed heavy fines for adults caught playing on swings and slides in children's playgrounds. Anyone on the swing sets over the age of 16 must pay a fine of 20 Turkish lire (more than a third of an average monthly salary in Turkey). We wonder what these civil servants would make of Disney World.

### Stale Beer may Clean up River

Professor Tom Harris of the University of Tulsa has discovered that stale beer can be used to clean up the Tar Creek Superfund site. The creek, a former zinc mining area in northeastern Oklahoma, was placed on the original Superfund site 20 years ago. The EPA has poured in millions to clean it up. Harris told the *Associated Press* that treating the soon-to-be-wetland with beer would be more effective in removing zinc and lead from runoff water. They'll go ahead with the research when the EPA gives them a \$320,000 grant. But, they won't have to buy the beer. A local distributor will donate his expired beer to the project.

### Pop Tort

Yes, it's the first lesson of home economics. But, let's not allow common sense to stand in the way of another frivolous lawsuit. The *Philadelphia Inquirer* reports Brenda Hurff of Washington Township, NJ is suing the

Kellogg Co. for \$100,000 in damages. The complaint: self-immolating Pop Tarts. It seems Ms. Hurff left a cherry Pop Tart in her toaster while taking her children to school. Upon returning 20 minutes later, smoke was pouring from her home. Also named in the suit, toaster manufacturer, Black & Decker. Though Pop Tarts come with a warning not to leave them unattended due to possible risk of fire, Ms. Hurff insists that responsibility rests everywhere except with her.

### More Unfortunate Metaphors

Ingrid Newkirk, President of PETA, is not known for her balanced remarks. In the *Washington Post* of August 6th, she wrote a letter to the editor supporting Patricia Tereskiewicz, who may have taken several dogs she 'reported as abused.'" Newkirk writes, "John Brown was hanged for freeing the slaves; chained dogs are today's slaves and they need a new champion." Comparing crimes against humanity to animal abuse? Nothing new for Newkirk. The remark recalls the logic of an earlier comment in which her organization ranked the slaughtering of chickens with the Holocaust.

### NYC Rat Summit Rodent Task Force

PETA would not approve. *Associated Press* reports NYC recently held a Rat Summit and has set up a rodent task force to deal with the furry infestation. Rat sightings are on the rise in urban areas, prompting some residents to take matters into their own hands. A Houston exterminator worries that "People don't realize their habits are the root of the problem. Instead, people call 911 for rat help, kill rodents with shotguns and lock themselves in rooms."

### SF Drivers Brace for Leap in Parking Fines

In traffic-congested San Francisco, parking rage has set in. According to the *San Francisco Chronicle*, in the search for spaces, car owners have taken to parking on the sidewalks. But the Board of Supervisors wants to stop the practice by increasing the fine from \$25 to \$50. And the board is considering tripling fines for other parking violations. One resident accustomed to parking his car in the driveway between two buildings thinks the fines have gone too far. He said, "It's insane that the city would make this a priority, except there is revenue associated with it."

### Abbie Hoffman Lives On

The pipe-dream of flower children? No, it's an actual proposal from left-leaning congressmen. A group of House Democrats, led by Dennis Kucinich (D-Ohio), want to create a U.S. Department of Peace. Its aims are modest. The cabinet-level department would undertake everything from ending spousal abuse to advising the Secretary of Defense on "the de-escalation of unarmed and armed international conflict." The bill has 37 congressmen on board including Maxine Waters (D-Calif.), and John Conyers (D-Mich.). To think of all the world wars and family disputes we may have avoided if only a billion dollar bureaucracy had been put into place. Even pacifist groups don't think the bill is such a good idea. The Friends Committee on National Legislation wrote a letter to Kucinich expressing their doubts. "To be blunt, we believe that spending any major effort to create a U.S. Department of Peace is a waste of time. We have been around that track before and we ended up with the Arms Control and Disarmament Agency and a hobbled Institute of Peace." The road to bloated

tions.

### The Peaceniks are Not Alone

Meanwhile, Senator Robert Byrd expand the executive. According to introduced legislation to create a National Byrd, who's from the coal-mining state of West Virginia frets that not enough is being done to stop a climate catastrophe. The legislation's goals: invest more money in climate research and energy technology. But that's not all. In addition to an executive office on climate change, the Senator wants to establish an Office for Carbon Management and a Center for Strategic Climate Change Response, both in the Department of Energy. Byrd has the support of Senator Joe Lieberman (D-Conn.).

## END NOTES

(D-W.Va.) has his own proposal to *White House Weekly*, he's introduced legislation to create a National Office of Climate Change Response.

### Your Honor, We Submit this Forest as Exhibit Number One

The *Indianapolis Star* reports that a tree-sitter who tried to stop a wooded area from being razed by a developer is asking the courts to save the trees as evidence in his case. Michael "Moss" Englert has asked a judge to declare Bloomington's Brown Woods evidence for his defense against trespassing charges. Englert says destroying the trees would violate his constitutional right to a fair trial. The 50-acre site is slated for development into 208-unit low-income apartment complex.



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