



Willamette Freethinker



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<http://css.peak.org>

Special Double Size Issue!

Corvallis Secular Society (CSS) is a Humanist and Freethought society for all nontheists of good will.

CSS is affiliated with the American Humanist Association (AHA) and the Council for Secular Humanism (CSH).

From the Editor:

I can't believe it.

These bastards have no shame WHATSOEVER.

I call your attention to the shortest article in this newsletter. It's on page 7, next to the return of Angela's regular column.

Amidst mounting evidence that Defense Secretary Donald Rumsfeld knew of and authorized the sorts of prisoner abuse by American soldiers that took place in Abu Ghraib, Guantanamo, and elsewhere, he has finally taken authoritative action — and banned the cameras!

Our OFFICIAL GOVERNMENT POSITION now, is that it isn't what they *DO*, but what we *FIND OUT ABOUT*, that is the problem!!!

Want more? Check out these snippets from Ashcroft's latest run-in with the Senate Judiciary Committee:

Ashcroft: I am refusing to disclose these memos... I believe it is essential to the operation of the Executive Branch that the President have the opportunity to get information from his Attorney General that is confidential.

Senator Dick Durbin: With all due respect, your personal belief is not a law, and you are not citing a law, and you are not claiming Executive Privilege, and frankly, that is what contempt of Congress is all about.

Senator Joe Biden: I'll conclude by saying, there's a reason why we sign these treaties — to protect my son in the military! That's why we have these treaties! So when Americans are captured, THEY ARE NOT TORTURED!!!

We are truly fortunate that not everyone in our government thinks the way Bush's inner circle does. At least some of the Justice Department memos in question have already been leaked to the Wall Street Journal — and as politically conservative as THEY are, they were still appalled! See page 12 for the whole story...

Reed Byers
Editor, *Willamette Freethinker*

CSS Meetings and Events

NOTE:

It's Summer Solstice potluck time! The days are long, the food is plentiful, let's EAT! You know the drill — bring along any interested guests, and a dish or two to share with everyone. And remember, Potluck meetings start at 1:00!

We will try to bring some more Penn & Teller episodes to watch after the meal, if anyone is interested

Calendar:

Saturday, Jun 19th 1:00-4:00 CSS potluck
Saturday, Jul 17th 2:00-4:00 CSS regular meeting
Saturday, Aug 21st 2:00-4:00 CSS regular meeting

Regular meeting time:

Third Saturday of each month, from 2:00-4:00 pm.

Regular meeting location:

Corl House (3975 NW Witham Hill Dr, Corvallis).

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From the President:

Bush versus Science — Part 2

Bush: Religious Dogma and Economic Greed Trump Science in Public Health

This column addresses issues of public health under the Bush Administration. It is a continuation of last month's column, which considered environmental issues. The Bush Administration regularly ignores, distorts, or suppresses science, whenever it conflicts with the President's religious, social, and economic goals. Rep. Henry A. Waxman, Democrat from California, has created a website, <http://www.house.gov/reform/min/politicsandscience/>, entitled "About Politics & Science: The State of Science Under the Bush Administration." The information in this column is taken directly from this public website. Visit it for more information, including documentation.

ISSUE AREAS — PUBLIC HEALTH

HSS Report Distorts the Science of Healthcare

Disparities: The final version of a Health and Human Services (HHS) report on healthcare disparities altered the findings of scientists within HHS. In a June 2003 draft report, HHS scientists found that racial and ethnic disparities in health care are "national problems" that are "pervasive in our health care system" and carry a significant "personal and societal price." After review by political appointees, the final version contained none of these conclusions. Released December 23, 2003, the *National Healthcare Disparities Report* is a case study in the manipulation of science.

The Effectiveness of Abstinence-Only Education:

President Bush has consistently supported the view that sex education should teach "abstinence only" and not include information on other ways to avoid sexually transmitted diseases and pregnancy. Over the past three years, Congress has appropriated over \$100 million in grants to organizations that sponsor abstinence-only education. In November 2000, under the Clinton Administration, HHS developed meaningful, scientifically sound outcome measures to assess whether these programs achieved their intended purposes, including the "proportion of program participants who have engaged in sexual intercourse" and the birth rate of female program participants.

In late 2001, however, the Bush Administration dropped these measures and replaced them with a set of standards that does not include any real outcomes. Rather than tracking pregnancy or sexual activity, these measures assess attendance (!) and the attitudes of teens at the end of the education program, including the "proportion of participants who indicate understanding of the social, psychological, and health gains to be realized by abstaining from premarital sexual activity."

Until recently, a Center for Disease Control (CDC) initiative called "Programs That Work" identified sex education

programs that have been found to be effective in scientific studies and provided this information through its web site to interested communities. In 2002, all five "Programs That Work" provided comprehensive sex education to teenagers, and none were "abstinence-only." In the last year, and without scientific justification, CDC has ended this initiative and erased information about these proven sex education programs from its web site.

Breast Cancer Risks: An online National Cancer Institute fact sheet was changed to suggest a link between breast cancer and abortions, a move *The New York Times* called "an egregious distortion" of scientific evidence. Claiming that abortion can cause breast cancer, social conservatives have pushed for laws across the country that require doctors to provide "counseling" about this alleged risk to women seeking abortions. As these efforts advanced last year, the Administration distorted the science on this issue to portray abortion as a risk factor in breast cancer when there is a scientific consensus that it is not.

Condom Effectiveness: Social conservatives have long opposed government efforts to support birth control. In recent years, some have claimed that condoms are not very effective in protecting against sexually transmitted diseases and have pressed federal agencies to adopt this viewpoint. Under the Bush Administration, scientific evidence on the effectiveness of condoms has been suppressed or distorted to reflect this conclusion. In October 2002, CDC replaced a comprehensive online fact sheet about condoms with one lacking crucial information on condom use and efficacy. The original information, titled *Condoms and Their Use in Preventing HIV Infection and Other STDs*, included sections on the proper use of condoms, the effectiveness of different types of condoms, and studies showing that condom education does not promote sexual activity. It noted that "a World Health Organization (WHO) review . . . found no evidence that sex education leads to earlier or increased sexual activity in young people."

Like the CDC, the State Department's Agency for International Development (USAID) has censored its web site to remove information on the effectiveness of condoms. The Bush Administration has also promoted unscientific positions on condom use internationally. In December 2002, the U.S. delegation at the Asian and Pacific Population Conference sponsored by the United Nations attempted to delete endorsement of "consistent condom use" as a means of preventing HIV infection. U.S. delegates took this position on the grounds that recommending condom use would promote underage sex. Contrary to these U.S. claims, scientific studies have shown that comprehensive sex education delays the onset of sexual activity. The U.S. opposition to "consistent condom use" was rejected, 32-1.

Drinking Water Contamination: The Pentagon dropped plans to require the testing of drinking water for perchlorate – the main chemical ingredient of solid rocket fuel – at sites contaminated by the Defense Department and its contractors. Perchlorate, the main chemical ingredient of solid rocket fuel, alters the production of thyroid hormones and poses special health risks to developing fetuses and infants. As concern over the potential contamination of water and food supplies with perchlorate has grown, the Defense Department has suppressed investigations into the extent of the problem.

HIV/AIDS Policies and Research: Administration has obstructed the development of science-based policies and research on HIV/AIDS among the gay population. In January 2003, President Bush appointed marketing consultant Jerry Thacker to the Presidential Advisory Council on HIV/AIDS. Mr. Thacker has described homosexuality as a “deathstyle” and referred to AIDS as “the gay plague.” Mr. Thacker has also promoted “reparative therapy,” a process by which homosexuals are “reformed” through religion. According to the American Psychological Association, such therapy lacks an evidence base and attracts patients because of social pressure and ignorance. Shortly after the appointment was made public, Mr. Thacker withdrew his name from consideration for the Council.

Stem Cell Research: In banning federal funding for research on new stem cell lines, President Bush stated that “more than 60 genetically diverse” lines were available for potential research. In May 2003, NIH Director Dr. Elias Zerhouni told Congress that only 11 stem cell lines are widely available to researchers. All are potentially contaminated by viruses as a result of being developed with mouse feeder cells. Therefore, they may not be appropriate for human use because of the potential for infection. Addressing this problem, scientists at Johns Hopkins recently announced the discovery of a method for developing uninfected stem cell lines on feeder cells from adult humans. Scientists cannot work with new cell lines developed with this method, however, because President Bush’s policy prohibits the use of lines developed after April 2001.

Substance Abuse Committees: The Administration used an apparent political litmus test for appointees to an important drug abuse research committee. In 2002, Dr. William R. Miller, a professor of psychology and psychiatry at University of New Mexico, was invited to join the National Advisory Council on Drug Abuse. This advisory committee guides policy and funding on drug abuse at NIH. Before Dr. Miller could be appointed, however, an official from Secretary Thompson’s office called him to ask several questions. These questions included whether he was sympathetic to faith-based initiatives, whether he supported abortion rights, whether he supported the death penalty for drug kingpins, and whether he had voted for President Bush.

Dr. Miller recalled that Secretary Thompson’s aide said, “I need to vet you to determine whether you might have any views that would be an embarrassment to the president.”

After Dr. Miller answered that he does support needle exchange — a public health intervention proven to save lives but opposed by social conservatives — the aide responded, “That’s a problem.” When asked whether he voted for Bush, Dr. Miller said that he had not. The aide asked, “Why didn’t you support the President?” The aide told Dr. Miller he would determine whether his views were acceptable. Dr. Miller was never called back, and his name was not on the final list of appointees. Informed of what happened, Dr. Donald Kennedy, past president of Stanford University and editor of *Science*, commented: “I don’t think any administration has penetrated so deeply into the advisory committee structure as this one, and I think it matters If you start picking people by their ideology instead of their scientific credentials, you are inevitably reducing the quality of the advisory group.”

Reproductive Health Advisory Committees: In 2002, HHS impeded its ability to obtain objective scientific advice in women’s health by nominating Dr. W. David Hager, a conservative religious activist, to chair the FDA’s Reproductive Health Drugs Advisory Committee. The committee is charged with evaluating the safety and effectiveness of drugs for obstetrics, gynecology, and related specialties. In the past, FDA has chosen for this important position highly respected members of the scientific community with strong credentials in the field of reproductive health. Dr. Hager’s principal experience for the position appeared to be his lobbying for a renewed safety review of the approved drug RU-486, an abortifacient, even though no significant new evidence called its safety into question. *The Lancet* described his “track record” as a researcher as “sparse.” Dr. Hager’s major publications are medical books imbued with religious themes, such as offering advice that women who suffer from premenstrual syndrome should pray and read the bible. Although ultimately not appointed chair, Dr. Hager is now a member of the committee.

His appointment led *The Lancet* to comment: “Expert committees need to be filled, by definition, with experts. That means those with a research record in their field and in epidemiology and public health. Members of expert panels need to be impartial and credible, and free of partisan conflicts of interest, especially in industry links or in right-wing or religious ideology. Any further right-wing incursions on expert panels’ membership will cause a terminal decline in public trust in the advice of scientists.”

Lead Poisoning Advisory Committee: As a CDC committee prepared to consider changing childhood lead poisoning standards, HHS removed qualified scientists from the panel and replaced them with lead industry consultants. Specifically, HHS failed to reappoint Dr. Michael Weitzman of the University of Rochester and then rejected the nominations of Dr. Bruce Lanphear of the University of Cincinnati and Dr. Susan Klitzman of the Hunter College School of Health Sciences. These preeminent scientists have each published numerous papers in the scientific literature on lead poisoning.

(continued on page 5)

Ruling Upholds Oregon Law Authorizing Assisted Suicide

by Adam Liptak, *New York Times*, 5/27/2004

<http://www.nytimes.com/2004/05/27/national27SUIC.html>

The majority used unusually pointed language to rebuke Attorney General John Ashcroft, saying he had overstepped his authority in trying to block enforcement of the state law, Oregon's Death With Dignity Act.

"The attorney general's unilateral attempt to regulate general medical practices historically entrusted to state lawmakers," Judge Richard C. Tallman wrote for the majority, "interferes with the democratic debate about physician-assisted suicide and far exceeds the scope of his authority under federal law."

Charles Miller, a Justice Department spokesman, said lawyers there were reviewing the decision and had not decided on their next move. The government could ask an 11-member panel of the Ninth Circuit to rehear the case or try to appeal to the United States Supreme Court.

The assisted-suicide law in Oregon, the product of a 1994 voter initiative, allows adults with incurable diseases who are likely to die in six months to obtain lethal drugs from their doctors. The doctors may prescribe but not administer the drugs, and they are granted immunity from liability.

The majority in yesterday's decision emphasized that the court was not deciding the morality or appropriateness of assisted suicide.

"We express no opinion on whether the practice is inconsistent with the public interest or constitutes illegitimate medical care," Judge Tallman wrote. "This case is simply about who gets to decide."

The states do, the court ruled.

"The principle that state governments bear the primary responsibility for evaluating physician-assisted suicide follows from our concept of federalism, which requires that state lawmakers, not the federal government, are the primary regulators of professional medical conduct," Judge Tallman wrote.

About 30 people a year have used the law to end their lives since it became effective in 1997, according to state health records. That represents about one in every thousand deaths in Oregon.

"The main thing is that the people of Oregon made a decision through the democratic process," said Don James, 78, a Portland man who is dying of cancer. "I don't know yet if I will personally take advantage of it," Mr. James said of the law, noting that his prostate cancer has spread to his bones and causes him considerable pain. "But I want the option."

In 1997, Mr. Ashcroft, then a United States senator from Missouri, asked Attorney General Janet Reno to declare that physician-assisted suicide involving doctors violated federal law. She declined, saying that individual states should be allowed to regulate their own doctors. When Mr. Ashcroft became attorney general in 2001, he reversed Ms.

Reno's position and issued a directive saying that doctors who prescribe lethal drugs to patients under the Oregon law could face federal sanctions and prosecution under the Controlled Substances Act.

Some scholars have criticized Mr. Ashcroft for what they say is only fitful fidelity to his political philosophy of respect for decentralized government and local decision-making.

Yesterday's decision considered a challenge to Mr. Ashcroft's directive brought in 2001 by a doctor, a pharmacist, several terminally ill patients and the State of Oregon. Judge Robert E. Jones, of the Federal District Court in Oregon, sided with the plaintiffs in 2002, ordering the Justice Department not to enforce Mr. Ashcroft's directive..

In its ruling yesterday, the appeals court panel said that upholding Mr. Ashcroft's directive would have a high human toll.

"Doctors will be afraid to write prescriptions sufficient to painlessly hasten death," Judge Tallman wrote. "Pharmacists will fear filling their prescriptions. Patients will be consigned to continued suffering and, according to the declarations of record, may die slow and agonizing deaths."

Kevin Neely, a spokesman for Oregon's attorney general, Hardy Myers, said the ruling was "a slam-dunk victory for the State of Oregon."

"The attorney general's unilateral attempt to regulate general medical practices historically entrusted to state lawmakers," Judge Richard C. Tallman wrote for the majority, "interferes with the democratic debate about physician-assisted suicide and far exceeds the scope of his authority under federal law."

"Decisions regarding medical practice are decisions for the state and the state alone to make," Mr. Neely said. "Attorney General Ashcroft simply abused his authority in this matter."

Vikram Amar, a professor at Hastings College of the Law in San Francisco, said it was sometimes hard to divine the Justice Department's guiding philosophy in deciding which state laws to challenge. The department has tried to override state medical marijuana laws, and it has vetoed the decisions of local federal prosecutors who declined to seek the death penalty. "They haven't explained very well the distinctions they make," Mr. Amar said, "and that leaves them open to the charge of hypocrisy."

The majority appeared to acknowledge that Congress is free to override the Oregon law, but it held that federal lawmakers have so far not done so.

Mr. Ashcroft relied on the Controlled Substances Act, which allows the federal government to sanction doctors if they prescribe drugs for anything but legitimate medical purposes.

But the majority ruled that the text, purpose and history of that law did not authorize the Justice Department to use it to override the Oregon law. Congress meant to fight drug abuse, the majority said, not to regulate what is and is not medicine.

Judge J. Clifford Wallace, in a dissenting opinion, said the attorney general had the authority to issue his directive.

"There is simply no textual support for the majority's conclusion that 'the field of drug abuse,' as discussed in the Controlled Substances Act, does not encompass drug-induced, physician-assisted suicide," Judge Wallace wrote.

Judge Tallman, who wrote the majority decision, was appointed by President Bill Clinton but is not a member of the court's liberal wing. "He is one of the most conservative judges on the Ninth Circuit," said Professor Erwin Chemerinsky, a law professor at the University of Southern California.

Judge Tallman was joined by Judge Donald P. Lay, a visiting judge from the Federal Appeals Court in St. Louis. He was appointed by President Lyndon Johnson. Judge Wallace, who dissented, was appointed by President Richard Nixon.

Eli D. Stutsman, a Portland lawyer who represented the doctor and pharmacist in the case, said his clients are relieved.

"They're free from fear of prosecution under the Ashcroft directive," Mr. Stutsman said, "and they can focus on their practices and their ability to care for their patients."

Dr. Greg Hamilton, a spokesman for Physicians for Compassionate Care, which opposes the assisted-suicide law, said yesterday's decision was misguided.

"It's amazing when a federal court allows any state to nullify federal laws," Dr. Hamilton said. "Vulnerable people in the state of Oregon are deprived of the protections available to people in 49 other states."

Barbara Coombs Lee, president of Compassion in Dying Federation, a Portland, Ore., advocacy group that supports assisted suicide, said she was gratified by the ruling but wary of future challenges.

Barbara Coombs Lee, president of Compassion in Dying Federation, a Portland, Ore., advocacy group that supports assisted suicide, said she was gratified by the ruling but wary of future challenges.

"This law has been under constant assault for 10 years and this is the latest victory," Ms. Coombs Lee said, adding that Mr. Ashcroft "could take his loss and ask his friends in Congress to try again to amend the Controlled Substances Act."

"The opponents who remain at this point after six years of success in Oregon are really moral opponents," she said. "But they have lost in the court of opinion and they have lost in our nation's courts, so the next choice they have is to try and exert their political power where they have it."

From the President...

(cont. from p3)

In their place, HHS proposed several individuals with significant ties to the lead industry. One of these was Dr. William Banner, who has served as an expert witness for Sherwin-Williams paint company, a maker of lead paint. His only lead-related research publications involved experimental treatment of rats. Dr. Banner has testified that a lead level of 70 micrograms per deciliter is safe for children's brains. This position does not appear to be shared by any expert or scientific organization independent of the lead industry. In fact, contrary evidence emerged over 30 years ago, and as early as 15 years ago there was scientific consensus that children's brains were damaged by lower levels of lead.

My Conclusion

The Bush Administration ignores science and human welfare in the field of public health, in order to force upon us his socially-conservative, religious-right views, and in order to favor the industries that stand to benefit from lax standards for public health. This provides yet another reason why this Bush Administration needs to be retired.

John Dearing
President of CSS

Voice of an Angel

Yes I'm back! Things have muchly improved for me over the past couple weeks. After getting my medications stabilized, I was finally able to restart my Physical Therapy. The doctor thought it was best if I tried swimming pool therapy and I must say I am REALLY enjoying it! I go twice a week to the Timberhill Athletic Club and spend about 45 minutes doing water exercises, and then about 90 minutes just walking in the water. I've even been able to start backing off on my pain medications. It feels good to just get out and get moving again. So life has definitely improved for me! Reed and I are MOST pleased with my progress!

It's been very hectic the past few months. A good friend of mine died a couple weeks ago, his name was Paul. We met 10 years ago on the Internet and after a couple years we got to comparing our genealogy and discovered we were fifth cousins! He was a wonderful man who helped me through a lot of hard times in my life — I'll miss him terribly.

Paul grew up in the deep Bible Belt of the South and as one would expect he was VERY Christian. We would disagree on these issues a lot, but they rarely caused us any problems. I think he always thought that I would someday "come around". He would sometimes mention how he would pray for this to happen. (Well, as Dan Barker would say: Nothing fails like prayer!)

Paul and I had many conversations about life, the universe and everything. He was a Vietnam Veteran and said that his experiences in life only served to strengthen his "faith". He said he could not live with all the horrors he saw unless he thought there was some "greater plan" to it all. I felt just the opposite. I have never seen, nor needed there to be a "greater plan" to life. Paul had a hard time understanding this about me. I think, like a lot of Christians (especially those raised in the Bible Belt), he just could not wrap his head around the idea that someone simply did not need God or religion to live a happy life. He did not understand that a person can indeed not worry about "greater meanings" and simply live life as it comes along and do the best you can for yourself and your fellow inhabitants on this planet.

After a lot of observation of the religious folks I know, I think this is definitely the thing that separates us. As an Atheist/Secular Humanist, I don't need there to be a "meaning to life". I don't need there to be some "mystic plan" or some "invisible man in the sky" to feel that life is worth living. In the end, I would venture to say Christians are rather insecure for needing to drag all this baggage around.

Yet, also as a Freethinker, I believe that people have choices in life and it's not up to me to make those choices for them. So, if it makes them happy and they feel they need it, then who am I do deny them this piece of their life? What I do know is I will miss my friend and will think of him fondly for many years to come.

Angela Byers
CSS Treasurer & Webmaster

Rumsfeld bans camera phones in Iraq

published by ABC News

<http://www.abc.net.au/news/newsitems/s1114150.htm>

(AFP) — Mobile phones fitted with digital cameras have been banned in United States Army installations in Iraq on orders from Defence Secretary Donald Rumsfeld, The Business newspaper reported on Sunday.

Quoting a Pentagon source, the paper said the US Defence Department believes that some of the damning photos of US soldiers abusing Iraqis at Abu Ghraib prison near Baghdad were taken with camera phones.

"Digital cameras, camcorders and mobile phones with cameras have been prohibited in military compounds in Iraq," it said.

A "total ban throughout the US military" is in the works, it added.

Disturbing new photos of Iraqi prisoner abuse, which the US government had reportedly tried to keep hidden, were published on Friday in the Washington Post newspaper.

The photos emerged along with details of testimony from inmates at Abu Ghraib who said they were sexually molested by female soldiers, beaten, sodomised and forced to eat food from toilets.



The very powerful and the very stupid have one thing in common: Instead of altering their views to fit the facts, they alter the facts to fit their views... which can be very uncomfortable if you happen to be one of the facts that needs altering.

— Dr. Who, "The Face of Evil"

America Shrugged

It's the end of marriage as we know it, and most people feel fine.

by Michelangelo Signorile, *New York Press*, 5/27/2004

BARRING A MIRACLE, the family as it has been known for more than five millennia will crumble," warned the evangelist and psychologist Dr. James Dobson, regarding Massachusetts' impending first state-sanctioned same-sex marriages. Promises, promises! May 17 came and went, and the last time I checked, the family was still standing, dysfunctional as ever. The world is still spinning on its axis, the American economy keeps sputtering along and Iraq continues to spiral out of control.

The End of Civilization has prove to be the biggest, most over-hyped disappointment since the Y2K bug. No rapture, no floods, no earthquakes, no locusts. (Cicadas do not count.) The firstborn of every family did not die, nor did God strike Massachusetts off the map with an almighty thunderbolt. The weather, from what I could gather, seemed unseasonably pleasant all the way to Provincetown, as thousands of gay and lesbian couples wed across the Bay State last week.

Evangelical leaders were hoping the pictures on television of gay couples getting hitched would sicken and outrage the masses, driving millions of Americans to the barricades to take on the enemy within.

"The attacks on Pearl Harbor, New York and Washington awakened the nation to peril and called citizens to action," said R. Albert Mohler Jr., president of the Southern Baptist Theological Seminary, comparing those attacks to the Massachusetts decision. (He even called May 17 "a day that will live in moral infamy.")

Judging from most people's reactions, it's a day that's already been forgotten. So the new tack by the goofy God squad is to claim that people are in a state of shock, experiencing a delayed response.

"The fact is, enough people haven't awakened," the Rev. Lou Sheldon, founder of the Traditional Values Coalition, told the Washington Post. "It's a sleeping giant out there... And when [people] wake up I feel bad for the homosexuals."

Actually, people have woken up, and they're quite revolted. But the same-gender photo pairings that got them sick to their stomachs weren't coming out of Massachusetts: They were the photos out of Abu Ghraib, depicting the humiliating simulated sex acts that American soldiers and civilian contractors-using homosexual sex in a grotesquely homophobic manner-forced male Iraqi detainees to engage in.

In that respect, the timing of the Massachusetts marriages couldn't have been better for the same-sex marriage movement. The prison abuse scandal, the continuing

violence in Iraq and the administration's handling of the war puts same-sex marriage in perspective for most people. George W. Bush's approval ratings have plummeted as Americans realize that it's not gay marriage that's destroying the country, but rather the president, Donald Rumsfeld, Condoleezza Rice and the rest of the gang in the White House. They're the ones who've taken us to war based on lies and have irreparably damaged the nation's integrity.

In Congress, the federal marriage amendment seems dead in the water. Perhaps it wasn't a coincidence that the Senate cancelled a hearing on the amendment last week at which the homo-obsessed Gov. Mitt Romney of Massachusetts was to appear. How would it look if, in the middle of all the turmoil in the Middle East, reports came out of Washington depicting our senators focused on an issue that ranks at the bottom of voters' lists of priorities in every poll?

Several months back, I wrote that the FMA could turn out to be more of a problem for Bush than John Kerry (who doesn't support same-sex marriage either), as most voters, no matter how they feel about gay unions, have little passion to amend the Constitution or even to waste much time debating the issue. That has turned out to be true, but I didn't foresee other factors that have further complicated the FMA from Bush's perspective. Several recent reports have noted that the proposed gay marriage ban, while a major talking point for evangelical leaders, is failing to excite the evangelical rank and file. Even if they are adamantly opposed to same-sex marriage, many are ambivalent about getting the federal government involved. It's not a black and white issue for them, like abortion, nor is it one that gets them to empty their pockets and run to the polls.

"Just four months after an alliance of conservative Christians was threatening a churchgoer revolt unless President Bush championed an amendment banning same-sex marriage, members say they have been surprised and disappointed by what they call a tepid response from the pews," the New York Times reported.

If the FMA doesn't energize the GOP's religious base, and if the abortion issue doesn't fulfill that function either this year-Bush's chipping away at abortion rights might make some conservative Christians complacent in 2004-Bush may get the same turnout among evangelicals that he got in 2000, which was a disappointment to Karl Rove. Meanwhile, Bush will have alienated some moderate Republicans and Democrats who previously supported him. But perhaps more important, he will have energized

(continued on page 18)

Atheist wins \$1 million Web libel judgment

by Harriet Chiang, *SF Chronicle*, 6/12/2004

The Sacramento atheist who mounted a legal challenge to the phrase "under God" in the Pledge of Allegiance has won a \$1 million judgment against a minister he accused of libeling him in an article on the Internet.

Michael Newdow was awarded a \$1 million judgment Thursday against the Rev. Austin Miles after Contra Costa Superior Court Judge Steven Austin found that Miles had libeled Newdow in a column Miles wrote in 2002.

The column appeared shortly after Newdow won a ruling in the Ninth Circuit U.S. Court of Appeals in 2002 striking down the phrase "under God" in the Pledge of Allegiance recited daily in school classrooms. Newdow, who objected to his daughter reciting the pledge at her elementary school in the Elk Grove School District, argued that the phrase violated the constitutional separation of church and state.

The school district filed an appeal to the U.S. Supreme Court and in March the justices heard arguments from Newdow and the district and the Bush Administration.

Newdow alleges that after the federal appeals court ruling, Miles, a chaplain in Contra Costa County, accused him in an Internet posting of being a perjurer who lied when he said that his daughter suffered "emotional damage" by being forced to say the pledge.

Newdow filed suit in July 2003, flatly denying that he ever made that statement about his daughter.

Newdow said the judge issued his judgment after Miles failed to show up for any court hearings. He acknowledged, however, that he didn't expect to collect any money from Miles. "I wanted to clear my name," he said.

Miles, who would not say where in Contra Costa County he preaches, said he learned of the judgment only after a reporter emailed him Thursday asking for his reaction.

"It was a shock," he said, adding that he plans to file an appeal. "I was not informed of any court case."

Court Upholds Bible Class Ban

by the Associated Press, 6/8/2004

<http://www.cnn.com/2004/EDUCATION/06/08/bible.ruling.ap/>

CHATTANOOGA, Tennessee (AP)—A federal appeals court has upheld a ruling that argued weekly Bible classes are unconstitutional in the public schools of Rhea County, the same county where the "Scopes Monkey Trial" pitted creationists against evolutionists 79 years ago.

A three-judge panel of the 6th U.S. Circuit Court of Appeals in Cincinnati agreed Monday with a February 2002 ruling by U.S. District Judge R. Allan Edgar of Chattanooga.

Edgar ruled that the Bible Education Ministry program in Rhea County violated the First Amendment's clause calling for separation of church and state.

The 30-minute classes were held weekly for about 800 students in kindergarten through fifth grade at the county's three elementary schools. Parental consent was not required and students were allowed to participate in alternative activities if they objected to the classes.

Rhea County superintendent Sue Porter said Monday that school board members would likely discuss whether to appeal the latest ruling at their Thursday night meeting. Bible classes had been offered in Rhea County for 51 years.

"I'm disappointed, not surprised though," Porter said.

The appeals judges ruled that although school officials contended that the classes were value-driven, teaching responsibility and positive morals, they were "also teaching the Bible as religious truth."

The county's city of Dayton, about 35 miles northwest of Chattanooga, is where orator and presidential candidate William Jennings Bryan and the lawyer Clarence Darrow squared off in the courtroom during the 1925 prosecution of teacher John T. Scopes for teaching evolution in the public schools instead of the biblical story of creation.

THIS MODERN WORLD

by TOM TOMORROW



Hard lessons from poetry class: Speech is free unless it's critical

by Bill Hill, *Daytona Beach News-Journal*, 5/15/2004

Bill Nevins, a New Mexico high school teacher and personal friend, was fired last year and classes in poetry and the poetry club at Rio Rancho High School were permanently terminated. It had nothing to do with obscenity, but it had everything to do with extremist politics.

The "Slam Team" was a group of teenage poets who asked Nevins to serve as faculty adviser to their club. The teens, mostly shy youngsters, were taught to read their poetry aloud and before audiences. Rio Rancho High School gave the Slam Team access to the school's closed-circuit television once a week and the poets thrived.

In March 2003, a teenage girl named Courtney presented one of her poems before an audience at Barnes & Noble bookstore in Albuquerque, then read the poem live on the school's closed-circuit television channel.

A school military liaison and the high school principal accused the girl of being "un-American" because she criticized the war in Iraq and the Bush administration's failure to give substance to its "No child left behind" education policy.

The girl's mother, also a teacher, was ordered by the principal to destroy the child's poetry. The mother refused and may lose her job.

Bill Nevins was suspended for not censoring the poetry of his students. Remember, there is no obscenity to be found in any of the poetry. He was later fired by the principal.

After firing Nevins and terminating the teaching and reading of poetry in the school, the principal and the military liaison read a poem of their own as they raised the flag outside the school. When the principal had the flag at full staff, he applauded the action he'd taken in concert with the military liaison.

Then to all students and faculty who did not share his political opinions, the principal shouted: "Shut your faces." What a wonderful lesson he gave those 3,000 students at the largest public high school in New Mexico. In his mind, only certain opinions are to be allowed.

But more was to come. Posters done by art students were ordered torn down, even though none was termed obscene. Some were satirical, implicating a national policy that had led us into war. Art teachers who refused to rip down the posters on display in their classrooms were not given contracts to return to the school in this current school year.

The message is plain. Critical thinking, questioning of public policies and freedom of speech are not to be allowed

to anyone who does not share the thinking of the school principal.

The teachers union has been joined in a legal action against the school by the National Writers Union, headquartered in New York City. NWU's at-large representative Samantha Clark lives and works in Albuquerque.

The American Civil Liberties Union has become the legal arm of the lawsuit pending in federal court.

Meanwhile, Nevins applied for a teaching post in another school and was offered the job but he can't go to work until Rio Rancho's principal sends the new school Nevins' credentials. The principal has refused to do so, and that adds yet another issue to the lawsuit, which is awaiting a trial date.

While students are denied poetry readings, poetry clubs and classes in poetry, Nevins works elsewhere and writes his own poetry.

Writers and editors who have spent years translating essays, films, poems, scientific articles and books by Iranian, North Korean and Sudanese authors have been warned not to do so by the U.S. Treasury Department under penalty of fine and imprisonment. Publishers and film producers are not allowed to edit works authored by writers in those nations. The Bush administration contends doing so has the effect of trading with the enemy, despite a 1988 law that exempts published materials from sanction under trade rules.

Robert Bovenschulte, president of the American Chemical Society, is challenging the rule interpretation by violating it to edit into English several scientific papers from Iran.

Are book burnings next?

Hill is a retired News-Journal reporter.

**Everybody knows that the dice are loaded.
Everybody rolls with their fingers crossed.
Everybody knows that the war is over.
Everybody knows the good guys lost.
Everybody knows the fight was fixed.
The poor stay poor, the rich get rich.
That's how it goes.
Everybody knows.**

— from a Leonard Cohen song,
"Everybody Knows"

10 ways we botched Iraq

by Molly Ivins

AUSTIN, Texas — Too bad for anyone who tuned in to President Bush's speech Monday night hoping to hear something that would cheer us up —like a plan. That was as depressing as divorce. There he was, still peddling the phony idea that Saddam Hussein was connected to 9-11 — I guess that one will never get too old or too disproved.

In case you think no one in public life is capable of intelligent thought about Iraq, I recommend a speech made by Gen. Anthony Zinni (well, OK, so he's slightly retired) May 12 to the Center for Defense Information. In it, Zinni lists the 10 mistakes he believes were responsible for getting us into this fine mess.

My own modest contribution to this task began the day we announced we would be using Saddam's main palace as our headquarters in Iraq. "No, no, no," I moaned. "We're Americans. We don't do palaces." We should have announced that all Saddam's palaces would be converted into universities.

"Should have" is not normally a helpful construction, but I thought Zinni's list useful indeed. Since Zinni expanded brilliantly on several points, I do disservice by simplifying — even so, you'll see what I mean.

- Misjudging the success of containment. Containment actually worked, we just didn't know it.
- The strategy was flawed. We thought the road to Jerusalem led through Baghdad, when just the opposite is true — the road to Baghdad leads through Jerusalem. In other words, an Israeli-Palestinian settlement is the key to peace and progress in the region.
- We had to create a false rationale for going in to get public support. Zinni testified before the Senate Foreign Relations Committee just before the war and was asked if the threat from Saddam Hussein was imminent: "No, not at all," he said. "It was not an imminent threat. Not even close. Not grave, gathering, imminent, serious, severe, mildly upsetting, none of these."
- We failed to internationalize the effort. That's a point on which we have now reached near-universal agreement, including George W. Bush.
- We underestimated the task.
- Propping up and trusting the exiles. Zinni ranks this as possibly our biggest mistake, taking up Ahmad Chalabi's "Gucci guerrillas." Zinni has the additional authority of having testified against the Iraqi Liberation Act back in 1998, telling the Senate then that the Iraqi National Congress was not credible and would "lead us into something that we will regret."

For example, he writes Rumsfeld, "When next you testify before a congressional committee, would your testimony be any more credible were you required to deliver it stripped naked? I think not. "

- Lack of planning. When Zinni was head of CentCom in the Mideast, they actually did a reconstruction plan. "The size of the CPA was about the size we felt we needed for one province, let alone the entire country."
- The insufficiency of military forces on the ground.
- Ad hoc organization. The extent to which the CPA never had a game plan is incredible and, as The Washington Post rather acidly reports, the place is staffed with busy little right-wingers whose only claim to competence is their political connections.
- A series of bad decisions on the ground. Disbanding the army, etc.

First, Zinni recommends we stop digging the hole we're in. We need a U.N. resolution, then we need a lot of Arab officers in as advisers, then he has a whole series of specific military steps. He also emphasizes jobs, jobs, jobs.

"I would go to the contractors in there and say: 'I don't want to see truck drivers that are coming from Peoria, Ill. I want to pay truck drivers that are

Iraqis.' It doesn't take a hell of a lot of talent to drive a truck. Why aren't Iraqis driving trucks for their own reconstruction and redevelopment?" He also notes there is no system of education for the electorate — no political parties, nothing.

Another citizen with some valuable suggestions is New York lawyer Neal Johnston, who was moved to write Secretary of Defense Donald Rumsfeld concerning "proper controls upon the interrogation techniques of detainees held by our military forces abroad." Since we are extremely interested in getting the truth out of reluctant witnesses who may be covering up something, and since the Pentagon apparently feels it knows how to do this, Johnston wonders what would happen if the methods were more broadly applied. For example, he writes Rumsfeld, "When next you testify before a congressional committee, would your testimony be any more credible were you required to deliver it stripped naked? I think not.

"When our plans for Iraq are next explored at a Cabinet meeting, would your observations be any more insightful if delivered while strapped to a board and irregularly submerged in a vat of water? Doubtful at best."

Even, Johnston suggests, shoving a rolled copy of the Bill of Rights up a delicate place on the secretary's person would not necessarily improve Rumsfeld's truthfulness at his next press conference. "My solution is really quite simple: The Iraqi scum should be handled with much the same restraint we would all want to be applied to you, should the present criminal investigations wind up reaching even deeper into your office than is already the case."

The day the Constitution died

by Molly Ivins

AUSTIN, Texas — When, in future, you find yourself wondering, “Whatever happened to the Constitution?” you will want to go back and look at June 8, 2004. That was the day the attorney general of the United States — a.k.a. “the nation’s top law enforcement officer” — refused to provide the Senate Judiciary Committee with his department’s memos concerning torture.

In order to justify torture, these memos declare that the president is bound by neither U.S. law nor international treaties. We have put ourselves on the same moral level as Saddam Hussein, the only difference being quantity. Quite literally, the president may as well wear a crown — forget that “no man is above the law” jazz. We used to talk about “the imperial presidency” under Nixon, but this is the real thing.

The Pentagon’s legal staff concurred in this incredible conclusion. In a report printed by The Wall Street Journal, “Bush administration lawyers contended last year that the president wasn’t bound by laws prohibiting torture and that government agents who might torture prisoners at his direction couldn’t be prosecuted by the Justice Department..

“The report outlined U.S. laws and international treaties forbidding torture, and why those restrictions might be overcome by national security considerations or legal technicalities.”

The report was compiled by a group appointed by Department of Defense General Counsel William J. Haynes II, who has since been nominated by Bush for the federal appellate bench. “Air Force General Counsel Mary Walker headed the group, which comprised top civilian and uniformed lawyers from each military branch and consulted with the Justice Department, the Joint Chiefs of Staff, the Defense Intelligence Agency and other intelligence agencies. It isn’t known if President Bush has ever seen the report.”

When members of the Senate Judiciary Committee questioned Ashcroft about his department’s input, he simply refused to provide the memos, without offering any legal rationale. He said President Bush had “made no order that would require or direct the violation” of laws or treaties. His explanation was that the United States is at war. “You know I condemn torture,” he told Sen. Joe Biden. “I don’t think it’s productive, let alone justified.”

But another memo written by former Assistant Attorney General Jay S. Bybee, now a federal appeals court judge in California, establishes a basis for the use of torture for senior Al Qaeda operatives in custody of the CIA. I am not

one to leap to conclusions, but it seems quite clear how whatever perverted standards allowed at Guantanamo Bay jumped across the water to Abu Ghraib prison. Maj. Gen. Geoffrey D. Miller, commander at Gitmo, was dispatched last August to Abu Ghraib to give advice about how to get information out of prisoners. “Miller’s recommendations prompted a shift in the interrogation and detention procedures there. Military intelligence officers were given greater authority in the prison, and military police guards were asked to help gather information about the detainees,” according to The New York Times.

Among the legal memos that circulated within the administration in 2002, one is by White House counsel Alberto Gonzalez, famously declaring the Geneva Convention “quaint,” and another from the CIA asked for an explicit understanding that the administration’s public pledge to abide by the spirit of the Geneva Convention did not apply to its operatives. The only department consistently opposing these legal “arguments” was State. In April

2002, Secretary Rumsfeld sent a memo to Gen. James T. Hill outlining 24 permitted interrogation techniques, four of which were considered so stressful as to require Rumsfeld’s explicit approval before they were used.

It has been apparent for some time that the abuses at Abu Ghraib were not isolated instances — torture from Afghanistan to Gitmo to Iraq has so far resulted in 25 deaths now under investigation. As the late Jacabo Timmermann, the Argentine journalist who was tortured during “the dirty war,” said, “When you are being tortured, it doesn’t really matter to you if your torturers are authoritarian or totalitarian.” I doubt it helps any if they’re supposed to be bringing democracy, either. And as Ashcroft said, it isn’t productive.

The damage is incalculable. When America puts out its annual report on human rights abuses, we will be a laughingstock. I suggest a special commission headed by Sen. John McCain to dig out everyone responsible, root and branch. If the lawyers don’t cooperate, perhaps we should try stripping them, anally raping them and dunking their heads under water until they think they’re drowning, and see if that helps.

And I think it is time for citizens to take some responsibility, as well. Is this what we have come to? Is this what we want our government to do for us? Oh and by way, to my fellow political reporters who keep repeating that Bush is having a wonderful week: Why don’t you think about what you stand for?

In order to justify torture, these memos declare that the president is bound by neither U.S. law nor international treaties. We have put ourselves on the same moral level as Saddam Hussein, the only difference being quantity.

Pentagon Report Set Framework For Use of Torture

Security or Legal Factors Could Trump Restrictions, Memo to Rumsfeld Argued

by Jess Bravin, *Wall Street Journal*, 6/7/2004

Bush administration lawyers contended last year that the president wasn't bound by laws prohibiting torture and that government agents who might torture prisoners at his direction couldn't be prosecuted by the Justice Department.

The advice was part of a classified report on interrogation methods prepared for Defense Secretary Donald Rumsfeld after commanders at Guantanamo Bay, Cuba, complained in late 2002 that with conventional methods they weren't getting enough information from prisoners.

The report outlined U.S. laws and international treaties forbidding torture, and why those restrictions might be overcome by national-security considerations or legal technicalities. In a March 6, 2003, draft of the report reviewed by *The Wall Street Journal*, passages were deleted as was an attachment listing specific interrogation techniques and whether Mr. Rumsfeld himself or other officials must grant permission before they could be used. The complete draft document was classified "secret" by Mr. Rumsfeld and scheduled for declassification in 2013.

The draft report, which exceeds 100 pages, deals with a range of legal issues related to interrogations, offering definitions of the degree of pain or psychological manipulation that could be considered lawful. But at its core is an exceptional argument that because nothing is more important than "obtaining intelligence vital to the protection of untold thousands of American citizens," normal strictures on torture might not apply.

The president, despite domestic and international laws constraining the use of torture, has the authority as commander in chief to approve almost any physical or psychological actions during interrogation, up to and including torture, the report argued. Civilian or military personnel accused of torture or other war crimes have several potential defenses, including the "necessity" of using such methods to extract information to head off an attack, or "superior orders," sometimes known as the Nuremberg defense: namely that the accused was acting pursuant to an order and, as the Nuremberg tribunal put it, no "moral choice was in fact possible."

According to Bush administration officials, the report was compiled by a working group appointed by the Defense Department's general counsel, William J. Haynes II. Air Force General Counsel Mary Walker headed the group, which comprised top civilian and uniformed lawyers from each military branch and consulted with the Justice

Department, the Joint Chiefs of Staff, the Defense Intelligence Agency and other intelligence agencies. It isn't known if President Bush has ever seen the report.

A Pentagon official said some military lawyers involved objected to some of the proposed interrogation methods as "different than what our people had been trained to do under the Geneva Conventions," but those lawyers ultimately signed on to the final report in April 2003, shortly after the war in Iraq began. *The Journal* hasn't seen the full final report, but people familiar with it say there were few substantial changes in legal analysis between the draft and final versions.

A military lawyer who helped prepare the report said that political appointees heading the working group sought to assign to the president virtually unlimited authority on matters of torture — to assert "presidential power at its absolute apex," the lawyer said. Although career military lawyers were uncomfortable with that conclusion, the military lawyer said they focused their efforts on reining in the more extreme interrogation methods, rather than challenging the constitutional powers that administration lawyers were saying President Bush could claim.

The Pentagon disclosed last month that the working group had been assembled to review interrogation policies after intelligence officials in Guantanamo reported frustration in extracting information from prisoners. At a news conference last week, Gen. James T. Hill, who oversees the offshore prison at Guantanamo as head of the U.S. Southern Command, said the working group sought to identify "what is legal and consistent with not only Geneva [but] ... what is right for our soldiers." He said Guantanamo is "a professional, humane detention and interrogation operation ... bounded by law and guided by the American spirit."

Gen. Hill said Mr. Rumsfeld gave him the final set of approved interrogation techniques on April 16, 2003. Four of the methods require the defense secretary's approval, he said, and those methods had been used on two prisoners. He said interrogators had stopped short of using all the methods lawyers had approved. It remains unclear what actions U.S. officials took as a result of the legal advice.

Critics who have seen the draft report said it undercuts the administration's claims that it recognized a duty to treat prisoners humanely. The "claim that the president's commander-in-chief power includes the authority to use torture should be unheard of in this day and age," said

Michael Ratner, president of the Center for Constitutional Rights, a New York advocacy group that has filed lawsuits against U.S. detention policies. "Can one imagine the reaction if those on trial for atrocities in the former Yugoslavia had tried this defense?"

Following scattered reports last year of harsh interrogation techniques used by the U.S. overseas, Sen. Patrick Leahy, a Vermont Democrat, wrote to National Security Adviser Condoleezza Rice asking for clarification. The response came in June 2003 from Mr. Haynes, who wrote that the U.S. was obliged to conduct interrogations "consistent with" the 1994 international Convention Against Torture and the federal Torture Statute enacted to implement the convention outside the U.S.

The U.S. "does not permit, tolerate or condone any such torture by its employees under any circumstances," Mr. Haynes wrote. The U.S. also followed its legal duty, required by the torture convention, "to prevent other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture," he wrote.

The U.S. position is that domestic criminal laws and the Constitution's prohibition of cruel and unusual punishments already met the Convention Against Torture's requirements within U.S. territory.

The Convention Against Torture was proposed in 1984 by the United Nations General Assembly and was ratified by the U.S. in 1994. It states that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture," and that orders from superiors "may not be invoked as a justification of torture."

That prohibition was reaffirmed after the Sept. 11 attacks by the U.N. panel that oversees the treaty, the Committee Against Torture, and the March 2003 report acknowledged that "other nations and international bodies may take a more restrictive view" of permissible interrogation methods than did the Bush administration.

The report then offers a series of legal justifications for limiting or disregarding antitorture laws and proposed legal defenses that government officials could use if they were accused of torture.

A military official who helped prepare the report said it came after frustrated Guantanamo interrogators had begun trying unorthodox methods on recalcitrant prisoners. "We'd been at this for a year-plus and got nothing out of them" so officials concluded "we need to have a less-cramped view of what torture is and is not."

The official said, "People were trying like hell how to ratchet up the pressure," and used techniques that ranged from drawing on prisoners' bodies and placing women's

underwear on prisoners heads — a practice that later reappeared in the Abu Ghraib prison — to telling subjects, "I'm on the line with somebody in Yemen and he's in a room with your family and a grenade that's going to pop unless you talk."

Senior officers at Guantanamo requested a "rethinking of the whole approach to defending your country when you have an enemy that does not follow the rules," the official said. Rather than license torture, this official said that the report helped rein in more "assertive" approaches.

Methods now used at Guantanamo include limiting prisoners' food, denying them clothing, subjecting them to body-cavity searches, depriving them of sleep for as much as 96 hours and shackling them in so-called stress positions, a military-intelligence official said. Although the interrogators consider the methods to be humiliating and unpleasant, they don't view them as torture, the official said.

The working-group report elaborated the Bush administration's view that the president has virtually unlimited power to wage war as he sees fit, and neither

"In order to respect the president's inherent constitutional authority to manage a military campaign ... (the prohibition against torture) must be construed as inapplicable to interrogations undertaken pursuant to his commander-in chief authority," the report asserted.

Congress, the courts nor international law can interfere. It concluded that neither the president nor anyone following his instructions was bound by the federal Torture Statute, which makes it a crime for Americans working for the government overseas to commit or attempt torture, defined as any act intended to "inflict severe physical or mental pain or suffering." Punishment is up to 20 years imprisonment, or a death sentence or life imprisonment if the victim dies.

"In order to respect the president's inherent constitutional authority to manage a military campaign ... (the prohibition against torture) must be construed as inapplicable to interrogations undertaken pursuant to his commander-in chief authority," the report asserted. (The parenthetical comment is in the original document.) The Justice Department "concluded that it could not bring a criminal prosecution against a defendant who had acted pursuant to an exercise of the president's constitutional power," the report said. Citing confidential Justice Department opinions drafted after Sept. 11, 2001, the report advised that the executive branch of the government had "sweeping" powers to act as it sees fit because "national security decisions require the unity in purpose and energy in action that characterize the presidency rather than Congress."

The lawyers concluded that the Torture Statute applied to Afghanistan but not Guantanamo, because the latter lies within the "special maritime and territorial jurisdiction of the United States, and accordingly is within the United States" when applying a law that regulates only government conduct abroad.

Administration lawyers also concluded that the Alien Tort Claims Act, a 1789 statute that allows noncitizens to sue in U.S. courts for violations of international law, couldn't be invoked against the U.S. government unless it consents, and that the 1992 Torture Victims Protection Act allowed suits only against foreign officials for torture or "extrajudicial killing" and "does not apply to the conduct of U.S. agents acting under the color of law."

The Bush administration has argued before the Supreme Court that foreigners held at Guantanamo have no constitutional rights and can't challenge their detention in court. The Supreme Court is expected to rule on that question by month's end.

For Afghanistan and other foreign locations where the Torture Statute applies, the March 2003 report offers a narrow definition of torture and then lays out defenses that government officials could use should they be charged with committing torture, such as mistakenly relying in good faith on the advice of lawyers or experts that their actions were permissible. "Good faith may be a complete defense" to a torture charge, the report advised.

"The infliction of pain or suffering per se, whether it is physical or mental, is insufficient to amount to torture," the report advises. Such suffering must be "severe," the lawyers advise, and they rely on a dictionary definition to suggest it "must be of such a high level of intensity that the pain is difficult for the subject to endure."

The law says torture can be caused by administering or threatening to administer "mind-altering substances or other procedures calculated to disrupt profoundly the sense of personality." The Bush lawyers advised, though, that it "does not preclude any and all use of drugs" and "disruption of the senses or personality alone is insufficient" to be illegal. For involuntarily administered drugs or other psychological methods, the "acts must penetrate to the core of an individual's ability to perceive the world around him," the lawyers found.

Gen. Hill said last week that the military didn't use injections or chemicals on prisoners.

After defining torture and other prohibited acts, the memo presents "legal doctrines ... that could render specific conduct, otherwise criminal, not unlawful." Foremost, the lawyers rely on the "commander-in-chief authority," concluding that "without a clear statement otherwise, criminal statutes are not read as infringing on the president's ultimate authority" to wage war. Moreover, "any effort by Congress to regulate the interrogation of unlawful combatants would violate the Constitution's sole vesting of the commander-in-chief authority in the president," the lawyers advised.

Likewise, the lawyers found that "constitutional principles" make it impossible to "punish officials for aiding the president in exercising his exclusive constitutional authorities" and neither Congress nor the courts could "require or implement the prosecution of such an individual."

To protect subordinates should they be charged with torture, the memo advised that Mr. Bush issue a "presidential directive or other writing" that could serve as evidence, since authority to set aside the laws is "inherent in the president."

The report advised that government officials could argue that "necessity" justified the use of torture. "Sometimes the greater good for society will be accomplished by violating the literal language of the criminal law," the lawyers wrote, citing a standard legal text, "Substantive Criminal Law" by Wayne LaFave and Austin W. Scott. "In particular, the necessity defense can justify the intentional killing of one person ... so long as the harm avoided is greater."

In addition, the report advised that torture or homicide could be justified as "self-defense," should an official "honestly believe" it was necessary to head off an imminent attack on the U.S. The self-defense doctrine generally has been asserted by individuals fending off assaults, and in 1890, the Supreme Court upheld a U.S. deputy marshal's right to shoot an assailant of Supreme Court Justice Stephen Field as involving both self-defense and defense of the nation. Citing Justice Department opinions, the report concluded that "if a government defendant were to harm an enemy combatant during an interrogation in a manner that might arguably violate criminal prohibition," he could be justified "in doing so in order to prevent further attacks on the United States by the al Qaeda terrorist network."

Mr. LaFave, a law professor at the University of Illinois, said he was unaware that the Pentagon used his textbook in preparing its legal analysis. He agreed, however, that in some cases necessity could be a defense to torture charges. "Here's a guy who knows with certainty where there's a bomb that will blow New York City to smithereens. Should we torture him? Seems to me that's an easy one," Mr. LaFave said. But he said necessity couldn't be a blanket justification for torturing prisoners because of a general fear that "the nation is in danger."

For members of the military, the report suggested that officials could escape torture convictions by arguing that they were following superior orders, since such orders "may be inferred to be lawful" and are "disobeyed at the peril of the subordinate." Examining the "superior orders" defense at the Nuremberg trials of Nazi war criminals, the Vietnam War prosecution of U.S. Army Lt. William Calley for the My Lai massacre and the current U.N. war-crimes tribunals for Rwanda and the former Yugoslavia, the report concluded it could be asserted by "U.S. armed forces personnel engaged in exceptional interrogations except where the conduct goes so far as to be patently unlawful."

The report seemed "designed to find the legal loopholes that will permit the use of torture against detainees," said Mary Ellen O'Connell, an international-law professor at the Ohio State University who has seen the report. "CIA operatives will think they are covered because they are not going to face liability."

Public Broadcasting Veers to the Right

by Chellie Pingree, president of *Common Cause*,
as published on *AlterNet*, 6/1/2004

It is deeply troubling to learn that public broadcasting has been subject to intense ideological pressure from conservatives.

Ken Auletta's expose in this week's *New Yorker* "Big Bird Flies Right" points to several disturbing trends:

The decision by CPB to fund two programs - one hosted by Tucker Carlson, who speaks for conservatives on CNN's "Crossfire," and one moderated by Paul Gigot, editorial page editor of *The Wall Street Journal*, at the same time that "NOW with Bill Moyers," which receives no CPB funds, is cut from an hour to 30 minutes, in what appears to be a Bush Administration litmus test for choosing members of the CPB. When CPB board candidate Chon Noriega, a UCLA media professor and co-founder of the National Association of Latino Independent Producers, was interviewed by the White House, he was asked whether the CPB should intervene in programming "deemed politically biased." When Professor Noriega said intervention should be used in only extraordinary circumstances, the appointment process ground to a halt, and the White House asked Senate Minority Leader Tom Daschle (D-SD) to put forward another candidate.

Bill Moyer's statement to Auletta: "This is the first time in my 32 years of public broadcasting that CPB has ordered up programs for ideological instead of journalistic reasons."

To begin with, there is a huge problem with the CPB. Whether it is a Democratic or Republican President who appoints them, CPB board members tend to be big political donors who often come with specific ideological agendas. This seems particularly true of the current board.

For example, President George W. Bush's most recent CPB appointees, Gay Hart Gaines and Cheryl Halpern, have along with their families given more than \$800,000 to the Republican Party and candidates since 1995. And both appointees have backgrounds that raise questions about their suitability to serve on the board. During her confirmation hearing last fall, Halpern indicated that she would welcome giving CPB members the authority to intervene in program content when they felt a program was biased. Gaines chaired Newt Gingrich's (R-GA) political committee GOPAC. This is the same Gingrich who as

House Speaker proposed cutting all federal assistance to public television.

Current board chairman Kenneth Tomlinson has given \$7,700 to Republicans since 1995, and has been active in Republican politics. A friend of Karl Rove, he is quoted in *The New Yorker* article as saying, "It is absolutely critical for people on the right to feel they have the same ownership stake in public television as people on the left have." Tomlinson has also objected to Moyers' including commentary in his programs.



The fact that members of the Corporation for Public Broadcasting (CPB), which provides federal funds to public radio and TV, play politics with its program content should disturb us all - irrespective of our political views. Public broadcasting should not find itself in the crosshairs of a partisan firing squad. At a time when Americans are finding it more and more difficult to get past the clutter and partisanship on commercial TV and radio to find truthful sources of information about their government, this ideological pressure may gag one of the few sources of independent, substantive news and commentary that Americans can count on.

The visionaries who created public broadcasting set up the CPB as a nonprofit corporation charged with distributing federal funds to public radio and television. CPB's primary mission has always been to serve as a "heat shield" between government and public broadcasting, protecting its programming from government interference. But instead of serving its intended function, the CPB now is the agent of ideological interference.

We cannot let partisans drive an ideological stake in the heart of public broadcasting. At a time when media consolidation is making it more difficult for Americans to hear diverse points of view and to be exposed to substantive, challenging journalism, we must save public broadcasting from these attempts to meddle with its editorial independence. Today I'm calling on our 250,000 *Common Cause* members and supporters and all those who support public broadcasting to phone or e-mail members of the CPB board. Tell them we won't tolerate playing politics with public broadcasting.

Chellie Pingree is the president of Common Cause, a non-profit organization dedicated to ending the influence of special interests on politics.

GOP Sneaks Provision in Jobs Bill:

Free Pass for Clergy, Church Politicking

from American Atheists' AANews email newsletter #1145, dated 6/12/04

A provision smuggled into a jobs development bill now in the House of Representatives would give clerics and houses of worship greater latitude in endorsing political candidates and participating in campaigns.

Known as the "Safe Harbor for Churches" amendment, the proposed measure has been added to a 379-page legislative item known as the "American Jobs Creation Act of 2004" (HR 4520). It is similar to previous bills introduced by Rep. Walter Jones (R-NC) and other lawmakers to permit houses of worship to endorse partisan candidates, raise money and actively campaign. Current law circumscribes what churches, mosques and temples may do in terms of political activism and still maintain their special non-profit, tax exempt status.

The "Safe Harbor" proposal also comes in the wake of news that the Bush-Cheney campaign has been aggressively seeking to identify and court "friendly" congregations. Some 1,600 Evangelical churches in Pennsylvania alone were targeted as part of a re-election campaign to woo worshipers and turn out religious voters for Mr. Bush.

In 2000, religious conservatives flocked to the polls in record numbers to support George Bush. Recent surveys show the president in a dead heat with presumptive Democratic challenger Sen. John Kerry. Pundits say that once again the votes of Evangelical and Fundamentalist Christians are vital in helping the incumbent hold on to the White House.

Unlike the previous legislation, however, the "Safe Harbor for Churches" proposal was not introduced as a stand-alone bill. Rather, the measure was inserted into the Jobs Creation measure at the behest of House Speaker Dennis Hastert (R-Ill). A spokesperson for the House Ways and Means Committee cryptically told the Washington Post, "This is an election year and there are not many bills that will become law this year." Post correspondent Alan Cooperman added that Hastert's office did not return repeated calls or release any printed statement about the legislative rider.

Specifically, the church-friendly provision declares that members of the clergy may endorse candidates and engage in other political activity, but not on behalf of their affiliated religious groups. Nor could they make partisan statements in publications or functions sponsored by a church, mosque or temple. This is already stipulated in existing IRS and other regulations pertaining to non-profit groups.

But the bill would allow clerics three "unintentional violations" of tax laws per year without jeopardizing the tax exempt status of their respective houses of worship. The first "unintentional" mistake would require the church, synagogue or mosque to pay corporate taxes on one week's worth of its annual revenue. The penalty for a

second violation would be taxation of 50% of annual revenues, with the third taxing a full year's contributions.

"The big issue here is that politicians are looking for ways to allow religious groups to engage in campaigning while immunizing them from the laws and penalties other political groups face," said Ellen Johnson, president of American Atheists. "This bill does not go as far as previous legislation in terms of benefiting churches, but it is another 'green light' for religious groups to become more politically active."

A push to give religious groups wide latitude to endorse candidates and raise money for political campaigns began in the wake of the year 2000 election. Despite reports of widespread abuse by churches, two pieces of legislation were introduced in late 2001. They included the Bright Line Act (HR2931) introduced by Rep. Philip M. Crane (R-Ill) and the "Houses of Worship Political Speech Protection Act" authored by Rep. Jones. The Crane proposal would have permitted churches, mosques and temples to spend up to 20% of annual revenues for political lobbying, while

the HWPSPA authorized use of funds for endorsements and even resources on behalf of candidates.

Despite vigorous support from the religious right, both bills failed to pass.

That has not stopped the clamor, though, to involve religious leaders in political activism.

"The laws are already being circumvented on a massive scale," said AA's Johnson. "Clerics already endorse

candidates — all they have to do is stand up in front of a congregation during services and claim they are speaking as 'private individuals'."

Indeed, from the Christian Coalition to various inner-city Ministerial Councils, clerics regularly use their positions as religious leaders to endorse or oppose those running for public office. Only in rare cases do violations attract the scrutiny of the Federal Election Commission or the IRS.

Critics charge that the "Safe Harbor" provision is another effort to create a church-based machine. But supporters of the measure, and even campaign spokespersons for Bush-Cheney, say that such proposals are meant to mobilize individual voters, not congregations — a distinction many charge is disingenuous.

Sharon Castillo, a representative for the Bush campaign office told The Baptist Standard newspaper that the program to identify "friendly" churches was "intended to encourage individual-to-individual communication."

"We fully respect the letter of the law, and we (the campaign) in no way want to imply that people should use their houses of worship specifically to help the campaign," Castillo added.

...the bill would allow clerics three "unintentional violations" of tax laws per year without jeopardizing the tax exempt status of their respective houses of worship.

Bush/Zombie Reagan in '04!

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It's Morning in America... Again!

Difficult times call for great leaders -- men of vision, strength and courage. Men like George W. Bush and the shambling, reanimated corpse of Ronald Reagan. Welcome to the official Web site of Bush/Zombie Reagan 2004, Inc., home of the new Republican presidential ticket!

As the first undead nominee from a major political party, Zombie Reagan is blazing new trails, just as he did in life.

Why is Vice President Cheney been replaced on the ticket with Zombie Reagan?

Vice President Cheney has decided to step down, in order to spend more time with his family.

Additionally, his de-aging process requires that he bathe in the blood of virgins on an increasingly frequent basis. While this has not hampered his ability to perform the duties of his office in any way, it sort of creeps Condi out.

The rumor that the Vice President was moved to an undisclosed location and lost is untrue.

Is Zombie Reagan up to the task?

Yes. The zombification process offers a complete rejuvenation of physical ability, and Zombie Reagan has the constitution of twenty-year-old athlete. In fact, he no longer needs to sleep and can withstand any wound save the complete destruction of his head. By way of example, Zombie Reagan would have been able to shrug off his 1981 assassination attempt and eat his attacker. He and President Bush enjoy clearing brush together.

Can a zombie even hold elective office?

The Constitution offers no specific prohibition against zombies serving their country. In fact, the majority of the Administration is already composed of the undead. It is a little known fact that Secretary of State Colin Powell is the only cabinet-level member that still has a beating heart.

Zombie Reagan, however, cannot become President, because he has already served two terms in that office. If George W. Bush were to die during his second term (say, by

being eaten by Zombie Reagan), three options exist: the Speaker of the House would be elevated to the Presidency, Congress would convene to elect a new President or the President would undergo the zombification process and complete his term.

Will Zombie Reagan be the Ronald Reagan that the country remembers so well?

Of course. Zombie Reagan has all the genial charm and old fashioned American optimism that we grew to love in the 1980's. His appearance has changed slightly and he speaks with markedly different cadences -- as is common with zombies -- but he is everything he was in life... Except warm! Ha ha!

Will Zombie Reagan require the brains of the living to feast on?

Yes. However, enough Young Republicans have volunteered to donate the ones they aren't using that this will not be an issue.

Is Zombie Reagan really that much of an advantage? Doesn't John Kerry have the zombie vote locked up?

No. John Kerry, in fact, isn't really a zombie. He is more akin to Frankenstein's Monster, built out of parts stolen from graveyards under cover of night. He simply claims to be a zombie for political advantage.

Are you afraid that Zombie Reagan will draw attention away from President Bush?

No. Both the Administration and the party are confident that George Bush's eloquence and personal style will not be overshadowed by a lumbering, flesh-eating corpse. Well, mostly confident.

What're some other advantages of adding Zombie Reagan to the ticket?

He will demonstrate America's resolve to continue the battle against terrorism. Instead of retreating to an undisclosed location following an attack, for instance, Zombie Reagan will be on the front lines, eating illegal combatants.



America Shrugged...

(cont. from page 7)

many liberal Democrats and gay rights advocates, who are organizing fiercely in light of his support of the FMA.

Gay groups on college campuses and in community centers across the country are briskly registering new voters, painting Bush as a tyrant who is turning gays into second-class citizens. The Human Rights Campaign, the largest gay group in Washington, last week launched an ad campaign excoriating Bush, which will appear more than 85 times in gay, lesbian, bisexual and transgender community publications. Even the Log Cabin Republicans launched television commercials critical of Bush for supporting the amendment.

Most of those in the religious right who feel passionately about the FMA are voting for Bush anyway. It's quite possible that Bush's continued vocal support of the FMA will get more Democrats than Republicans out to vote—it's certainly energizing loyal Democratic constituencies like gays and lesbians. Meanwhile, the majority of voters, including swing voters, will only continue to note that Bush is trying to change the subject and focus on an issue that is not a priority for them. It's not that they support same-sex marriage necessarily—though the most recent Newsweek poll showed a slim majority supporting some form of legal sanction for gay unions—but seeing Bush pandering to the religious right while there are so many other issues affecting the country isn't going to play well. As an issue this election year, same-sex marriage may turn out to be a trap that Karl Rove set for Kerry, but which hapless W. walked into all by himself.

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