The Trouble with Employment Law

by Walter Olson

Over the past 35 years, legislators, regulators, and courts have invented and imposed on the American workplace a vast new body of law ranging from sexual harassment and handicap-accommodation law to age discrimination law to mandated family leave to new common-law doctrines making employers liable for "wrongful termination," "workplace defamation," infliction of emotional distress by harshness in supervision, and much more. Practicing lawyers refer to that new body of law as employment law and distinguish it from the earlier labor law associated with the New Deal. It is mostly advanced, not by unions or by collective worker sentiment or action, but by lawyers' threats to sue for large damages on behalf of one or a few workers. It aspires to regulate, not just hiring, firing, and wage setting, but the whole range of working conditions, including conversations and psychological interactions on the job.

Individually, these laws have been adopted on a variety of rationales. Taken as a group—and in the minds of many of their supporters—they embody a more wide-ranging objective. They aim to bestow on workers a form of job security, assuring them they will not be fired, denied promotion, or subjected to other adverse action for what a court deems bad reasons. In effect, the laws implicitly promising to tie employers' hands only from acting with "bad cause," the laws in fact deter many actions taken for good cause as well, simply because many employers will put up with much genuine incompetence or insubordination rather than take even a small risk of being dragged into an expensive lawsuit with some random chance of losing in the end. The result has been harm to the cause of excellence and even basic competence in the workplace, with serious resulting costs not only for businesses and their owners but also for coworkers and customers.

What of the promised benefits? Here, too, employment law often backfires: labor markets adjust to the new climate in ways that hurt the intended beneficiaries and undercut the aim of job security. If employers and employees are left free to do so, most will find it advantageous to negotiate arrangements that reflect the traditional legal

Walter Olson is a senior fellow at the Manhattan Institute. This article is excerpted and adapted from The Excuse Factory: How Employment Laws Are Paralyzing the American Workplace, published by the Free Press.

In This Issue

Crane on the budget deal 2
Book by Václav Klaus 3
Upcoming events 6
Clinton and the Constitution 7
The Religious Freedom Restoration Act: a debate 8
New Cato staff 11
The need for water markets 15

Continued on page 6
A Failure of Leadership

The recent “budget deal” (as it’s always flippantly referred to here in Washi-
Václav Klaus’s essays published

Up from Communism

Václav Klaus was appointed finance minister of the Czech Republic in 1990, shortly after the demise of that country’s communist government. Two years later he was named prime minister, and in that capacity he has been one of the most effective spokesmen for classical liberal ideas in the world. With the publication of Renaissance: The Rebirth of Liberty in the Heart of Europe, the Cato Institute brings together 29 essays and speeches by Klaus, all of which were originally written or delivered in English.

The book has received widespread praise. Margaret Thatcher says, “Klaus is one of the most remarkable political figures of our time. His bold and persuasive message should be taken to heart not just in the Central and Eastern European countries but throughout the world.” Former secretary of state George P. Shultz calls Renaissance “an inspiring blend of ideas and action by a man of ideas and action—of purpose and of belief in the essence of freedom.” And Nobel laureate James M. Buchanan states, “These essays reflect the extension of ideas into the hands-on politics of Central Europe in transition. Well might other nations (including our own) wish for political leaders who understand the necessary foundations for a free society.”

Renaissance is divided into four sections. The first section, “The Process of Transformation,” includes his essay, “Rebirth of a Region: Central Europe Five Years after the Fall,” which was originally delivered at the Atlantic CEO Institute Conference in Prague in 1994. In it he discusses what he believes were the most important steps toward restoring the rule of law and bringing prosperity to a region that had neither.

“The most important change at the macroeconomic level was general privatization,” Klaus says. That was achieved through a system of bids and auctions in which properties were systematically transferred to private hands. “At the macroeconomic level, the task,” he reports, “was to end the paternalism of the state, eliminate all forms of subsidies, keep the state budget in balance, and pursue an independent monetary policy.” Much of that has taken place now, and the Czech Republic, according to Klaus, has made it past “major surgery” and is in the “rehabilitation center.”

How was such radical change possible in such a short time?

Klaus answers that question in “Current Challenges and Conservative Solutions.” He says, “We started our Velvet Revolution, our systemic change, our fundamental change of the entire political, social, and economic framework—not a reform, not perestroika—with a clear positive vision of the society we wanted to live in.” Thus, the desire to break with communism completely, not to try to mold it into something improved but fundamentally the same, was the key. Klaus continues, “We learned from Hayek, Popper, and other thinkers that the evolution of human institutions, and especially the evolution of such complex systems as society, proceeds more by means of ‘human action’ than of ‘human design.’ We had no dreams about mixed systems, about third ways or different vintages of perestroika.”

Also included in Renaissance are his views on foreign aid, what monetary systems are consistent with a free and vibrant society, civil liberties, and egalitarianism. Regarding the latter, he says, “We are sometimes accused of forgetting to mention adjectives other than ‘free.’ However, I believe that it is sufficient to guarantee freedom—individual happiness is up to each of us.”

The book can be purchased for $18.95 (cloth) or $9.95 (paper) by calling 1-800-767-1241.
Nickles Keynotes Social Security Conference

- February 5-9: The Cato Institute held its annual Benefactor Summit in Scottsdale, Arizona. Among the speakers were Nathaniel Branden, author of *The Psychology of Self-Esteem*; individualist feminist Christina Hoff Sommers; and Sen. Sam Brownback (R-Kans.). In addition, Charles Murray discussed his new book, *What It Means to Be a Libertarian: A Personal Interpretation*; Tom Palmer and George H. Smith delivered lectures on philosophy and history; and Cato policy directors spoke about their areas of research. More than 170 people attended the event.

- February 12: At a Policy Forum on "Considering Competition in Long-Distance Telephone Service," three speakers debated long-distance telephone deregulation. While generally agreeing that deregulation should be pursued, Paul MacAvoy of Yale University and Robert Hall of Stanford University differed over structural separation: MacAvoy disputed Hall's claim that it is in the best interest of the consumer. Sam Simon of Issue Dynamics was skeptical of efforts to further deregulate the industry.

- February 13: Cassandra Chrones Moore, adjunct scholar at the Cato Institute and the Competitive Enterprise Institute, spoke about her new Cato book, *Haunted Housing: How Toxic Scare Stories Are Spooking the Public Out of House and Home*, at a Book Forum. Moore argued that the dangers of radon, lead, asbestos, and electromagnetic fields have been greatly exaggerated by regulators and the media, which has artificially inflated housing costs. She played a public service announcement by the Environmental Protection Agency designed to frighten and mislead homeowners about radon. Vena Jones-Cox of the Ohio Real Estate Investment Association gave a first-hand account of how zealous regulators have reduced the supply of housing, particularly low-income housing.

- February 14: The Cato Institute hosted a day-long conference titled "The Other Side of the Pyramid: A New Social Security System for the Next Century." The conference included four panel discussions; a luncheon address by José Piñera, codirector of the Cato Project on Social Security Privatization, and a keynote address by Senate Majority Whip Don Nickles (R-Okla.). After the conference John Stossel of ABC's *20/20* hosted a Town Hall meeting to be aired later this year.

- February 18: The Cato Institute hosted a debate, "Is the Religious Freedom Restoration Act Constitutional?" On the negative, Marci A. Hamilton, professor of law at Cardozo Law School, argued that the act is unconstitutional and imprudent because it does not respect local autonomy and is a threat to federalism. On the affirmative, Kevin J. Hasson, president and general counsel of the Becket Fund for Religious Liberty, argued that the act is constitutional because it grants people even more liberty than they now have and is consistent with section 5 of the Fourteenth Amendment. The next day Hamilton argued the constitutionality of the act before the Supreme Court.

- February 19: At a Policy Forum on "Welfare, Affirmative Action, and the Black Family," Bill Stepney, a rap music producer, argued that welfare has undermined the formation of families with fathers. That, he maintained, has produced feelings of inadequacy, which, in turn, have led to misogynist music and many other problems. He also discussed the consequences of affirmative action policies.

- February 21: The Cato Institute hosted a City Seminar in Atlanta. Rep. Mark Sanford (R-S.C.) delivered the keynote address, "A Free-Market Agenda for the 105th Congress," and José Piñera, codirector of the Cato Project on Social Security Privatization, gave the luncheon address. Ed Crane, David Boaz, and Michael Tanner, all of the Cato Institute, also spoke.

- February 27: Paul Peterson, professor of government at Harvard University, discussed his study of Milwaukee's school choice program at a Policy Forum titled "School
Choice in Milwaukee: The Evidence of Gains. Peterson argued that despite the limited nature of Milwaukee's program—for example, only 1 percent of the public school population was allowed to participate and religious schools were excluded—choice produced significant gains. Among other things, math and reading test scores rose. Jeffrey Henig, author of Rethinking School Choice, maintained that the improvements were minor and could possibly be attributed to methodological problems with the study.

March 6: John Fialka, author of War by Other Means: Economic Espionage in America, spoke at a Policy Forum on "Economic Espionage and the Clinton Administration." He argued that economic espionage costs Americans billions of dollars each year and that the federal government should take more aggressive action to prevent it from occurring. Stanley Kober, research fellow in foreign policy studies at the Cato Institute, concurred that economic espionage takes place but maintained that it is not hurting American competitiveness. Moreover, should America's intelligence agencies concentrate on preventing economic espionage, their attention could be drawn away from more pressing national security concerns.

March 19: The Cato Institute hosted a Policy Forum on "Trade, Human Rights, and U.S. Foreign Policy." Mike Jendrzejczyk of Human Rights Watch Asia argued that economic sanctions against countries with poor human rights records can help to produce positive change in those countries. Marino Marcich of the National Association of Manufacturers and Stuart Anderson of the Cato Institute maintained just the opposite. They argued that trade brings not only new products but also new ideas—ideas that eventually permeate the culture and help to topple authoritarian regimes.

March 24: At a Policy Forum on "Wiretapping in the Digital Age: Reassessing CALEA," four panelists discussed the Communications Assistance in Law Enforcement Act, which requires phone companies to retrofit networks to facilitate wiretapping by law enforcement agencies. Alan McDonald of the Federal Bureau of Investigation maintained that CALEA enables the federal government to better track and monitor possible terrorist threats. Barry Steinhardt of the American Civil Liberties Union, Jim Dempsey of the Center for Democracy & Technology, and Albert Gidari of the law firm of Perkins Coie contended that wiretapping is already overused and that bills that broaden the government's ability to wiretap, such as CALEA, should be viewed with skepticism.


March 27: At a Book Forum broadcast by C-SPAN, Julian Simon, professor of business administration at the University of Maryland and senior fellow at the Cato Institute, discussed his newest book, The Ultimate Resource 2, published by Princeton University Press and the Cato Institute. In that 700-page work, Simon contends that every trend in material human welfare has been improving and will continue to do so indefinitely.
assumption of “employment at will,” in which either side can break off the relationship. Employers value such a deal because they want to control their payroll and seek out the best talent; employees would benefit too because such an arrangement improves the chance that an employer will go out on a limb to offer them attractive jobs in the first instance. By stepping in to forbid such contracts, our lawmakers and courts suggest that they are more intent on imposing their own values than on respecting workers’ own choices of acceptable tradeoffs in the workplace.

The Assault on Competence

In The Excuse Factory, I trace dozens of examples of how the new employment law has protected alcoholic pilots, firefighters who lack the physical strength to lift hoses or rescue bodies, secretaries who can’t type, blue-collar workers who can’t make it in to work on time, teachers who can’t spell or pronounce words, operators of dangerous industrial machinery who smoke pot on break or can’t read warning signs, and office workers who steal from their colleagues’ purses and desks. This is hardly what we were promised when the new laws were introduced. Most of the new laws on their face seemed only to rule out employment decisions based on improper factors such as bias, spite, personality conflicts, and the like. Thus, during the debate over the 1964 Civil Rights Act, Sen. Hubert Humphrey foresaw a new emphasis on “qualifications” in hiring, with the result that the law would “not only help business, but also improve the total national economy.” Not only were we going to keep on permitting merit hiring; we were going to require it.

The rapid rise of reverse preference and affirmative action inevitably changed the tone. By 1968 the University of Minnesota had adopted a pioneering “policy commitment” that contained a not exactly inspiring promise to “hire and promote disadvantaged persons wherever there is a reasonable possibility of competent performance.” An EEOC consent decree provided for an “affirmative action override” allowing AT&T to “promote a ‘basically qualified’ person rather than the ‘best qualified’ or ‘most senior.’” ABC’s 20/20 assembled examples of guidelines for federal hiring; Federal Aviation Administration guidelines provide that “the merit promotion process . . . need not be utilized if it will not promote your diversity goals.” “In the future,” a Defense Department memo specifies, “special permission will be required for the promotion of all white men without disabilities.” The U.S. Forest Service achieved a formulation that was hard to improve on: “only unqualified applicants will be considered.”

Not surprisingly, critics of employment law have focused on the case against reverse preference and affirmative action. But even if both disappeared tomorrow, the new employment law would continue to prevent employers from filling jobs with the most competent workers. Prevailing EEOC doctrines would still divide workers into “qualified” and “unqualified” universes and forbid preferring the highly qualified to the minimally qualified. Most ways employers measure or document merit at either the hiring or the firing stage would still be under a legal cloud. A dozen laws would still make it risky to fire or discipline rebellious underperformers.

Putting Us in Danger

In the early years of the new law, the courts tended to go easy on second-guessing employer decisions where the consequences of get-
Assessing Clinton’s Constitutional Record

Although President Clinton has expressed support for an “expansive” view of the Constitution and the Bill of Rights, his “record is, in a word, deplorable,” writes Timothy Lynch in the new Cato study “Dereliction of Duty: The Constitutional Record of President Clinton” (Policy Analysis no. 271). Lynch, assistant director of the Cato Institute’s Center for Constitutional Studies, contends that if “constitutional report cards were handed out to presidents, Clinton would receive an F.” As evidence of Clinton’s poor record, Lynch cites the administration’s attempts to censor the rights of peaceful protesters; its military involvement in Bosnia and missile attacks on Iraq, which did not have congressional approval; and its attempts to federalize health care, crime fighting, environmental protection, and education. On questions of both economic and civil liberties, Lynch concludes, President Clinton has acted beyond his constitutional authority and has placed the liberty of American citizens in peril.

School Vouchers: A Free-Market Debate
Disentangling the government from matters with which it should not be involved is often very difficult. Education is a prime example. In the new Cato Institute study “Vouchers and Educational Freedom: A Debate” (Policy Analysis no. 269), Joseph L. Bast and David Harmer square off against Douglas Deerey on the issue of school vouchers. Bast, president of the Heartland Institute, and Harmer, author of School Choice: Why You Need It, How You Get It, maintain that vouchers would not subject private schools to excessive government regulation and in fact would eventually lead to the complete separation of school and state. Perhaps more important, they contend that no greater reform is politically feasible. Deerey, president of the National Scholarship Center, counters that vouchers would create a vast system of government contractors and parents with “school stamps,” a massive lobby for ever-increasing subsidies. In addition, he argues that Bast and Harmer are wrong in suggesting that vouchers would not lead to greater regulation of private schools. This study is the first “dueling” Policy Analysis the Cato Institute has ever published.

The Problems of “Global Leadership”
In a new Cato study, “U.S. ‘Global Leadership’: A Euphemism for World Policeman” (Policy Analysis no. 267), Barbara Conry, foreign policy analyst at the Cato Institute, argues that “global leadership” should not be the goal of U.S. foreign policy. “Although ‘leadership’ sounds benign,” she writes, “today’s proponents of global leadership envision a role for the United States that resembles that of a global hegemon—with the risks and costs hegemony entails.” Instead of policing the world, she maintains, the United States should concentrate on protecting its vital national security interests. That could be done through greater reliance on regional security organizations, the creation of spheres of influence, and regional balance-of-power arrangements.

Programming Mandates vs. the First Amendment
In August 1996 the Federal Communications Commission adopted rules requiring television broadcasters to air at least three hours per week of “educational” programming for children. In a new Cato Institute study, “Regulation in Newspeak: The FCC’s Children’s Television Rules” (Policy Analysis no. 268), attorney Robert Corn-Revere argues that this rule is flawed in two respects: it will not
Is the RFRA Constitutional?

On February 18th the Cato Institute hosted a debate titled “Is the Religious Freedom Restoration Act Constitutional?” Arguing the affirmative was Kevin J. Hasson, president and general counsel of the Becket Fund for Religious Liberty. His opponent was Marci Hamilton, professor of law at Cardozo Law School and counsel for the city of Boerne, Texas, which is challenging the constitutionality of the act. Roger Pilon, director of Cato’s Center for Constitutional Studies, introduced the debate.

Excerpts from his and the speakers’ formal remarks and their rebuttals follow.

Kevin J. Hasson

America was founded to a substantial extent by people seeking religious liberty. It was no accident, therefore, that when we declared ourselves a separate, self-governing people, we put the protection of our diverse religious traditions foremost among our concerns. The First Amendment plainly states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” When governments were limited, religious freedom was a relatively uncomplicated matter. With the growth of government over the 20th century, however, the opportunities for conflict between state and church have grown exponentially.

The dispute before us, City of Boerne, Texas v. Flores, which the Supreme Court will hear tomorrow morning, is a case in point. It arose when the archbishop of San Antonio, P. F. Flores, sought a construction permit from the city of Boerne to tear down a local church and build a new one. That the archbishop could proceed only with government permission tells us that we are in the 20th century. That the permit was denied under local historic preservation laws tells us that we are well into a century that permits change only when it conforms to some massive government plan. When the permit was denied, Archbishop Flores sued, invoking the Religious Freedom Restoration Act, which Congress had passed in 1993. In defense, the city claimed the act was unconstitutional because it violated the separation of powers doctrine.

Here the issues start to get complicated, but it’s important to outline them if our discussion is to make sense. RFRA was signed by President Clinton with great fanfare and broad bipartisan support. The act was in response to the 1990 Supreme Court opinion in Employment Division v. Smith, in which the Court abandoned the strict scrutiny it normally invokes in cases dealing with religious freedom and applied a middle level of scrutiny to find that the state of Oregon could deny unemployment benefits to Native Americans who had been fired from their jobs after using illegal peyote as part of their religious rituals. The Court held that there is no special religious exemption from neutral, generally applicable laws that happen to have an “incidental effect” on the free exercise of religion.

The question here is not simply about religious freedom. It is also about federalism under the Fourteenth Amendment, which in section 5 gives Congress “the power to enforce, by appropriate legislation, the provisions” of section 1, including the provision that “no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

And it is a question, perhaps more vexing, of whether Congress has the power to intrude upon the Court’s interpretation of the Constitution by requiring a higher standard of review for religious freedom cases than the Court has used—a separation of powers question that takes us back to the seminal case of Marbury v. Madison.

Marci Hamilton: If upheld, the Religious Freedom Restoration Act will transform our society from one in which churches are expected to be fair-minded members of their respective communities to one in which churches hold the upper hand, whether the issue is zoning, prison regulation, or taxation. RFRA’s disdain for the rule of law and for a responsible role for churches is certain to engender less, rather than more, religious tolerance. It is unfortunate that it was drafted in such legalistic terms and therefore is largely inaccessible to the people, who should understand what has hit them.

If you look at the record of the Constitutional Convention, the one word you will see over and over again is “tyranny.” The Framers recognized that tyranny is possible when you have great concentrations of power, and they agreed that the way to avoid tyranny was to divide and decentralize power. They did that in the Constitution of the United States.

The three most important structural safeguards in the Constitution are the separation of the powers of the three federal branches; federalism, which separates the powers of the federal government and the states; and the establishment clause, which separates the powers of church and state. RFRA crosses all three boundaries simultaneously.

No one, not even the respondents in this case, would disagree that the Supreme Court has the final word on the meaning of the Constitution. Once the Supreme Court has declared the meaning of the Constitution, that is its meaning. No other branch has the authority to subvert that meaning.

I believe that Marbury v. Madison in 1803 stated the problem with RFRA most elegantly. Chief Justice Marshall said,

Either the Constitution controls any legislative act repugnant to it, or the legislature may alter the Constitution by an ordinary act. Between these alternatives there is no middle ground. The Constitution is either a superior paramount law
unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislator shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law. If the latter part be true, then written constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable.

Which is to say that if the Constitution does not place meaningful checks on the exercise of authority by the legislature, its authority will be boundless.

To understand RFRA you have to understand its scope. The act applies to every law in the United States, whether it was drafted and enacted by a city, a state, a municipality, or the federal government, and whether or not it is a written law. It also applies whether the law was passed before or after RFRA. In other words, this act intends to be the structural equivalent of the Constitution. No other law in this country has that scope. Congress has never before passed a law that has such scope, and RFRA's scope is the prime indicator that what Congress in fact is trying to do is to displace the judiciary's decision with its own policy determination that a different standard ought to be applied in cases involving religious freedom.

The text of the Fourteenth Amendment makes clear that RFRA exceeds congressional authority. Section 5 of the amendment gives Congress authority only to enforce constitutional guarantees, that is, "the provisions of this article." In contrast, RFRA attempts to redefine in gross the guarantees of the free exercise clause. No matter where you look—the legislative history; the president's signing statement; or the amicus brief by RFRA's drafters, the Coalition for the Free Exercise of Religion—the purpose of RFRA was to overturn Smith and to provide protection against laws that do not violate the free exercise clause.

Moreover, any law passed under section 5 must be "appropriate." There must be some proportional fit between means and ends, and under the Court's decision in the civil rights cases, there must be evidence of state wrongdoing to justify federal intervention. RFRA is not appropriate under either of those criteria.

Many people will say, "Why should we hamstring Congress by forcing it to act within the confines of a particular enumerated power, especially when what we are doing, expanding religious liberty, is a good thing?" The answer is twofold. First, the Framers understood what we need to relearn—that holding the government to the enumerated powers is the only way to adequately contain a federal branch that has the means to become unlimitable. Second, the powers of church and state need to be balanced.

As a religious believer, I am uneasy about the major organized religions' coming together to draft a statute for Congress, to lobby for it on the Hill, and then to litigate it to the hilt. The organized religions have come together with the most dangerous branch of government, Congress, to elevate their power in their communities. That is the very union of power that was most feared by the Framers.

If RFRA is upheld, we can simply install a moving sidewalk between the Court and Congress so that, when the Court issues a constitutional interpretive decision, the losers can more easily reach Congress to overturn that interpretation. We can also expect an onslaught of federal control of state and local lawmaking in every arena. The text of the Fourteenth Amendment says, in part, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The expansive reading of the Fourteenth Amendment suggested by the church and the federal government in this case would eviscerate the liberty that is preserved when local communities have a measure of autonomy from a distant and centralized national power. RFRA threatens to erode local autonomy and to cement the unfortunate expansion of federal power that has occurred over the last half century.

Kevin J. Hasson: Professor Hamilton and I agree that religious liberty is important. She and I agree on virtually nothing else. The Religious Freedom Restoration Act is constitutional because it gives people in the United States even more liberty. It takes authority from both the federal government and the state governments and gives even more liberty. Giving even more liberty than the Constitution requires is a perfectly respectable thing to do under the Fourteenth Amendment. And thus RFRA is constitutional.

But let me digress for a moment and discuss whether RFRA is a good idea. I think it is. Professor Hamilton and I disagree about that, too. Whether it is a good idea, however, has nothing to do with whether it is constitutional. There are all sorts of bad ideas that are constitutional and all sorts of good ideas that are unconstitutional. This is a good idea that happens to be constitutional.

Let me point to two cases to demonstrate my point. An Orthodox rabbi in Miami Beach recently wanted to hold prayer meetings in his home and was told by the city that he could not do so because it would violate the zoning requirements. He sued and the courts said, "We're sorry. This is a neutral law of general applicability and you may not hold prayer meetings in your home." Then RFRA was passed. The rabbi sued again. The district court again said no, but the court of appeals reversed and stated that RFRA permits such activity.

The second case, which is a suit that the Becket Fund is arguing, involves the Defense Department's denying persons the freedom to preach to a broad coalition of Christians, Jews, and Muslims. Under a neutral law of general applicability, the Defense Department has told those people that they may not preach against President Clinton's veto of the partial birth abortion ban and in favor of Congress's override of it. I do not want to say that without RFRA we would lose because I do not believe that is true, but RFRA is clearly our strongest argument.

Now back to why RFRA is constitutional. The Fourteenth Amendment does three things: guarantees equal protection of the law; prohibits states from depriving people of life, liberty, or property without due process; and prohibits states from denying to citizens the privileges or immunities of U.S. citizenship. It also grants enforcement rights to Congress. And there is a very important reason it did that. The reason is that the people did not trust the Supreme Court to enforce
RFRA, continued from page 9

the amendment. The country had just gone through a civil war and the Supreme Court then sitting was virtually the same Court that had handed down Dred Scott. That grant of enforcement power to Congress, specifically because the Court was not trusted, is what is at issue in this particular case.

On the day that the final draft of the Fourteenth Amendment was introduced, Senator Howard, who introduced it, had this to say, and it's lengthy but it deserves to be quoted in full.

Now sir, there is no power given in the Constitution to enforce and to carry out any of these guarantees. [The guarantees he was speaking of explicitly were the first eight amendments to the Constitution.] They stand simply as a Bill of Rights in the Constitution without power on the part of Congress to give them full effect. While at the same time, the states are not restrained from violating the principles embraced in them. Up until that time the Bill of Rights were limitations only on the federal government, not the States, and the Court, not the Congress, had any power to do anything about them. As I have remarked they are not powers granted to Congress and therefore it is necessary, if they are to be effectuated and enforced, as they assuredly ought to be, that additional power should be given to Congress to that end. This is done by the fifth section of this amendment, which declares that the Congress shall have power to enforce by appropriate legislation the provisions of this article.

Here is a direct affirmative delegation of power to Congress to enforce all those guarantees, a power not found in the Constitution. Congress knew precisely what it was doing. It was giving itself the power to do what it did not trust the Court to do: to carry out, enforce, and effectuate all the principles of all those guarantees. One of the specific problems that Congress was worried about, and the debates at the time are replete with references to it, was the religious liberty of people in the South. Southerners had invoked noise regulations "to suppress the religious meetings among the colored people." Planners proposed regulations authorizing only ordained ministers to preach and imposing a 10:00 p.m. curfew on meetings. That sounds a lot like a zoning regulation in Miami Beach to me.

Let me pause for a second to ask if it is troubling that Congress has so much authority. Sure it is. Any time you give Congress authority, it's troubling. Members of Congress tend to do dumb things with it. Nevertheless, the Constitution is what the Constitution is, and section 5 of the Fourteenth Amendment says what it says.

In sum, RFRA restricts the powers of the federal government and state governments and as a result gives people even more liberty. That's why it's constitutional, and that also happens to be why I believe it's a good idea.

Hamilton: I think that you can understand now why I started out by saying that the problem with RFRA is that it lacks respect for the rule of law. Mr. Hasson stood up here and complained about the bureaucrats of Boerne. The bureaucrats of Boerne are duly elected officials who are carrying out the plans the people of Boerne have asked for. If RFRA is good law and can be applied to every law that is passed at any level, why is it that the people cannot, through their duly elected officials, set the agendas for their communities? There is less liberty overall when federalism is completely stomped out by the ability of a centralist government to determine what the level of liberty will be in every community. Federalism is at stake in this case. It is at stake because those who have drafted, lobbied for, and are now liti-
gating RFRA firmly believe that elected officials are nothing but bureaucrats. That is simply inaccurate. I'll be the first to talk about the executive branch's being filled with bureaucrats who don't do the right thing, but that's not what we're talking about here. We're talking about duly elected local officials.

Another problem with RFRA was conceded by Mr. Hasson. He stated that the law provides even more liberty than the Constitution requires. That's true, and that's the problem. Section 5 of the Fourteenth Amendment is meant to enforce constitutional guarantees. RFRA does not attempt to enforce constitutional guarantees. It attempts to enlarge them dramatically with respect to every law and every government in the United States for the purpose of imposing Congress's policy views on religious issues on the courts and on the states. RFRA is dramatically different from anything the Court has ever said is appropriate.

Hasson: Even assuming that bureaucrats tend to pursue the will of the people, a very charitable assumption, the will of the people is simply not the end of the matter. We do not live in a pure democracy. The Bill of Rights was designed specifically to prevent the will of the people from accomplishing certain things. The Fourteenth Amendment was passed specifically to prevent the will of the people, especially in the southern states, from accomplishing many things that Congress thought were evil, including trampling on religious liberties. What Professor Hamilton seems to be arguing is that section 5 was a bad idea. Maybe it was a bad idea, but, good idea or bad, it is part of the Constitution.
Regulation magazine redesigned

Cato Names New Staff

In its effort to advance the market-liberal message, the Cato Institute has made a number of additions to its staff and has redesigned Regulation magazine.

- Pat Korten has joined the Cato Institute as vice president for communications. Korten, a long-time public relations professional, served as spokesman for the Department of Justice during the Reagan administration. He is the producer of CatoAudio, the Institute’s monthly audio magazine.

- Dan Greenberg has been named director of communications. He previously worked for the Heritage Foundation and Gov. Mike Huckabee (R-Ark.).

- Tom W. Bell, former assistant professor of law at the University of Dayton Law School, is Cato’s new director of telecommunications and technology studies. Bell replaces Lawrence Gasman, who will be returning full-time to his consulting firm, Communications Industry Researchers, Inc. Gasman, now a senior fellow of the Institute, did much to advance Cato’s work in this important area, including writing a 1994 book, Telecompetition: The Free Market Road to the Information Highway. Solveig Bernstein, previously assistant director of telecommunications and technology studies, is now associate director.

- Earl C. Ravenal, professor of international relations emeritus at the Georgetown University School of Foreign Service, has been named distinguished senior fellow in foreign policy studies at the Cato Institute. Previously, Ravenal was a senior fellow and a member of the Board of Directors of the Institute. He is the author of numerous books, including Designing Defense for a New World Order and Strategic Disengagement and World Peace: Toward a Noninterventionist American Foreign Policy. Later this year Cato will publish his new book, Defending America in an Uncontrollable World: The Military Budget, 1998–2002.

- Richard A. Long has been named vice president for administration. Long, a graduate of Virginia Tech, has held a number of senior managerial positions in the insurance industry.

- Darcy Olsen, formerly managing editor of Regulation magazine, has replaced Naomi Lopez as entitlements policy analyst at Cato. Lopez has taken a position at the Institute for Socioeconomic Studies in White Plains, N.Y.

- Regulation magazine, Cato’s review of business and government, has recently been redesigned. According to Regulation’s editor, Edward L. Hudgins, the staff attempted to give “the magazine a classic look and also endeavored to improve Regulation’s various sections.”

  Hudgins hopes to see the Letters section, which has grown over the past two years, continue to gain importance and become “a forum in which vital regulatory issues are vigorously debated.” In addition, in the Perspectives section, which will replace Currents, experts will offer brief analyses of and commentaries on a wide variety of topics.

  The magazine will also feature regular columnists. Fred L. Smith, president of the Competitive Enterprise Institute, will discuss technology policy. Brink Lindsey of Willkie Farr & Gallagher will write about trade issues. Frank Wilner, chief of staff at the Surface Transportation Board, will offer an insider’s perspective on government regulation. Timothy Lynch, assistant director of Cato’s Center for Constitutional Studies, will question the constitutionality of government regulations. And Sheldon Richman, vice president of policy affairs at the Future of Freedom Foundation, will explore the humorous side of government mandates.

  Peter VanDoren, Cato’s assistant director of environmental studies, will head up the much-expanded book review section. The main Features section will continue to offer in-depth examinations of the assumptions behind the effects of, and the alternatives to current regulations.

  The Winter 1997 issue of Regulation is the first to incorporate those changes. It can be purchased for $5 by calling (202) 842-0200.

Earl C. Ravenal

Edward L. Hudgins

Are We Spooking the Public Out of House and Home?

“Fascinating and compelling—everything you want to know about the fears and reality of the dangers of radon, lead, asbestos, and electromagnetic fields. This book should spur a reevaluation of where and how we spend our resources to save lives, an evaluation that is long overdue.”

—Bruce N. Ames
University of California at Berkeley

283 pages, $21.95 cloth, $11.95 paper.
To order, call toll-free: 1-800-767-1241, Monday-Friday, noon to 9 p.m. eastern time.
The Americans with Disabilities Act has the potential to force the watering down of every imaginable standard of competence.

EMPLOYMENT LAW Continued from page 7

the safety issue they reversed field with a disability-rights decision known as Aline, rebuking a Florida school district that had worried that a tubercular teacher might go off the medication that kept her from being contagious in the classroom. Henceforth, the Court said, employers that wanted to invoke safety reasons for personnel decisions would have to prove "substantial" risk, and the Court's disapproving tone made clear that such claims would be less welcome than in the past. The "inexplicable deference to employer decisions that involve public safety," so offensive to the Texas Law Review authors, had been withdrawn.

The Impact of the ADA

The passage of the Americans with Disabilities Act was a decisive success for those who thought a little risk helps spice things up. Barbara Lee writes in the Berkeley Journal of Employment and Labor Law that the ADA "will make it very difficult for employers to make a successful safety defense in any but the most extreme cases." ADA advocates have repeatedly stressed that an employer can't win merely by showing an "elevated risk" of injury to customers or coworkers; it must also prove the risk "substantial," "direct," and not to be mitigated by any possible accommodation.

In their 1981 volume, Teachers and the Law, Louis Fischer, David Schimmel, and Cynthia Kelly disputed the notion that it's virtually impossible to get a poorly performing teacher out of the classroom. As evidence they offered five real-life cases in which districts were upheld in ousting educators for incompetence. But that was in 1981. Now the ADA has made the authors' examples obsolete; it would give all five of the teachers a shot at contesting their removal.

One of the milestones marked by disabled-rights law lay in the revision of the definition of competence itself. An "employer who performs the traditional 'can the person do the job' analysis," explains one commentator, "generally will have violated the A.D.A." An employer must not insist on the capacity to handle any particular task unless it is demonstrably "essential" to the job, and EEOC guidelines include verbiage endorsing, officially, "the same performance standards and requirements that employers expect of persons who are not disabled." But despite such "soothing language," writes Barbara Lee in the Berkeley Journal of Employment and Labor Law, in practice "employers should prepare for a substantial amount of second-guessing about essential functions and...production standards."

Indeed, it's hard to think of a type of shortcoming in a worker that might not be a potential manifestation of some disability. In the new age of accommodation, even deficits arising from causes other than disabilities increasingly must be ignored, accommodated, or both. Lack of proficiency in the English language is an example; some who fall short in this area can claim some sort of disability, but another large group has trouble because English is not their native language. The latter group is not covered by ADA but has been brought under legal protection by the simple expedient of stretching the bans on national-origin and alienage bias.

From the perspective of the customer the left shouting at the uncomprehending taxi driver or hospital orderly, inability to communicate clearly in English might appear a simple issue of competence, or perhaps safety. But a line of cases descending from the landmark ruling in Díaz v. Pan Am (1970) encourages courts to ignore such feelings by suggesting that customer preferences are an improper criterion in hiring. It is "necessary to reject customer preference arguments," agrees Mari Matsuda in a widely cited Yale Law Journal article calling for stronger legal enforcement of the emergent legal doctrine against accent discrimination. Matsuda concedes that banning accent discrimination in customer-service jobs "will admittedly impose some hardship on businesses that rely heavily on pleasing customer whims"—an impressive formulation, reducing as it does to a mere "whim" humans' desire to communicate with each other in transacting their affairs.

ADA has the potential to force the rethinking—and watering down—of every imaginable standard of competence, whether of mind, body, or character. In the Texas Law Review, Thomas McGarity and Elinor Schroeder argue that rather than let employers go on finding excuses to prefer physically stronger candidates for heavy-lifting jobs, the law should require them "to reduce lifting requirements for all employees." Abolish heavy lifting by law—why hadn't anyone thought of that before?

A widely cited 1991 Harvard Law Review article by Stanford professor Mark Kelman refers casually to the "illegitimacy of mainstream judgments of merit." Many people, Kelman concedes, may imagine that "an individual merits a particular benefit as long as he actually possesses the specified qualifications for the benefit," but that is to take "a completely formal and static view of merit." A properly "contingent view of personhood and merit" would recognize that qualifications for a job relate more "to meeting ever-shifting social needs." What that means in practice is that even if "by hypothesis" certain workers are better able to perform some jobs, it is "not obvious" that they are in any way "entitled" to them. "More politically progressive commentators," among whom there is little doubt the author is included, deny "the legitimacy of allowing private employers to distribute [jobs or income] in accord with either current or potential productivity."

The Law's Elusive "Benefits"

Markets are a moving target. They react to controls by adjusting, often slowly at first and then more and more fully in the long run. Time and again, when attempts are made to impose artificial job security, markets adjust in ways that gradually undercut the goal.

Employment-security buffs used to point with pride to Europe, where employers have long operated under tenure laws that, by American standards, are extremely stringent. To all appearances, the laws had indeed contributed to (as well as resulted from) what one might call a culture of tenure. Labor statistics suggest European workers are much more likely than their American counterparts to stay with a single employer for many years, both because layoffs and dismissals are less frequent and because they quit their jobs at a much lower rate. "My great-grandfather walked 200 miles in his clogs to get here, and I'm damned if I'm going to move out now," said a Welsh coal miner, with no irony intended, during a 1984 strike.
“Wrongful-firing law casts a chill on employers, ... and that chill may already have seriously hurt the employment climate.”

Certain serious problems were apparent in the European job market even at the time of its most apparent success. By American or Japanese standards, it did extraordinarily badly at creating new jobs, and its rate of labor force participation fell well below American or Japanese levels. By 1996 the jobless rate was running at about 11 percent, or double ours, and the rate of long-term joblessness was several times ours. Economists pointed to one overwhelming cause: the Continent's abysmally low pace of new job creation.

In this country, too, there are signs, though far more scattered and preliminary, that our much more recent ventures into labor-market control are beginning to backfire.

One well-documented phenomenon under the new body of law is the small business that resolves to stay small. Occupational Safety and Health Administration regulations kick in at 10 employees, the Americans with Disabilities Act and the Civil Rights Act at 15, age bias and the health insurance continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1986 at 20, plant-closing-notification and family-leave mandates at 50, and Employee Retirement Income Security Act and Equal Employment Opportunity Commission reporting at 100. "Many businesses are taking pains to keep their payrolls under 50," reported the Wall Street Journal when the family-leave law went into effect.

What about hiring backlash against members of protected groups? Women entrepreneurs may feel freer to speak out about discrimination law than do men. New Yorker Tama Starr, whose family business, ArtKraft Strauss, builds many of the signs in Times Square, caused fainting fits among editorialists with her remarks on the Family and Medical Leave Act: "If you're an employer, you will look at a young woman and say, 'Can we really entrust her to do crucial responsibilities that no one else can do because she's going to take three months off?'" In fact, women's groups did report an upsurge in complaints of firings around the law's effective date. A National Federation of Independent Business survey of 1,000 small businesses found half admitted reluctance to hire women of childbearing age because of leave concerns.

Stifling Growth and Jobs

One of the most remarkable studies of the effects of the new laws was conducted by a research team led by James Dertouzos of the RAND Corporation. Its results suggest that the laws may already have measurably hurt job creation. The team examined trends in employment levels in each state and compared them with the extent to which each state had moved away from traditional employment-at-will law toward new wrongful-firing doctrines. (Discrimination, harassment, and other non-common-law claims were not part of the study.) The apparent effects were surprisingly large: total employment ran between 2 and 5 percent lower in states where the legal climate had turned most hostile to employers, such as California, compared with states that had stayed closest to the old rules. States where dismissed employees could sue for pain and suffering showed more harm to employment levels than those where those employees could sue only for back pay. Hardest hit was service and financial employment, while manufacturing was least affected—consistent with the wide perception that managers file wrongful termination cases more often than do machinists (who are more likely to turn to union remedies or to none at all).

The RAND researchers found that, averaged over the whole universe of employment, the direct, countable costs of the new common-law wrongful-firing doctrines did not seem all that high: perhaps only a tenth of 1 percent of the nation's total wage bill, averaging out to $100 per dismissed worker. Yet in practice, Dertouzos estimates, California employers behaved as if the indirect costs of being sued were surprisingly large: total employment ran 100 times more important to them than the direct costs. Reputation costs and general unpleasantness would boost the multiplier further. If Dertouzos and colleagues are anywhere near correct, then wrongful-firing law casts a chill on employers far in excess of its likely effect of transferring money to lucky workers, and that chill may already have seriously hurt the employment climate in the most litigious states.

Another study, by Edward Lazear in the August 1990 Quarterly Journal of Economics, found significant negative effects from mandated severance payments, a close cousin to tenure notions. Lazear analyzed data from labor markets in 22 countries over three decades and found that, on average, a mandate of three months' severance could be expected to reduce the ratio of employment to population by 1 percent. If implemented in the United States, he estimates, such a policy would raise the unemployment rate by more than 5 percent; it would also turn 9 million full-time jobs into part-time jobs.

Mandated severance as a benefit would also be self-defeating in another way: mainstream economics suggests that workers commonly wind up "paying for" their own benefit packages in the form of traded-off wages. Thus studies have found that once the market adjusts, more than 80 percent of workers' compensation costs winds up coming out of workers' own pockets. Where they can, as MIT economist Jonathan Gruber has shown in a series of studies, employers will target the offsetting cuts to the particular classes of worker likely to use the benefit in question; thus Gruber found mandated pregnancy coverage to have been accompanied by a slowdown in wage gains for workers in the age group likely to draw that benefit.

A Product No One Would Buy

In short, as time goes on, workers can expect to shoulder the bulk of the costs of a right to sue over things that go wrong in the workplace. Those costs are likely to far exceed the value most rational workers would put on that right. No one trying to design a workplace fringe benefit would ever have devised the features of today's employment litigation. As Mayer Freed and Daniel Polsby of Northwestern University point out in an Emory Law Journal article, even employees who obtain individual work contracts with their employers seldom negotiate for open-ended promises of lifelong tenure. They are more likely to ask for and extract fixed-term salary guarantees, severance payouts, "golden parachutes," and the like. Rationally enough, they'd rather go after knowable and definite benefits. Equally rationally, employers would rather offer more money than offer tenure.

There's every reason to think that many workers faced with both the costs and the benefits of easy litigation would decline to buy the product, and of course employers would be reluctant to offer it. In short, if...
allowed freedom to contract, both sides have every reason to contract vigorously out of today’s employment law.

As markets go, employment markets are reasonably fluid. Hiring is still a basically voluntary process, and each time it happens the terms can be reordered from scratch. Employers and employees attempt to recoup their relationship in whatever categories are least legally regimented: as arm’s-length contraction, long-term “temporary” worker, independent provider of “outsourcing” services, and the like. Thus the new employment law faces an endless struggle against an insidious enemy: choice. Both employers and workers tend to make choices that defeat the law’s intent, substituting the kind of security most of us prefer—that of an open economy and society where there will be many places to take our talents—for the Old World style of security where we know our place and everyone else’s.

But it would be hasty to count out the forces of legal coercion: they are good at what they do. Already it is unlawful to escape most of the new laws by simply contracting out. Bans on automatic arbitration may be next. It is characteristic of a bad product that it must be forced on unwilling purchasers. And it is increasingly clear that today’s employment litigation is just such a bad product.

**STUDIES** Continued from page 7

achieve the desired goals, and it is unconstitutional. The theory behind the mandate is that the market will not provide educational programming on its own because the audience does not desire it. If that is so, then regulation is not a solution, since the FCC cannot force anyone who would not have already done so to watch educational programming. Moreover, Corn-Revere argues, “Governmental interest in protecting children from programming deemed inappropriate does not translate into a constitutional mandate to compel programming the government believes is beneficial. The commission’s mandate for ‘educational’ television plainly overreads the extent of the FCC’s authority under the Constitution.”

**Chilling Effects on the Internet**

In the new Cato Institute study “Chilling the Internet? Lessons from FCC Regulation of Radio Broadcasting” (Policy Analysis no. 270), Thomas W. Hazlett and David W. Sosa of the University of California at Davis maintain that the Communications Decency Act could do much to prevent the free flow of ideas on the Internet. The authors argue that previous federal initiatives aimed at “improving” the content of speech over electronic media actually constrained robust public debate. After the Fairness Doctrine was repealed in 1987, “the volume of informational programming increased dramatically—powerful evidence of the potential for regulation to have a ‘chilling effect’ on free speech.” If upheld by the Supreme Court, Hazlett and Sosa contend, the CDA would likely have a similar chilling effect.
Rain and snow may be falling today, but throughout the world people continually fear water shortages. Is there reason for such apprehension? Are we running out of water? In a new Cato book, *Water Markets: Priming the Invisible Pump*, Terry L. Anderson and Pamela Snyder, executive director and research associate at the Political Economy Research Center, argue that the answer is no—if we return control of water from government to markets.

Zach Wiley of the Environmental Defense Fund states that the book, an updated and expanded version of the 1983 volume *Water Crisis: Ending the Policy Drought*, "makes a dry subject fun. It belongs on the shelves of everyone interested in natural resources, the environment, markets, and governance. Anderson and Snyder effectively articulate and document a fundamental lesson of contemporary water policy—ecological goals will not be achieved unless the economic engine of water markets is fully engaged."

The authors document that humans are using only between 38 and 64 percent of the earth's readily available water. Nevertheless, in several poor countries of Africa and the Middle East, available water is often contaminated, producing millions of deaths each year. Anderson and Snyder argue that government control of water supplies has led to mismanagement and misallocation of water and that markets are the solution.

Anderson and Snyder provide a history of government water policy, including the development of laws that either prohibit the transfer of water or sharply regulate its use, such as "beneficial use" restrictions. To establish a water right in most states, an appropriator must apply the diverted water to a "beneficial" use. How "beneficial" is defined, however, is often a mystery. For example, Montana has stated that using water in coal slurry pipelines is not beneficial. The result has been the diversion of water to areas and projects that the government, rather than the market, has deemed important.

Anderson and Snyder argue that, despite all the limits on water transfer, change is coming. Trades between agricultural users and cities are increasingly common; environmentalists are searching for ways to lease agricultural water for in-stream uses such as salmon and steelhead spawning habitat; and Indian tribes that have settled water rights disputes are leasing their water. Moreover, the market revolution has not been confined to the United States. As a response to increasing scarcity, several Australian states have begun allowing permanent transfers of water entitlements through markets.

According to the authors, reliance on markets will not only increase efficiency in allocation, it will also improve the quality of water. If property rights in water are well defined, enforced, and tradable, "individuals will have an interest in monitoring their rights and in finding ways to get additional environmental quality at minimum cost. Using incentives embedded in property rights and common law principles will take us further, more quickly, and more cost-effectively toward improving water quality than will coercion."

Concluding their discussion, Anderson and Snyder say that there is reason for optimism, but that we must not perpetuate failed policies. "Some would say that water cannot be entrusted to markets because it is a necessity of life. To the contrary, because it is a necessity of life, it is so precious that it must be trusted to the discipline of markets. Unless distortions created by governmental intervention are corrected, water shortages will become more acute and more crises will be inevitable."

The book can be purchased for $19.95 (cloth) or $10.95 (paper) by calling 1-800-767-1241.
“To Be Governed…”

✦ Also, we are selling the Brooklyn Bridge
   “Based on the projections we now have,” [President] Clinton said in unveiling his new plan, “we believe we can maintain a balanced budget for more than two decades.”
   —New Republic, Mar. 3, 1997

✦ Don’t talk about any crazy religious ideas
   The FBI . . . is requesting that in coming years telephone companies set aside the capability for law enforcement officials to perform as many as 60,000 simultaneous wiretaps and other traces nationwide.
   —Washington Post, Jan. 15, 1997

✦ The other 38 percent were too astonished to answer
   Meanwhile, 62 percent [of Britons polled] said the description “privileged” fits the House of Windsor.

✦ Washington staves off another peasant assault
   Tax assessments on residential property in most of suburban Washington increased modestly this year, . . . indicating an apparent recovery in the market after several years of slow growth in the region’s economy.
   “People are confident in the economy again. They have shaken off the anxiety about the balanced-budget push . . . ,” said Stephen S. Fuller, a professor of public policy at George Mason University.
   —Washington Post, Mar. 16, 1997

✦ Governing: It’s not just a job, it’s a career
   Mary B. Goodhue . . . in 1992 was the only Republican woman serving in the [New York] State Senate. She was extremely popular with her colleagues . . .
   So she says she was unprepared for what occurred when [George] Pataki showed up at her office one day in the spring of 1992.
   “He said he was going to run in a primary against me,” Goodhue recalled. “I said, ‘I wish you wouldn’t do that.’ . . .
   “I needed two more years for my pension,” says Goodhue.

✦ Who’s got power
   What follows is our own roll call of those who have made power in the Bay Area.
   Margaret Wells, Director, Educational Placement Center, San Francisco Unified School District. The woman who decides where your children go to school.
   —San Francisco Focus, April 1997

✦ Forced to rely on civil society
   Across the Washington area, finding a place for children to play soccer is an increasing challenge, as the sport’s popularity has surged. Financially squeezed local governments haven’t been able to develop enough fields for practices, games and tournaments to satisfy the demand.
   That has forced area soccer clubs to do it themselves.
   —Washington Post, Apr. 1, 1997

✦ There is no connection between these stories
   Trying to generate “a new season of service,” President Clinton on Saturday designated a National Service Week and said that he hoped more than 1 million Americans would participate at food banks, shelters and playgrounds.
   —San Francisco Examiner, Apr. 6, 1997

Kiev residents rebuffed their mayor’s attempt to revive a Soviet-era tradition, virtually ignoring his call to hit the streets Saturday to help clean up the Ukrainian capital.
   —San Francisco Examiner, Apr. 6, 1997

✦ The president is shocked—shocked—to discover that some of the people he hit up for money were less than savory
   In the wake of controversy over visits to the White House by some individuals with foreign connections, new national security adviser Samuel R. “Sandy” Berger wants to tighten the screening of such persons who meet President Clinton or National Security Council staff members.

✦ Like here, for instance
   [Russian media mogul Vladimir] Gusinsky . . . added that the wealthy Russian bankers and magnates see themselves in a bitter fight for “a democratic, open country, in which bandits will not come to the Kremlin and be photographed with the president.”
   —Washington Post, Mar. 31, 1997