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Number 2

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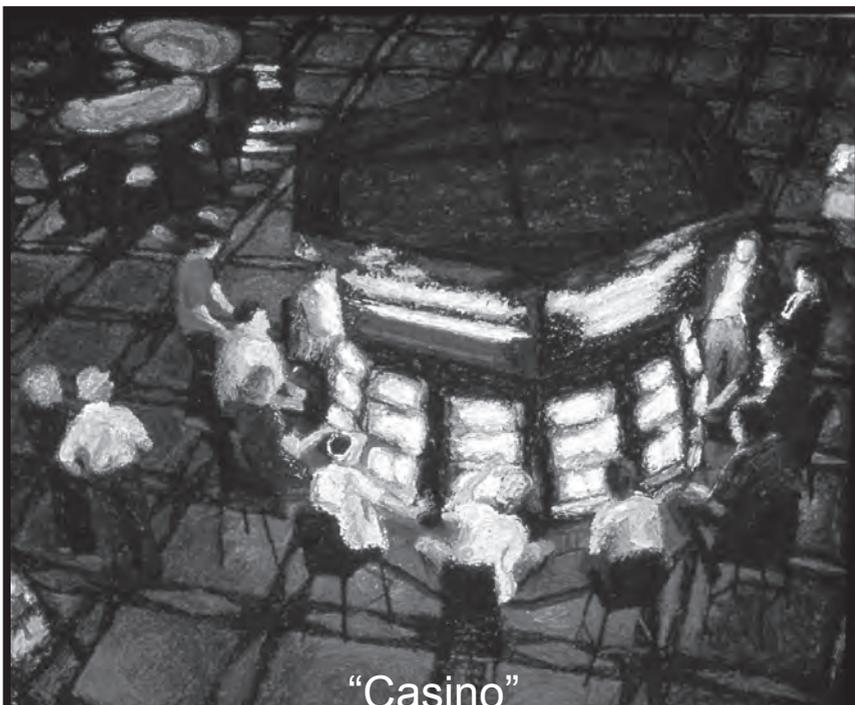
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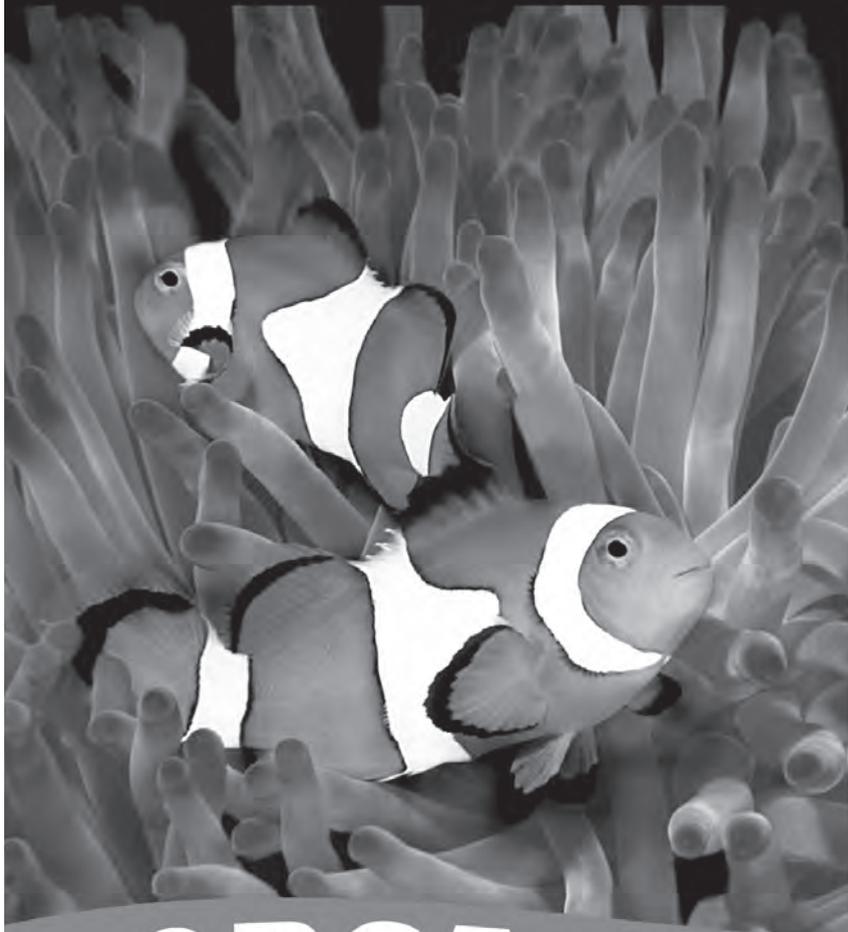
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# HOW THE “PUBLIC OPTION” WAS SOLD

KIP SULLIVAN

**T**he people who brought us the “public option” began their campaign promising one thing but now promote something entirely different. To make matters worse, they have not told the public they have backpedaled. The campaign for the “public option” resembles the classic bait-and-switch scam: tell your customers you’ve got one thing for sale when in fact you’re selling something very different.

When the “public option” campaign began, its leaders promoted a huge “Medicare-like” program that would enroll about 130 million people. Such a program would dwarf even Medicare, which, with its 45 million enrollees, is the nation’s largest health insurer, public or private. But today “public option” advocates sing the praises of tiny “public options” contained in congressional legislation sponsored by leading Democrats that bear no resemblance to the original model.

According to the Congressional Budget Office, the “public options” described in the Democrats’ legislation might enroll 10 million people and will have virtually no effect on health care costs, which means the “public options” cannot, by themselves, have any effect on the number of uninsured. But the leaders of the “public option” movement haven’t told the public they have abandoned their original vision. It’s high time they did.

## The bait

“Public option” refers to a proposal, as Timothy Noah put it, “dreamed up” by Jacob Hacker when Hacker was still a graduate student working on a degree in political science. In two papers, one published in 2001 and the second in 2007, Hacker, now a professor of political science at Berkeley, proposed that Congress create an enormous

“Medicare-like” program that would sell health insurance to the non-elderly in competition with the 1,000 to 1,500 health insurance companies that sell insurance today.

Hacker claimed the program, which he called “Medicare Plus” in 2001 and “Health Care for America Plan” in 2007, would enjoy the advantages that make Medicare so efficient—large size, low provider payment rates and low overhead. (Medicare is the nation’s largest health insurance program, public or private. It pays doctors and hospitals about 20 percent less than the insurance industry does, and its administrative costs account for only 2 percent of its expenditures compared with 20 percent for the insurance industry.)

Hacker predicted that his proposed public program would so closely resemble Medicare that it would be able to set its premiums far below those of other insurance companies and enroll at least half the non-elderly population. These predictions were confirmed by the Lewin Group, a very mainstream consulting firm. In its report on Hacker’s 2001 paper, Lewin concluded Hacker’s “Medicare Plus” program would enroll 113 million people (46 percent of the non-elderly) and cut the number of uninsured to 5 million. In its report on Hacker’s 2007 paper, Lewin concluded Hacker’s “Health Care for America Plan” would enroll 129 million people (50 percent of the nonelderly population) and cut the uninsured to 2 million.

Until last year, Hacker and his allies were not the least bit shy about highlighting the enormous size of Hacker’s proposed public program. For example, in his 2001 paper Hacker stated: “Approximately 50 to 70 percent of the non-elderly population would be enrolled in Medicare Plus...Put more simply, the plan would be very large...Critics will resurface whatever the size of the public plan. But this is an area where an intuitive and widely held notion—that displacement of employment-based coverage should be avoided at all costs—is fundamentally at odds with

good public policy. A large public plan should be embraced, not avoided. It is, in fact, key to fulfilling the goals of this proposal.”

In his 2007 paper, Hacker stated: “For millions of Americans who are now uninsured or lack affordable work place coverage, the Health Care for America Plan would

**...today “public option” advocates sing the praises of tiny “public options” contained in congressional legislation sponsored by leading Democrats that bear NO resemblance to the original model.**

-- Kip Sullivan

be an extremely attractive option. Through it, roughly half of non-elderly Americans would have access to a good public insurance plan...A single national insurance pool covering nearly half the population would create huge administrative efficiencies.”

Hacker’s papers and the Lewin Group’s analyses of them have been cited by numerous “public option” advocates. For example, when Hacker released his 2007 paper, Campaign for America’s Future (CAF) published a press release praising it and drawing attention to the large size of Hacker’s proposed public program. The release, entitled “Activists and experts hail Health Care for America plan,” stated:

“Detailed micro-simulation estimates suggest that roughly half of non-elderly Americans would remain in workplace health insurance, with the other half enrolled in Health Care for America...A single national insurance pool covering nearly half the population would create huge administrative efficiencies. Because Medicare and Health Care for America would bargain jointly for lower prices, they would have enormous combined leverage to hold down costs.”

When the Lewin Group released its 2008 analysis of Hacker’s 2007 paper, CAF’s Roger Hickey wrote in the *Huffington Post*, “efficiencies achievable through Hacker’s public health insurance program” would save so much money that the US could “cover everyone” for no more than what we spend now.

## The switch

Now let’s compare the “single national health insurance pool covering nearly half the population” that Hacker and other “public option” advocates enthusiastically championed with the “public option” proposed by Democrats in Congress. And then let’s inquire what Hacker and company said about it.

As readers no doubt know, the Senate Health, Education, Labor, and Pensions (HELP) Committee, and three House committee chairmen working jointly, published draft health care “reform” bills in June. According to the Congressional Budget Office, the “public option” proposed in the House “tri-committee” bill might insure 10 million people and would leave 16 to 17 million people uninsured. The “public option” proposed by the Senate HELP committee, again according to the Congressional Budget Office, is unlikely to insure anyone and would hence leave 33 to 34 million uninsured. The CBO said its estimate of 10 million for the House bill was highly uncertain, which is not surprising given how vaguely the House legislation describes the “public option.”

Here is what the CBO had to say about the HELP committee bill: “The new draft also includes provisions regarding a ‘public plan’, but those provisions did not have a substantial effect on the cost or enrollment projections, largely because the public plan would pay providers of health care at rates comparable to privately negotiated rates--and thus was not projected to have premiums lower than those charged by private insurance plans.”

Obviously the “public option” in the Senate HELP

committee bill (zero enrollees; 17 million people left uninsured) and the “public option” in the House bill (10 million enrollees (maybe!); 34 million people left uninsured) are a far cry from the “public option” originally proposed by Hacker (129 million enrollees; 2 million people left uninsured). Have we heard the Democrats in Congress who drafted these provisions utter a word about how different their “public options” are from the large Medicare-like program that Hacker proposed and his allies publicized? What have Hacker and his allies had to say?

In public comments about the Democrats’ “public option” provisions, the leading lights of the “public option” movement imply that Hacker’s model is what Congress is debating. Sometimes they come right out and praise the Democrats’ version as “robust” and “strong.” But I cannot find a single example of a statement by a “public option” advocate warning the public of the vast difference between Hacker’s original elephantine, “Medicare-like” program, and the Democrats’ mouse version.

For example, on June 23 Hacker testified before the House Education and Labor Committee that “the draft legislation prepared by [the] special tri-committee promises enormous progress.” He went on to enumerate all the benefits of a “public option.” Yet the House tri-committee proposal bore no resemblance to the public plan he described in his papers and that the Lewin Group analyzed. Later, when *Kaiser Health News* asked Hacker in a July 6 interview why “your signature idea--a public plan--has become central to the health care reform debate,” Hacker again praised his “public plan” proposal and offered no hint that the “public option” so “central to the debate” was very different from the one he originally proposed.

Ditto for Hacker’s allies. Representatives of Health Care for America Now (HCAN), the organization most responsible for popularizing the “public option,” repeatedly describe the House and Senate HELP committee bills as “strong” or “robust,” always without any justification for this claim, and have repeatedly failed to warn the public that the “public options” they promote today are mere shadows of the “public options” they endorsed in the past. On July 15, the day the HELP committee passed its bill, Jason Rosenbaum blogged for HCAN: “The Senate HELP Committee has just referred a bill to the floor of the Senate with a strong public option.”

Searching the websites of the organizations that serve on HCAN’s steering Committee--AFSCME, Democracy for America, Moveon.org and SEIU, for Example--one will find not a shred of information that would help the reader comprehend how small and ineffective the “public options” proposed in the Democrats’ bills are, nor how different these are from the one Hacker originally proposed. Yet these groups continue to urge their members and the public to “tell Congress to support a public option.”

## Models compared

It has become fashionable among advocates of a “public option” to trash the expertise and the motives of the Congressional Budget Office. But the CBO’s charac-

terization of the “public option” proposed in the Democrats’ legislation is entirely reasonable. This becomes apparent the moment we compare Hacker’s blueprint for his original “Medicare Plus” and “Health Care for America” programs with the “blueprints” (if *tabula rasas* can be called “blueprints”) contained in the Senate HELP Committee and House bills.

Hacker’s papers laid out these five criteria that he and the Lewin Group said were critical to the success of the “public option:”

“1. The PO had to be pre-populated with tens of millions of people, that is, it had to begin like Medicare did representing a large pool of people the day it commenced operations (Hacker proposed shifting all or most uninsured people as well as Medicaid and SCHIP enrollees into his public program); 2. Subsidies to individuals to buy insurance would be substantial, and only PO enrollees could get subsidies (people who chose to buy insurance from insurance companies could not get subsidies); 3. The PO and its subsidies had to be available to all nonelderly Americans (not just the uninsured and employees of small employers); 4. The PO had to be given authority to use Medicare’s provider reimbursement rates; 5. The insurance industry had to be required to offer the same minimum level of benefits the PO had to offer.”

Hacker predicted, and both of the Lewin Group reports concluded, that if these specifications were met Hacker’s plan would enjoy all three of Medicare’s advantages—it would be huge, it would have low overhead costs, and it would pay providers less than the insurance industry did. As a result, the “public option” would be able to set its premiums below those of the insurance industry and seize nearly half the non-elderly market from the insurance industry. According to the Lewin Group’s 2008 report, Hacker’s version of the “public option” would, as of 2007:

“Enroll 129 million enrollees (or 50 percent of the non-elderly); have overhead costs equal to 3 percent of expenditures; pay hospitals 26 percent less and doctors 17 percent less than the insurance industry (but these discounts would be offset to some degree by increases in payments to providers treating former Medicaid enrollees); and, set its premiums 23 percent below those of the average insurance company.”

I question some of Hacker’s and the Lewin Group’s assumptions, including their assumption that any public program that has to sell health insurance in competition with insurance companies could keep its overhead costs anywhere near those of Medicare (Medicare is a single-payer program that has no competition), especially during the early years when the public program will be scrambling to sign up enrollees. A public program will have to hire a sales force and advertise. It will have to open offices. It will have to negotiate rates, and perhaps contracts, with thousands of hospitals and hundreds of thousands of clinics, chemical treatment facilities, rehab units, home health agencies, etc. Or it will have to contract with someone to do all that. But I have little doubt that if a public program were to open with a large enough customer base, and it had the advantage of a law requir-

ing that only its customers receive substantial subsidies, it could do what the Lewin Group said it could do.

Now let us compare Hacker’s original model with the mousey “public options” proposed by the Senate HELP Committee and the House. Of Hacker’s five criteria, only one is met by these bills! Both proposals require the insurance industry to cover the same benefits the “public option” must cover. None of the other four criteria are met. The “public option” is not pre-populated, the subsidies to employers and to individuals go to the “public option” and the insurance industry, employees of large employers cannot buy insurance from the “public option” in the first few years after the plan opens for business and maybe never (that decision will be made by whoever is President around 2015), and the “public option” is not authorized to use Medicare’s provider payment rates. (The House bill comes the closest to authorizing use of Medicare’s rates; it authorizes Medicare’s rates plus 5 percent).

Is it any wonder the CBO concluded the Democrats’ “public option” will be a tiny little creature incapable of doing much of anything? More curious is that CBO gave the House “public option” any credit at all (you will recall CBO said it would enroll maybe 10 million people). The CBO should have asked, Can the “public option”—as presented in either bill—survive?

## How did this happen?

How did the “Medicare Plus” proposal of 2001 (when Hacker first proposed it) get transformed into the tiny “public options” contained in the Democrats’ 2009 legislation? The answer is that somewhere along the line it became obvious that the Hacker model was too difficult to enact and had to be stripped down to something more mouse-like in order to pass. Did the leading “public option” advocates realize this early in the campaign? Or midway through the campaign when the insurance industry began to attack the “public Option?” Or late in the campaign when they found it difficult to persuade members of Congress to support Hacker’s original model? Whatever the answer, will they find it in their hearts to tell their followers their original strategy was wrong? I suspect the answer is different for different actors within the “public option” movement. Hacker surely knew what was in his original proposal and surely knows now that the Democrats’ bills don’t reflect his original proposal. Hacker and others familiar with his original proposal were probably betrayed by the process. As the “public option” concept became famous and edged its way toward the centers of power, they couldn’t find the courage to resist the transformation of the original proposal into the mouse model.

For other actors within the “public option” movement, ignorance of Hacker’s original proposal and of health policy in general may have led them to rely on more knowledgeable leaders in the movement. Their error, in other words, was to trust the wrong people and, as the “public option” came under attack, to cave in to groupthink. This error was facilitated by the “public option” movement’s decision to avoid mentioning any de-

tails of the “public option” whenever possible.

**What next?**

Those of us in the American single-payer movement must continue to educate Congress and the public on the need for a single-payer system. We must also convince advocates of the “public option” that they have made two serious mistakes and, if they learn quickly from these mistakes, that real reform is still possible.

The first mistake was to think that a “public option” that merely took over a large chunk of the non-elderly market (as opposed to one that took over the entire market) could substantially reduce health care costs and thereby make universal coverage politically feasible. Any proposal that leaves in place a multiple-payer system--even a multiple-payer system with a large government-run program in the middle of it--is going to save very little money. Even if Hacker’s original Health Care for America Plan had taken over half the non-elderly market and then reached homeostasis (something Hacker swore up and down it would do), the savings would have been relatively small. The reason for that is twofold. First, any insurance program, public or private, that has to compete with other insurers is going to have overhead costs substantially higher than Medicare’s. (It is precisely because Medicare is a single-payer program that its overhead costs are low.) Second, the multiple-payer system Hacker would leave in place would continue to impose unnecessarily large overhead costs on providers.

The second mistake the “public option” movement made was to think the insurance industry and the right wing would treat a “public option” more gently than a single-payer. Conservatives have a long history of treating small incremental proposals such as “comparative effectiveness research” as the equivalent of “a government takeover of the health care system.” It should have been no surprise to anyone that conservatives would shriek “socialism!” at the sight of the “public option,” even the mouse model proposed by the Democrats.

The bait-and-switch strategy adopted by the “public option” movement has put the Democrats in a terrible quandary. Seduced by the false advertising about the potency of the “public option” to lower costs, Democrats have raised public expectations for reform to unprecedented levels. Failing to meet those expectations during the 2009 session of Congress, which is inevitable if the Democrats continue to promote legislation like the bills released in June, is going to have unpleasant consequences. Is there no way out of this quandary?

Conventional wisdom holds that if the Democrats don’t pass a health care reform bill by December, they will have to wait till 2013 to try again. But if the “public option” movement were to join forces with the single-payer movement, the two movements could prove the conventional wisdom wrong. This won’t happen, obviously, if the “public option” movement fails to perceive the reasons it failed.

It is conceivable the “public option” movement



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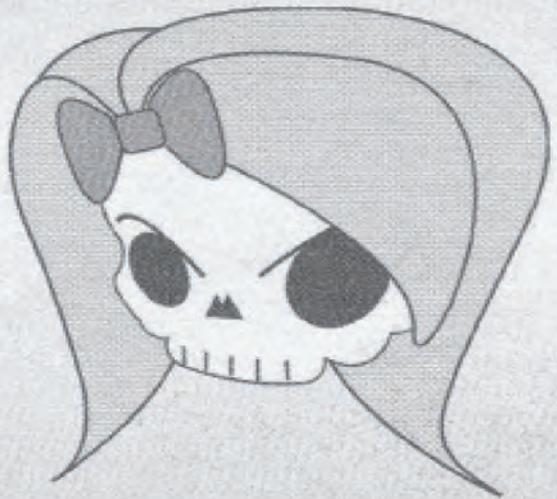
## H E A L T H

could decide the bait-and-switch strategy was wrong and that their only error was not to stick with Hacker's original model. It should be obvious now that that would also be a tactical blunder. We have plenty of evidence now that conservatives will react to the mousey version of the "public option" as if it were "a stalking horse for single-payer." We can predict with complete certainty they will treat Hacker's original version as something even closer to single-payer. If a proposal is going to be abused as if it were single-payer, why not actually propose a single-payer? At least then, when a particular session of Congress comes and goes and we haven't enacted a single-payer system, we will have educated the public about the benefits of a single-payer and have further strengthened the single-payer movement.

To sum up, "public option" advocates must choose between continuing to promote the "public option" and seeing their hopes for cost containment and universal coverage go up in smoke for another four years, and throwing their considerable influence behind single-payer legislation. At this late date in the 2009 session, it is unlikely that a single-payer bill could be passed even if unity within the universal coverage movement could be achieved. But if the "public option" wing and the single-payer wing join together to demand that Congress enact a single-payer system, December 2009 need not constitute a deadline.

Kip Sullivan belongs to the steering committee of the Minnesota chapter of Physicians for a National Health Program.

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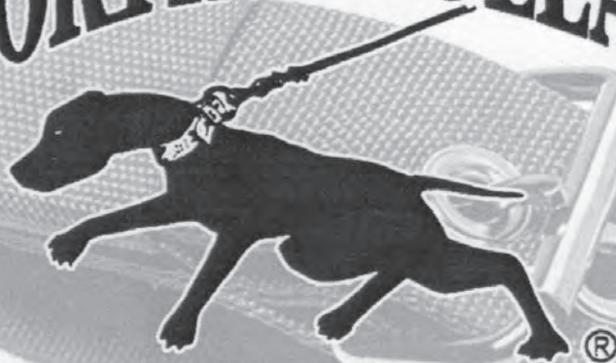


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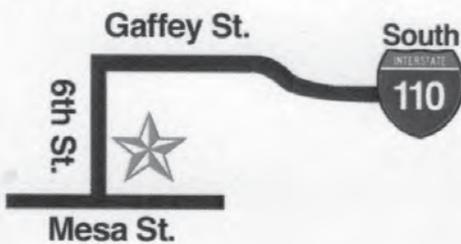
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# WHERE'S HEALTH CARE GOING?

ARIANNA HUFFINGTON

**T**he White House is in full scramble mode, trying to walk back last week's reports that the administration had struck a deal with Big Pharma promising to remove from its health care overhaul the ability of Medicare to negotiate for lower drug prices.

But they can't walk back two essential facts: 1) the drug industry has drawn an \$80 billion line in the sand -- that's the maximum amount of cost cutting it'll accept before withdrawing its support for health care reform, and 2) during the campaign Obama promised to repeal the ban on negotiating with drug companies, predicting it would result in as much as \$310 billion in savings.

So even if the White House didn't explicitly promise to take price negotiations off the table, by agreeing to Big Pharma's \$80 billion ceiling they've effectively done just that (the \$150 million ad campaign the drug industry has promised to run in support of the president's health care plan only adds to the stench).

And if the right to negotiate drug prices is dead, so is the chance for meaningful reform.

The White House has now shown itself willing to cave on the two essential elements of real health care reform -- drug price negotiations and having a public option.

Both are crucial to containing costs. The right to negotiate drug prices is how free markets operate -- taking advantage of economies of scale and the bargaining power that comes with bulk purchasing. To give this up should be abhorrent to anyone who believes in a functioning capitalist system, as opposed to what we are increasingly becoming: an oligarchy of powerful interests. In the same way, having a public option is the only meaningful

way to provide competition leading to lower insurance costs.

Giving us health care reform without those key ingredients is like serving a PBJ sandwich without the peanut butter or the jelly.

This white-bread-only reform makes no sense practically -- or politically. Health care reform that doesn't contain costs is destined to fail -- arming the GOP with a powerful "I told you so" cudgel to swing in 2010 and 2012.

Making matters worse, the chance to enact meaningful change doesn't come along often. And when the opportunity is squandered, it is lost for a long, long time. When reform that isn't reform passes, people check it off their list and move on -- and we are left with worse-than-no-reform boondoggles like No Child Left Behind and Bush's Medicare drug plan.

Robert Reich called the White House/Big Pharma deal -- or its wink-wink, no-deal-here equivalent -- "extortion."

**The White House has now shown itself willing to cave on the two essential elements of real health care reform -- drug price negotiations and having a public option.**

-- Arianna Huffington

For me, it's emblematic of precisely what Obama promised to put an end to: politics as usual where, as Frank Rich put it, "the American game is rigged" and (quoting Obama himself) the system is in hock to "the interests of powerful lobbyists or the wealthiest few" who have "run Washington far too long."

And it's not like the drug industry somehow pulled a fast one on the president. During the 2008 campaign, Obama was unequivocal on the issue. Here are some of the flashback quotes:

-- "Congress exempted Medicare from being able to negotiate for the cheapest available price. And that was a profound mistake."

-- "We will break the stranglehold that a few big drug and insurance companies have on the health care market."

-- "We're not going to get change unless we can overcome the resistance the drug companies, the insurance companies, the HMOs, those who are making a major profit from the system currently."

And from his campaign documents:

-- "Allow Medicare to negotiate for cheaper drug prices.... Barack Obama and Joe Biden will repeal the ban

on direct negotiation with drug companies and use the resulting savings, which could be as high as \$310 billion, to further invest in improving health care coverage and quality.”

"We'll tell the pharmaceutical companies 'Thanks but no thanks for overpriced drugs,'" Obama said in October. "We'll let Medicare negotiate for lower prices." From now on shall we just assume that "thanks but no thanks" really means "thanks"?

Obama also promised to hold all negotiations on C-SPAN. He hasn't. Instead we've had a week of White House statements, followed by anonymous White House briefings, followed by contradictory anonymous White House briefings, accompanied by the PhRMA drug lobbyists touting their agreement, followed by the lobbyists issuing "no comment" comments on their agreement, followed by the lobbyists walking back their touting of their agreement.

The health care industry has hired more than 350 former members of Congress and government staffers to lobby their former colleagues, and is spending around \$1.4 million a day trying to maintain the status quo. Looks like it will be money well spent. With price control negotiations and the public option circling the drain, their victory is near complete.

The third fundamental element of real cost containment is getting serious about prevention -- shifting the focus of our health care system from treating sickness to preventing illness. As Einstein put it: "Problems cannot be solved by the same level of thinking that created them." That's why HuffPost is committed to pursuing new lines of thinking on the health care debate -- including the importance of making changes to the lifestyle choices that greatly impact our health.

To this end, we are delighted to welcome Dr. Dean Ornish as our Medical Editor. He's a pioneer in promoting lifestyle changes and prevention as a path to better health, and will be writing both about personal health issues and about moving prevention front and center in the ongoing health care debate. He'll also be recruiting writers with a wide range of perspectives on how to achieve wellness. This is a vital debate to have, because we clearly cannot continue down the current costly and inefficient health care path.

Remember when Obama kept presenting the fact that he hadn't been in Washington very long as a virtue? If real health care reform dies -- and the death of real health care reform is completely consistent with a Rose Garden signing ceremony of a "reform bill" -- I guess it will show that even six months in Washington is too long.

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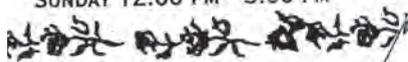
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**OPTICAL**

# BUSH SPYING RELIED ON FAULTY THEORIES

J A S O N L E O P O L D

**G**eorge W. Bush justified his warrantless wiretapping by relying on Justice Department attorney John Yoo's theories of unlimited presidential wartime powers, and started the spying operation even before Yoo issued a formal opinion, a government investigation discovered.

Essentially, President Bush took it upon himself to ignore the clear requirement of the 1978 Foreign Intelligence Surveillance Act that all domestic intelligence-related electronic spying must have a warrant from a secret federal court, not just presidential approval. Illegal wiretapping is a felony under federal law.

The July 10 report by the inspectors general of the CIA, National Security Agency, Justice Department and Defense Department also didn't identify any specific terrorist attack that was thwarted by what was known as the President's Surveillance Program (PSP), although Bush has claimed publicly that his warrantless wiretapping "helped detect and prevent terrorist attacks on our own country."

In a 38-page unclassified report, the inspectors general said most U.S. intelligence officials who were interviewed "had difficulty citing specific instances where PSP reporting had directly contributed to counterterrorism successes."

Bush authorized the PSP in October 2001, the month after the 9/11 terror attacks on New York and Washington, but Yoo's first legal opinion "explicitly addressing the legality of the PSP was not drafted" by Yoo until Nov. 2, 2001.

The inspectors general's report also makes clear that the full PSP was more expansive than the Terrorist Surveillance Program, the warrantless wiretapping that was revealed by the *New York Times* in December 2005. The TSP involved intercepting calls between the United States and overseas if one party was suspected of links to al-Qaeda or to an al-Qaeda-affiliated group.

Though the undisclosed elements of the PSP remain highly classified, the report gave some hints to its scope by noting that the program originated from a post-

9/11 White House request to NSA Director Michael Hayden to consider "what he might do with more authority."

Hayden then "put together information on what was operationally useful and technologically feasible," the report said. "The information formed the basis for the PSP."

In other words, the PSP stretched the limits of what the NSA could accomplish with its extraordinary capabilities to collect and analyze electronic communications around the world. Various journalistic accounts have suggested that Bush's spying program crossed the line from zeroing in on specific surveillance targets to "data-mining" a broad spectrum of electronic communications.

Suggesting that the government gathered information on many innocent people, the inspectors general

stated that "the collection activities pursued under the PSP...involved unprecedented collection activities. We believe the retention and use by IC [intelligence community] organizations of information collected under the PSP... should be carefully monitored."

## Legal Minuet

In creating the PSP, the Bush administration engaged in a pattern of factual and legal justifications that paralleled what was done with other controversial "war on terror" programs, such as the "enhanced interroga-

tion" of detainees that included the near-drowning of waterboarding and other brutal practices widely denounced as criminal torture.

As with the torture policies, President Bush relied on exaggerations of dangers and on legal theories that were essentially pre-cooked.

Regarding the PSP, Bush's White House guided the CIA in hyping the threat of more terrorist attacks, the inspectors general found. At the end of the first CIA-prepared threat assessment after 9/11, the chief of staff for CIA Director George Tenet added a paragraph saying the groups discussed in the memo "possessed the capability and intention to undertake further terrorist attacks within the United States," the report said.

Tenet's "Chief of Staff recalled that the [alarming]

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-- Jason Leopold

paragraph was provided to him initially by a senior White House official,” the report said. “The paragraph included the [CIA director’s] recommendation to the President that he authorize the NSA to conduct surveillance under the PSP.”

Having the CIA present as grim a terrorism threat as possible--producing what became known inside the government as the “scary memos” because they were made as scary as possible--was institutionalized as the PSP continued through periodic reauthorizations by Bush, the report said.

“CIA Office of General Counsel (OGC) attorneys reviewed the draft threat assessment memoranda to determine whether they contained sufficient threat information and a compelling case for reauthorization of the PSP,” the report said. “If either was lacking, an OGC attorney would request that the analysts provide additional threat information or make revision to the draft memoranda.”

Once the first threat assessment was in place, the next part of this minuet was performed by John Yoo, a right-wing legal theorist assigned to the Justice Department’s powerful Office of Legal Counsel.

According to Yoo’s OLC boss, Jay Bybee, Yoo was “the White House’s guy” on national security issues. Yoo also was “read into” the secret details of the PSP, though his titular superior, Bybee, was kept out of the loop, the report said.

“In September and early October 2001, Yoo prepared several preliminary opinions relating to hypothetical random domestic electronic surveillance activities, but

the first OLC opinion explicitly addressing the legality of the PSP was not drafted until after the program had been formally authorized by President Bush in October 2001,” the report said.

“The first OLC opinion directly supporting the legality of the PSP was dated November 2, 2001, and was drafted by Yoo,” the report said. “Yoo acknowledged that FISA ‘purports to be the exclusive statutory means for conducting electronic surveillance for foreign intelligence,’ but opined that ‘[s]uch a reading of FISA would be an unconstitutional infringement on the President’s Article II authorities.’”

Yoo said the law “cannot restrict the President’s ability to engage in warrantless searches that protect the national security.”

### Challenges to Yoo

The report noted that after Yoo’s departure from government in 2003, other Justice Department lawyers challenged Yoo’s legal scholarship, noting for instance that he had ignored one of the key Supreme Court rulings on presidential authority, the repudiation of President Harry Truman’s decision to nationalize the steel industry during the Korean War.

Yoo “omitted any discussion of *Youngstown Sheet & Tube Co. v. Sawyer*, a leading case on the distribution of government powers between the Executive and Legislative Branches,” the report said.

“Justice [Robert] Jackson’s analysis of President



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Truman's Article II Commander-in-Chief authority during wartime in the Youngstown case was an important factor in OLC's subsequent reevaluation of Yoo's opinions," the report said.

Though Yoo--now a University of California at Berkeley law professor--refused to be interviewed by the inspectors general, he defended his failure to cite Youngstown in his 2006 book, *War by Other Means*.

"We didn't cite Jackson's individual views in Youngstown because earlier OLC opinions, reaching across several administrations, had concluded that it had no application to the President's conduct of foreign affairs and national security," Yoo wrote, adding:

"Youngstown reached the outcome it did because the Constitution clearly gives Congress, not the President, the exclusive power to make law concerning labor disputes. It does not address the scope of Commander-in-Chief power involving military strategy or intelligence tactics in war."

Just days after the 9/11 attacks, Yoo drafted a 20-page memorandum that offered up theories on how the Bush administration could sidestep Fourth Amendment protections against unreasonable searches and seizures in the event the U.S. military used "deadly force in a manner that endangered the lives of United States citizens."

Yoo suggested some scenarios, such as the need to shoot down a jetliner hijacked by terrorists; to set up military checkpoints inside a U.S. city; to implement surveillance methods far superior to those available to law enforcement; or to use military forces "to raid or attack dwellings where terrorists were thought to be, despite risks that third parties could be killed or injured by exchanges of fire," according to Yoo's memo of Sept 21, 2001.

Yoo wrote that his ideas would likely be seen as violating the Fourth Amendment. But he said the terrorist attacks on 9/11 and the prospect that future attacks would require the military to be deployed inside the U.S. meant President Bush would "be justified in taking measures which in less troubled conditions could be seen as infringements of individual liberties."

Yoo also wrote in the memo that domestic surveillance activities, such as monitoring telephone calls without a court's permission, might be proper notwithstanding the Fourth Amendment's ban on the government conducting unreasonable searches and seizures, without court warrants.

## Hints in Opinions

Early references to Bush's surveillance program were also included in one of Yoo's legal opinions released by the Obama administration in April. That memo, titled "Authority for Use of Military Force to Combat Terrorist Activities Within the United States," concluded "that the Fourth Amendment had no application to domestic military operations."

The report by the inspectors general also said Yoo's opinion letting Bush circumvent the FISA court jeopardized the Justice Department's relationship with the court. Indeed, in December 2005, after the *New York*

*Times* exposed the existence of the domestic surveillance program, U.S. District Court Judge James Robertson resigned from the FISA court.

Robertson told colleagues that President Bush's unilateral decision to spy on Americans suspected of links to terrorists, without first seeking approval from the 11 judges assigned to the FISA court, was legally questionable, and his resignation should be interpreted as a sign of protest.

After the inspectors general's report was released recently, Sen. Patrick Leahy of Vermont, Democratic chairman of the Senate Judiciary Committee, renewed his calls for a bipartisan "truth commission" to examine abuses of power during the Bush administration.

"This report underscores why we should move forward with a nonpartisan Commission of Inquiry," Leahy said. "Without a thorough, independent review of decisions that run counter to our laws and treaties, we cannot ensure that these same mistakes are not repeated. Such a Commission must have bipartisan support to be able to truly get to the bottom of these issues with objectivity and credibility."

Leahy's counterpart in the House, Rep. John Conyers of Michigan, who also has been pushing for investigations and has called on Attorney General Eric Holder to appoint a special prosecutor to investigate Bush-era abuses, said the report showed that Bush "broke the law" by "personally authorizing the warrantless surveillance program."

Conyers added, "The refusal of key Bush administration officials such as [Vice President Dick Cheney's chief counsel] David Addington and John Yoo to cooperate with the IG's review underscores the need for an independent commission with subpoena power to further review these issues, as I have called for."

Jason Leopold is editor of *The Public Record*.

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# BUDGET CALIFORNIA BUDGET CRISIS

JULIA BROWNLEY

**T**here is no good news. However, the Assembly and Senate leadership did strike a deal with the Governor on a budget that keeps California, one more time, from falling over the cliff. This budget is not that different from the budget the legislature passed at the end of June that the Governor vetoed with great fanfare. Three weeks later, with the state issuing IOUs and losing \$25 million dollars every day a budget was not passed, he decided that he did agree. A balanced budget was on his desk in June and he opted for more grandstanding. The Governor should be ashamed.

It could have been worse. We think we can now stop issuing IOUs to state vendors, although that's still not certain. Hopefully the state's credit rating won't fall any further, having already been downgraded twice in recent weeks to near-junk status. Mass closure of our precious state parks was taken off the table, although the Governor used his line-item veto to blue-pencil more cuts after the Legislature sent the budget to him, which put at least some parks in jeopardy again.

Serious legal questions have been raised about whether the Governor exceeded his authority in those vetoes. The California Supreme Court has said that his authority extends only to new appropriations, while the vetoes he made are to items in the budget he signed in February. He could have vetoed them in February, but he does not get "a second bite at the apple." This issue is likely to end up back before the Court.

I don't count the fact that the budget includes no new revenues as automatically good. Oil companies, for example, are surely celebrating. Thanks to the Governor's patronage, California remains the only one of the 22 oil-producing states in the nation that exempts its oil companies from having to pay an oil severance tax that could be generating billions of dollars every year for schools, health care, parks, transportation, public safety, etc. In

2007, Alaska's Governor raised the oil severance tax to 25%. The proposed 9.9% tax for California would have been a bargain if Governor Schwarzenegger wanted to prove genuine environmental credentials.

Related to that, I helped lead the charge to successfully fight new oil drilling off Santa Barbara that the Governor leveraged into the budget, breaking the promise of decades of environmental protection along that beautiful coast. Another "shame on him" for putting the interests of big oil over those of some of the most vulnerable people in the state. To make up for the money that he had hoped new off-shore oil drilling would generate, he blue-penciled cuts to social services, including a massive blow to the Healthy Families program that provides low-cost health coverage to children and teens whose families don't qualify for Medi-Cal.

Because some of the revenues proposed at the May special election were rejected by the voters, and because Republican caucus members are all required to sign irresponsible pledges not to raise any taxes or revenues regardless of how dire the circumstances, the budget solution includes more than \$15 billion in program cuts; \$875 million that will hit the poor, elderly, disabled, and children. Cities and counties that deliver the services people count on every day suffered another raid of roughly \$1.7 billion. The Governor wanted \$3 billion from local government, but we managed to save about \$1 billion, although a massive coalition of cities is readying to file suit to recover all of it.

And, again, our schools took a huge hit of approximately \$9 billion, all the way from kindergarten through to the community colleges and

UC and CSU systems. Fortunately, the Governor's direct assault on the Prop 98 funding guarantee to K-12 education, and insistence on suspending it entirely, was rejected by the Democrats and a commitment was made to repay this money to schools when the economy rebounds.

Nevertheless, education is going to suffer badly. This means not just the lives of the children themselves who are in our care and who will fall further behind, but also many schools, having already suffered year after year of cuts, that will have to increase class sizes, lay off teachers, and scale back on the core quality and breadth of the education they can and want to provide.

The lost opportunities for new high school graduates who won't be able to afford substantial college tuition

**I believe that now more than ever there is clear and powerful evidence that time and time again California's 2/3 voting requirement has negatively impacted the lives of all Californians.**

-- Julia Brownley

increases will ultimately damper the success of California's economy long term, since business depends on an educated workforce to meet the competitive challenges of a global marketplace.

There's more accounting gimmicks, including the shifting of 10% of next year's income tax withholding into this year's budget, and delaying state workers' June 30, 2010 paycheck for one day to July 1, pushing that expenditure into the 2010-2011 fiscal year but counting the revenue this year.

### Broken governance structure

We can't continue down this defensive and reactive path of BandAid government. California is at a tipping point. There is a growing consensus that out of this moment of crisis must come the will to craft realistic structural reforms.

I went to Sacramento to make meaningful change: to return our K-12 schools and higher-ed schools to greatness; to provide quality accessible and affordable health care, especially for our children; to protect our environment, and to leverage and transform California as the technological leader of a new "green" economy; to promote social and economic justice for all; and to make our government more transparent and effective.

I had no idea of the roadblocks I'd be facing beyond just the partisan divide. Term limits means everyone's a short-timer. By the time you develop some expertise on issues and have figured out how to navigate the

process, you're out. The requirement of a 2/3 supermajority to pass a budget and to raise revenues creates a tyranny of the minority. Just a couple of days ago, a citizen ballot initiative was qualified to be circulated for signatures that would reduce the 2/3 to 3/5. If successful it would go before the voters in November 2010. Even the bi-partisan commission that Assembly Speaker Karen Bass formed to craft recommendations for tax reform is reportedly descending into partisan gridlock. It could put out separate majority and minority recommendations, and decline entirely to tackle some of the tough "holy grail" issues necessary to effect real tax reform.

### What can be done?

There is a lot going on in the Legislature. There are bills pending right now to establish a two-year budgeting process; change the voter threshold for parcel taxes; limit the initiative process, including signature gathering and funding sources; and to create more transparency and better accountability for our actions.

Outside of Sacramento, for example, Charles Young, former Chancellor of UCLA, has just filed suit against the provision in Proposition 13 that requires a 2/3 vote in the Legislature. The legal theory is that when voters passed the 2/3 provision, it was a "revision" of the California Constitution rather than an "amendment." The Constitution allows amendments to be made by the initiative process, but not revisions, which must be made through a constitutional revision commission or a consti-

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## B U D G E T

tutional convention. The California Supreme Court will ultimately be asked to decide.

In the meantime, the Legislature is looking carefully at both a constitutional revision commission and a constitutional convention. I believe that now more than ever there is clear and powerful evidence that time and time again California's 2/3 voting requirement has negatively impacted the lives of all Californians. Unless something changes, it will continue to be a roadblock to our ability to save our Golden State.

Make no mistake, California's governance structure is broken and we need to fix it. Most of all, as legislators, we need to be visionary in our thinking, and to bring new strategies for governing and delivering public services in California to every decision we make. And we need maximum public input and participation every step of the way.

Julia Brownley is a member of the California Assembly, 41st District.

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# BROKERING THE BAILOUT

JOHN O'KANE

The Bush-Obama strategy of throwing trillions at the banks to solve the mortgage crisis has been a failure. The banks welcome public money to remove toxic assets from their books, insured by we-the-taxpayers, as well as the hundreds of billions in direct handouts, but they've hardly returned the favor. They've used these funds to pay mega salaries and prop up stock values, choices that obviously benefit them. They needed public support, no one wanted the system to collapse. But how much? We're now witnessing their return to profitability and have to wonder what sort of public-private partnership we've inherited.

Have the too-big-to-fail corporations, beneficiaries of the virtual absence of an anti-trust policy over the past three decades, held us hostage?

We learned a few months ago that China's productivity rate over the past year was 8%. The reason, according to The News Hour, is that their banks have been lending. Just like here, China's banks received bailouts. But unlike here, they were contingent on lending to consumers and businesses.

Now, if direct and fairer lending to consumers and businesses had been the goal, wouldn't the banks be reaping profits and increasing their reserves in an improved and healthier economy? Nobel winners like Paul Krugman and Joseph Stiglitz, among others, have been claiming for nearly a year that if we'd vigorously confronted problems in the housing market in the first place, the bailouts wouldn't be necessary.

After all, these problems, as most everyone agrees, are at the root of the crisis.

The problem is that the banks also gain from an unhealthy economy. While housing drags down the "recovery," Citi's and Goldman's paper inflates with taxpayer wealth and many continue to suffer. And those with the liquidity to take advantage of "free" markets are cueing up at the home auctions faster than the health insurance companies can rescind policies. They're hoping that we are nowhere near the bottom yet. The housing market of course was hardly free on the way up, pumped by a very friendly deregulatory climate for speculation that allowed predatory lenders to gouge buyers; and it's hardly free on the way down as policies repress prices through restrictive lending. If we've learned anything about the current crisis

it's that ups and downs have become as normal as the presence of the homeless. Stability requires shocks, to paraphrase Naomi Klein's "shock doctrine."

Unfortunately we have nothing to absorb the shocks during these corrective phases when a lot of bad and abnormal stuff happens. Some have to bear the brunt of induced shocks and wait it out because this approach mostly benefits those in power. As Naomi Klein shows, it is during the down phases when inequality increases and many fortunes are made. And recent data bear this out. The already wide gap between haves and have-nots has widened in the past year. And non-whites have been especially affected since they've bore the brunt of the housing collapse through absorbing a disproportionate share of predatory loans.

Bailing out big banks has hardly contributed to a climate conducive to free markets and competition. On the contrary, it has allowed institutions already too big to fail to gobble up other banks, leading to even unfreer market concentrations that especially

hurt small business. There's a staggering number of small banks failing each week, as we learn from the FDIC, and many of these are being gobbled up by the already-too-

**Manipulating the money supply through the purchase of securities and altering the borrowing rate to banks, the Fed's tools of the trade, unfortunately treats ups and downs as normal while doing little if anything about the power of huge banks with more market control to gouge borrowers.**

--John O'Kane

big! Where is the regulation we were promised under the mantra of “change?”

This is the biggest problem we face in all industries across the economic spectrum: fewer and fewer corporate owners controlling more and more production. It’s the global gobbling-up game. Such has been the prolonged fetish of the free market myth that what happens as a result of concentration is ignored; we continue to celebrate a “competitive” world that excludes more and more while underwriting oligopoly.

According to Robert Freeman, global companies

ket power. Manipulating the money supply through the purchase of securities and altering the borrowing rate to banks, the Fed’s tools of the trade, unfortunately treats ups and downs as normal while doing little if anything about the power of huge banks with more market control to gouge borrowers.

Fed Chair Bernanke was actually out in the field a few months ago selling the Fed at a “town hall meeting” in Kansas City. The agenda was remarkably streamlined. The discussion never deviated from the Fed line of independence from politics, while Bernanke endorsed ex-



*Photo by John O’Kane*

spent \$75 billion in 1973 to gobble each other up and block competition, soaring to \$550 billion by 1993, and \$2.4 trillion by 1999. It continues to increase today, giving them the power to artificially raise prices and reduce wages. The larger effect is an extraordinary transfer of wealth and income from Obama’s consuming middle class to the already too-big and over-concentrated.

“In 2007, the top 1% of the US population owned 60% of all business assets. Meanwhile, the bottom 50% of the population owned a mere 2.5% of such assets. The bottom 40% owned nothing. US income distribution has become more unequal than at any time since 1928, just before the Great Depression. In the ten years between 1996 and 2006 two thirds of all the growth in the entire US economy went to the top 1% of income earners.”

But the attention, thanks to big media, is all about the Fed and the level of interest rates, not issues of mar-

actly what the filter-down sages in the partisan-dependent branches always do: no-strings-attached transfers to those in the know who’ve been able to ever so mysteriously marry the state to capitalism and call it the free-market system. He apologized for the pain many have to bear on main street, but urged us to be patient. We must accept the fact that in economics lags are inevitable!

Politics and money policy are already married. The dependency is hidden behind the fog of numbers on the nightly business news. We just need a different union!

The Obama “programs” for victims of the housing crash are products of a bad marriage. So few loans have been modified, or good refinancing accomplished, that Obama recently summoned the CEOs of the major banks to the White House to explain why more progress hasn’t been made. B of A, for example, has only modified 4% of qualified loans! This despite getting considerable public

money, and showing significant profits in the last quarter. Aside from a public expression of displeasure at this “progress,” it is unclear what the White House is going to do about it. Obama’s response suggests that he’s open to alternative unions. But can he be? He just reappointed Bernanke because he saved the system from collapse!

Obama must know why so few modifications have been made. The banks are blaming the victims. They make it very difficult to qualify since they believe many applicants will be in worse shape later and that therefore it will be a useless exercise.

One of the responses to this dilemma in places like California, where “upside-down” homeowners make up a huge number of applicants, and where the effective unemployment rate is well into the teens, is for banks to grant temporary modifications and wait it out. These “modified” homeowners are then monitored for a few months to see if they’re worthy of a permanent modification. Many unfortunately don’t survive this test period.

One of the problems here is that in recent months foreclosures have ratcheted up as unemployment benefits run out and jobs are cut, particularly in the government sector with the state’s huge budget shortfall. And foreclosures mean a further decline in property taxes which breeds further shortfalls and more job losses. So more and

The media’s managed “debate” has made us amnesiacs. But not only have we forgotten what’s at stake. There’s been a shift in how the issue is defined. At the outset there was some acknowledgement that this was no normal market correction, that it was caused by specific policies that are no longer credible, the failed ones of the Bush administration indebted to the Reagan legacy, etc. Recall Obama’s speeches that pitch the middle class, especially in the run-up to the election last Fall. People shouldn’t be the victims of these policies. It was not their fault. We need to regulate the banks. We need to stabilize home values because that’s the basis of the middle class’s wealth, and what allows consumers to keep spending as well. The loss of equity in property makes it difficult for consumers to borrow or refinance, which has a direct effect on spending, which has an effect on employment as demand for products slackens and employers must resort to layoffs.

These comments about the system are right on, the basic commonsense of Econ 101. But it’s the bad apples now, not the rotten system, that we’re being told have sent everything into freefall. And we’re back to the abstractions of the Bush years: there’s no free lunch (for those who don’t qualify for bailouts!); those who couldn’t afford to buy that house, shouldn’t have, etc. The policies

*Photo by John O’Kane*

more of these “losers” are falling out of the process. And the more there are the more hesitant processors are to finalize modifications, believing the system’s weaknesses will just continue.

An active program to stabilize housing a year ago would have prevented all of this. Now, what passes for an active program is aimed at merely cleaning up the mess from a lack of effective action. Gone is the memory of what was at stake when this crisis occurred. Like with the Iraq war in 03. In the run up there was a “debate” about its legality and validity, but once the occupation occurred the discussion turned to technical matters and fundamental issues were lost. Similarly, a debate about the need to bypass the banks and shape a policy that counters their self-interested moves has been lost.

of the past year or so have trashed the credit reports and driven the values down, not to mention disappeared retirement and blocked access to borrowing. But the response to this situation is customized. The time period between the onset of the crisis and now barely exists. Your situation is your situation and you must bear the burden of the events of your own making!

Brokers have been especially victimized in recent months. They’re popular targets. When the housing market was booming, banks had a cozy relationship with them. They looked the other way on limited documentation because the high rates of interest they got in return made their days quite profitable. And since values kept going up many of these applicants could refinance quite soon anyway, correcting the near-sightedness.

They offered real help to the borrowers who were either first time homeowners, or perhaps not as credit worthy as the rules demanded. And the boom in home ownership was a good thing for many who needed some bending of the rules to get access to the American Dream. The brokers fulfilled a central plank in this dream: competition! While the banks made it difficult to borrow and often offered rates that were too high, the pool of brokers helped

to provide choice and in many cases lower rates. Sure, they got points for this. But on balance a first time borrower could make out better even if they didn't have many options.

Since the implosion it's been a different story. Brokers have been demonized for approving past loans that people could never afford, thus precipitating the crisis. But the culprit was predator loans, especially the sub-prime variety, authorized by greedy banks like Countrywide that speculated with marginal borrowers (Countrywide was recently gobbled up by B of A in its scramble to eliminate competition!).

Sara Bjazevich is a loan consultant at Gates Funding in San Pedro, CA, a subdivision of Los Angeles. She's been in the industry for several years, helping many from this area get a piece of the American Dream. A mere glance at the news these days, or at ads on TV or the internet, suggests there's a lot of good deals out there for victims of the downturn: historically low rates for home buying and refinancing, mere fees-to-lawyers away from getting that mortgage modified, and government programs everywhere to "HELP" people.

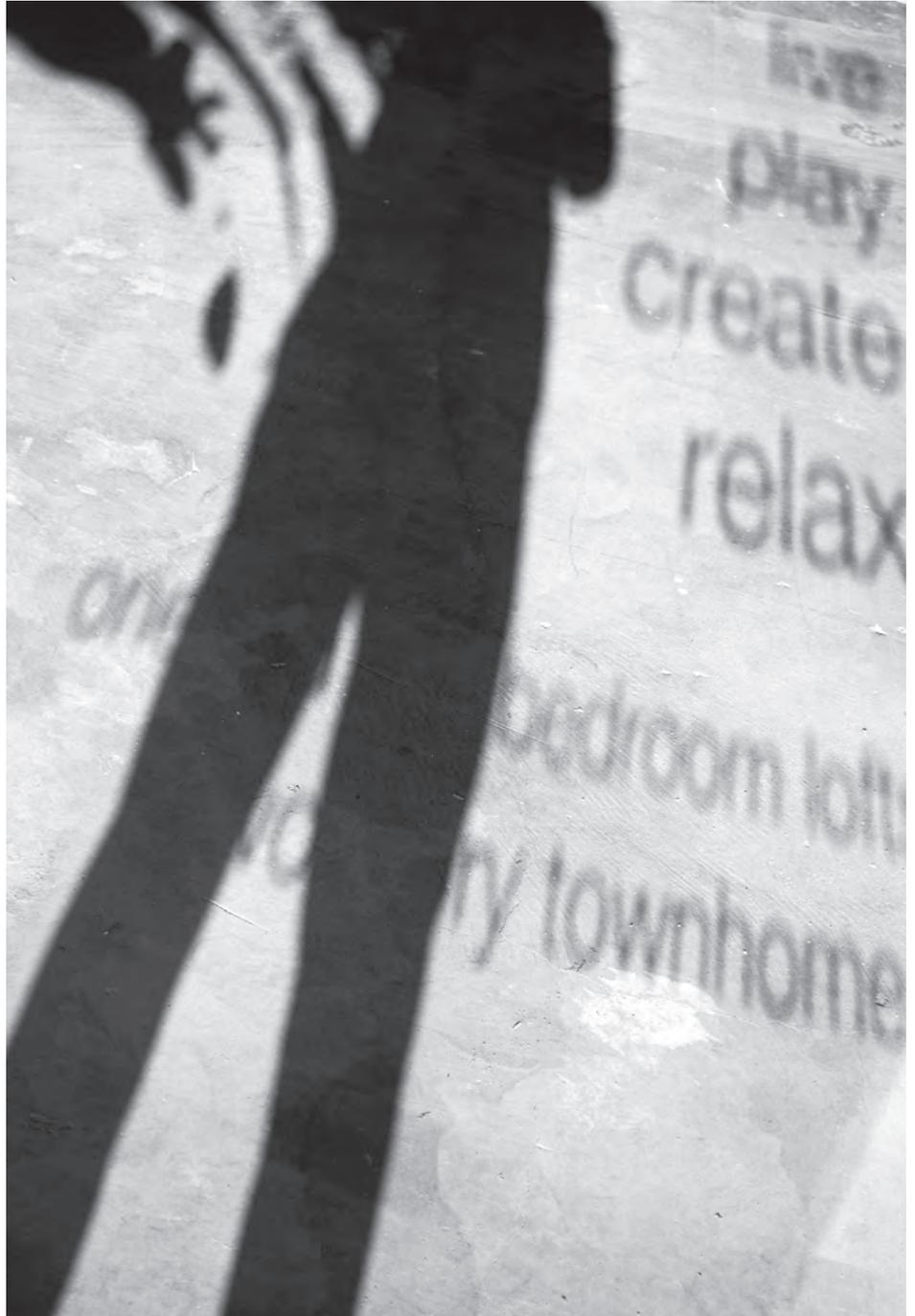
So I asked her to offer some insight into what's happening.

Her experience with loan modifications is not very promising. She's never seen one completed! They drag on and on and finally the applicants give up in frustration. Their income has to be so high that they nearly don't need one! And these "modifications" are often only "forbearance" schemes that add back payments to the principal with little or no improvement in terms or rates.

Rates are definitely lower now for home buyers, according to Sara. But there are really no special deals, and the banks are constantly changing the rates. It's often an hour-by-hour thing. And even when the low rates appear to be "locked in," meaning guaranteed, the banks can cancel the process even for applicants with very high

FICO scores. And every file has become a hassle because the banks seem to be intentionally slowing the process down, refusing to make quick decisions, according to Carla Califano, Sara's assistant. This has led to the need for re-approvals and reappraisals, and a new process that leaves applicants further frustrated and forced to bear more expense.

Refinancing has become very difficult, even for



*Photo by John O'Kane*

those with equity, because regulations regarding loan-to-value (LTV) have been tightened at a time when this "value" is shrinking rapidly. Applicants looking into the Obama Home Affordable Program will be allowed a max CLTV—combined loan to value—of 125%, but this past loan must be secured by either Fannie Mae or Freddie

Mac.

One of the very disturbing trends she's noticed is the disappearance of more and more wholesale lenders that once offered competition for borrowers. Sara remembers dealing with over 50 of these lenders, most of whom now have been gobbled up by the big banks or forced out of business. Suntrust, Flagstar, Reunion, Stearns Lending, Sierra Pacific and a few others are the only ones left. And, adding insult to injury, the big banks are refusing to deal with them one-on-one. Of those still standing, like Chase and Citi, only Wells Fargo and B of A (which stopped wholesaling last year but has recently returned) will deal directly with them. She feels their ultimate goal is to eliminate the brokers; that in the not-too-distant future they will no longer be part of the picture. Proposed state legislation would permit doing credit checks on realtors and loan officers!

A crucial area that shows the extent of the big banks' control of the process is appraisals. Critics of the sub-prime lending fiasco fix on the appraisals of property during the expansion as the problem, saying that many of them were done fast and loosely, consistent with the inflationary tempo of the times, and this allowed homeowners to withdraw cash from their property that was not supported by factual wealth. But since this was pumping the consumer economy, and returning many bennies back to the lenders, many made out like bandits. So it makes some sense that with the plummeting values there must be some sobering revisions to how property is valued.

The problem, Sara claims, is that now values are being understated and distorted! And this is directly related to the dominance of the process by the big banks. The culprit is the federally-inspired Home Valuation Code

of Conduct (HVCC), created through legislation implemented May 1st of this year. This was supposedly all about standardizing appraisals, getting rid of the quirky unfairness, so that reliability and stability could finally be restored to the system.

Sound good so far? Well, one of the unfortunate results of this legislation is to give the big banks more control. Title companies and banks, and we're talking about the few remaining big ones, are now allowed to own their own Appraisal Management Companies (AMCs). This encourages a virtual monopoly of the appraisal assignments and thus the ability of the big banks to influence the valuations. The independent appraisers, those locally based who have a stake in giving clients the truth and who best understand the relevant facts of their investments, are dropping like flies. The appraisers who work for the AMCs are doing the bidding of the big banks that have a vested interest in the outcome of the appraisals!

Which is to say they have clout, according to Sara, in getting the numbers to justify their restrained lending. They do what they want to deliver their version of reality. These appraisers work out of central command and apply global formulas that usually diverge from the local circumstances. And they have the power to request repeat appraisals, becoming more common, and pass on the fees to boot! Another disturbing trend, she claims, is that they are making clients pay for more and more of the process...

If we don't restore some trust in the system soon, and above all get an anti-trust policy (didn't Barney Frank suggest a while ago we needed one!), then the American Dream might very well flip into a nightmare.

Reprinted from *HuffingtonPost.com*.

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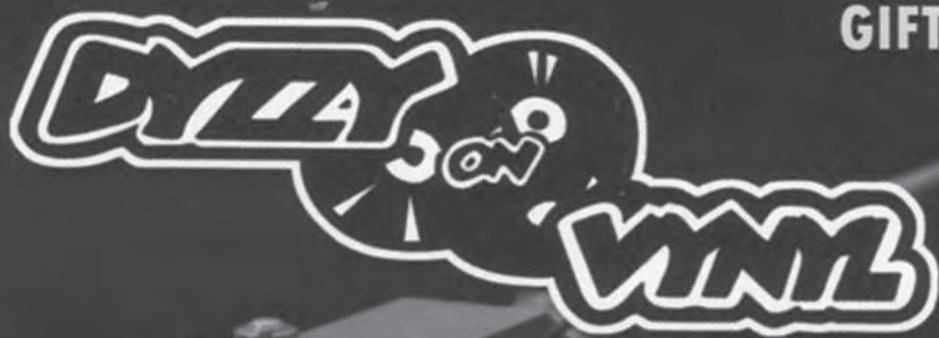
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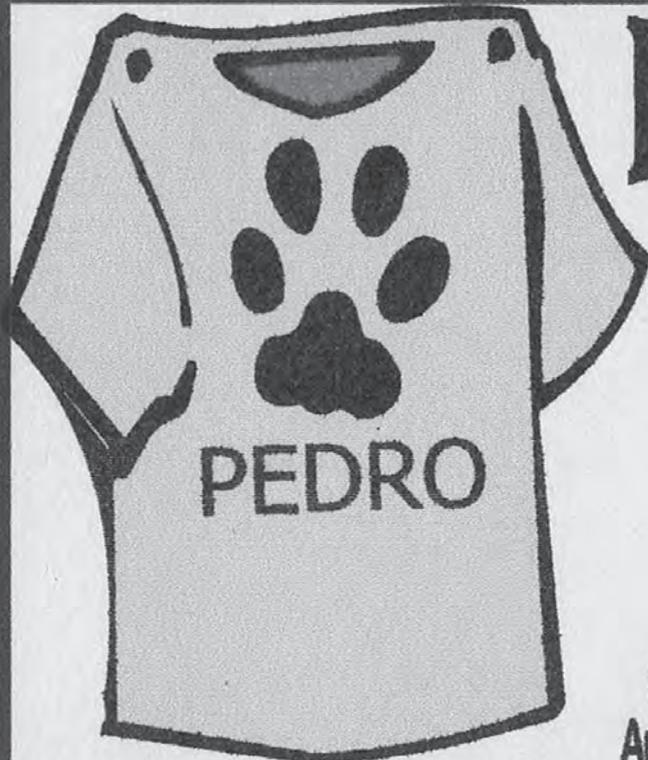
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# AVERILL PARK UPDATE

LAUREEN VIVIAN

On August 10th the Northwest San Pedro Neighborhood Council (NWSPNC) had its monthly meeting. It was a great success. Mike Shull, Superintendent of Planning and Construction for Recreation and Parks, and Mark Mariscal, Superintendent of the Harbor Region, attended and updated the council and the citizens of San Pedro on the renovation/restoration of the Park.

The Quimby Funds dedicated, all \$682,000, are ready to be released and will be sufficient to restore the stream, according to Mike Shull. This is a big victory for San Pedro in these times of belt-tightening. It was made possible by Janice Hahn's full support, consistent citizen pressure, and especially the understanding by Mike Shull that this project must focus on repairing what is there instead

of redesigning the whole system. Earlier plans went so far as to propose the removal of the stream!

There indeed were some tense moments over the last year and a half. The Department of Recreation and Parks lost its "in-house" design team and this and all other projects were moved to the LA Bureau of Engineering. A markedly different and detached perspective was taken by people with new views and design strategies. They had technical expertise but little understanding of the project, the community or the history of Averill Park. They actually proposed filling-in the stream with sand, creating bio-swales, closing part of the stream, relocating the wildlife, etc.

This creative, yet highly inappropriate brainstorming, went on for nearly a year! Then the project was moved back to Recreation and Parks and finally sent to the Planning and Construction Department. There were many changes again, but this time it was a fresh voice of reason that spoke. A light-handed restorative approach, one the neighbors had wanted all along, was adopted. The

"designing" stopped. A professional engineering firm was hired to write the specifications that would then allow for getting on with the task of fixing the infrastructure. The project was not only put back on course, but expedited!

We are very grateful to Mike Shull for his sensitivity to this issue, and especially his openness to preserving what makes the Park a special place: the stone walls, the depth of the stream beds, and other qualities that define its historical uniqueness. He took this project under his wing and quickly retained the necessary technical people whose recommendations made the plan happen.

So the stream will now be getting two new pumps to replace the old one. This means that the water will pass more quietly and efficiently, and better flush the lower pools where most of the wildlife resides. And these pumps will be camouflaged and placed away from the stream, a striking aesthetic and functional improvement. We won't miss that old pump spoiling our picturesque stream!

And budget permitting, there are a few other items we hope will



be addressed. Some of the vehicular access points have gates that are industrial-looking eyesores. Perhaps they can be eliminated or replaced with simple removable bollards and chains to emulate what is already in-use throughout the park. The two 60's-style drinking fountains could be replaced with ones that better cite the original history and that have both human and animal drinking bowls.

Finally, perhaps further down the road when we've benefited from fundraising and volunteers, some of the wooden gazebos that once hovered over several picnic areas could be rebuilt. And some limited historical lighting fixtures might improve security and visibility while accentuating selected features of the Park.

At any rate, construction for the renovation and restoration of Averill Park will begin before the winter!

Lauren Vivian, M.A., is a NWSPNC board member and SPNC stakeholder, as well as owner of DeKor Gallery on 6th Street. For a complete chronology of events, contact her at LVivian@earthlink.net. Photos by Lauren.

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Tomatoes, Chicken,  
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	Combo
Hamburger	\$4.35 \$7.35
Cheeseburger	\$4.95 \$7.95
Double Cheeseburger	\$5.35 \$8.35
Turkey Cheeseburger	\$4.95 \$7.95
Chicken Cheeseburger	\$4.95 \$7.95
California Cheeseburger	\$5.35 \$8.35
Pastrami Burger	\$4.99 \$7.95
Bacon Burger	\$4.99 \$7.99
Avocado Burger	\$5.35 \$8.35
Chili Burger	\$4.99 \$7.99
Vegetarian Burger	\$4.95 \$7.95
Add Ingredients	\$0.65

### Dinners

(Include Bread Sticks)

Shrimp Scampi	\$9.50
Vegetarian Lasagna	\$8.50
Lasagna	\$8.75
Spaghetti	\$7.50
Spaghetti with Meatballs	\$9.95
Cheese Ravioli	\$8.50
Spinach Ravioli	\$8.50
Chicken Alfredo	\$8.50
Chicken Parmesan	\$8.75
(Includes side of Spaghetti)	
Chicken Strips	\$9.25
(Includes 5Pcs. & French Fries)	
Add Meatballs or Sausage	\$2.75
Add Small Dinner Salad	\$2.25

### Rib Dinner

(Includes Bread Sticks)

BBQ Ribs Dinner	Small	Large
	\$9.20	\$13.50

### Sub Sandwiches

	8"	12"
Garlic Chicken	\$5.80	\$8.50
Ham & Cheese	\$5.80	\$8.50
BLT	\$5.80	\$8.50
Vegetarian Sub	\$5.80	\$8.50
Roast Beef	\$5.80	\$8.50
Turkey Sub	\$5.80	\$8.50
Tuna Sub	\$5.80	\$8.50
Pastrami Sub	\$5.80	\$8.50
Pepper Steak	\$5.80	\$8.50
Pizza Sub	\$5.80	\$8.50
Chicken Parmesan	\$5.80	\$8.50
Italian Stallion	\$5.80	\$8.50
Meatball Sub	\$5.80	\$8.50
Italian Sub	\$5.80	\$8.50
Italian Sausage	\$5.80	\$8.50
Italian Turkey	\$5.80	\$8.50

### Calzones

	Medium	Large
Vegetarian	\$9.75	\$11.25
Greek	\$9.75	\$11.25
Cheese	\$8.75	\$9.50
Add Topping	\$0.75	\$1.15

### Taco Plate

2 Chicken Tacos	\$5.30
2 Beef Tacos	\$5.30

### Quesadillas

Cheese Quesadilla	\$5.75
Chicken Quesadilla	\$6.25
Beef Quesadilla	\$6.25

### Burritos

Chicken Burrito	\$6.25
Beef Burrito	\$6.25

### Salads

(Include Bread Sticks)

	Regular	Large
Garden Salad	\$4.35	\$6.35
Greek Salad	\$5.55	\$7.55
Antipasto Salad	\$5.55	\$7.55
Chef Salad	\$5.55	\$7.55
Chicken Salad	\$5.55	\$7.55
Tuna Salad	\$5.55	\$7.55
Shrimp Salad	\$6.15	\$8.30

### Appetizers

Appetizer Combo	\$9.75
(Includes Hot Wings, Onion Rings Zucchini)	
Onion Rings	\$4.25
Fried Zucchini	\$4.25
Mozzarella Sticks	\$5.35
French Fries	\$2.50
Chili Fries (Add Cheese for \$1.05)	\$4.99
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Cheese & 1 Topping	\$7.25	\$10.45	\$12.80	\$15.40
Cheese & 2 Toppings	\$8.25	\$11.49	\$14.28	\$17.25
Cheese & 3 Toppings	\$8.99	\$12.50	\$15.50	\$18.75
Additional Toppings	\$1.15	\$1.45	\$1.75	\$2.00
#1 Vegetarian:	\$9.75	\$13.40	\$16.25	\$19.05
Mozzarella Cheese, Mushrooms, Olives, Green Pepper, Onion, Tomatoes.				
#2 Hawaiian:	\$9.50	\$12.25	\$14.50	\$18.75
Mozzarella Cheese, Ham, Pineapple.				
#3 Deluxe:	\$9.75	\$14.99	\$18.25	\$19.45
Mozzarella Cheese, Pepperoni, Sausage, Mushrooms, Onions, Green Pepper, Olives.				
#4 Meat Lovers Pizza:	\$9.75	\$15.05	\$18.25	\$19.45
Mozzarella Cheese, Pepperoni, Sausage, Ham, Salami, Ground Beef.				
#5 Greek Pizza:	\$9.75	\$14.99	\$18.25	\$19.45
Mozzarella Cheese, Feta Cheese, Sausage, Green Peppers, Onions, Tomatoes.				
#6 Hawaiian BBQ Chicken:	\$9.75	\$14.99	\$18.25	\$19.45
Mozzarella Cheese, BBQ Sauce, Chicken, Onion, Ham, Pineapple.				
#7 Margarita Pizza:	\$9.50	\$14.50	\$16.25	\$18.75
Mozzarella Cheese, Tomatoes, Basil, Fresh Garlic.				
#8 Shrimp Pizza:	\$10.75	\$15.95	\$18.75	\$19.95
Mozzarella Cheese, Shrimp.				

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# THE REALITY OF VICK'S RETURN

DAVE ZIRIN

**M**ichael Vick has been reinstated by the National Football League. But there's no guarantee that he will ever see the field. "I urge you to take full advantage of the resources available to support you and to dedicate yourself to rebuilding your life and your career. If you do this, the NFL will support you," said NFL Commissioner Roger Goodell.

"Opportunities for redemption are rare--but that is exactly the opportunity that awaits Mr. Vick," chimed in Ed Sayres, president of the American Society for the Prevention of Cruelty to Animals.

Both men, in their way, were attempting to put the best possible spin on Vick's return to the NFL. After serving twenty-three months in federal prison at Leavenworth for running a dogfighting ring--an ironic sentence considering the fact that a warmonger like Dick Cheney still roams free--Vick can now sign with an NFL team after a suspension that can last as long as six games.

While in prison, Vick met with the president of the Humane Society of the United States. He also will be working with groups aimed at steering young people away from dogfighting. By all accounts, Vick is profoundly remorseful. And if you had to declare bankruptcy and spend two years in Leavenworth, you would also be feeling a share of regret. Vick said in a recent statement, "As you can imagine, the last two years have given me time to re-evaluate my life, mature as an individual and fully understand the terrible mistakes I have made in the past and what type of life I must lead moving forward."

Goodell's decision comes in the wake of several players

showing their support for Vick on Twitter and even challenging the very idea that he could be suspended. It started with Terrell Owens, who tweeted, "Who's w/me on the Vick situation? All n favor, lemme get a tweet 2 support Mike Vick! He did the time 4 the crime! Let the guy play!!" Former pro bowler Steven Jackson added, "Playing is a privilege...But who has not sinned? Who can say I haven't made a mistake? Don't forget this will follow him the rest of his life. If serving time 4 the crime is not enough then what is? Don't agree with 4 games, 23 months is enough." Non-guaranteed contracts and Goodell's role as judge, jury and executioner of the league usually breed a kind of passivity, and this kind of public display of support by NFL players is rarer than a Detroit Lions playoff appearance. But none of it means a lick unless one of the NFL's thirty-two teams takes a chance and signs Vick, which is hardly guaranteed. It's a preposterous scenario. The NFL continues to employ J.T. O'Sullivan, Trent

Edwards and Dan Orlovsky--quarterbacks who couldn't throw a tantrum, let alone a touchdown. They also employ players who have been convicted for manslaughter, spousal abuse and everything short of molesting pandas.

Yet Michael Vick could remain radioactive for some time. It's hard to believe that NFL owners care deeply about animal rights. According to political donations, a typical NFL owner runs slightly to the right of Ghengis Khan. In fact, if they cared so deeply about animal rights, NFL owners would be publicly disavowing Sarah Palin. What they really care about is public relations. It's a public relations refracted through the very lens of the casual, mainstream racism that defines the modern Republican Party. Just as the ever-shrinking right wing clings to notions of Obama's birth certificate being invalid and are shocked that Henry Louis Gates Jr. may have a problem with being arrested in his own home, the idea of seeing an "ex-con" like Vick as being worth a damn is an entirely foreign concept.

The very political forces--and they are bipartisan--that have made the United States the prison capitol of the world are at work in the saga of Michael Vick. To insist that he deserves another chance is to admit that all ex-prisoners deserve to be seen as human beings and not simply statistics. For African-Americans, 9.2 percent of whom are behind bars, the urgency is even greater.

Whether you believe Michael Vick got a raw deal or think he deserved every last day of those two years in Leavenworth, people should collectively agree to pressure the owners of NFL teams to sign this man. Not just because he is good enough. Not just because he deserves any kind of a career comeback. But because if Michael Vick can't get a shot at redemption, if he is forever tainted, then where does that leave the millions still under the thumb of Prison USA? It's time for Michael Vick to get his second chance, for everyone who never even got a first.

**The very political forces--and they are bipartisan--that have made the United States the prison capitol of the world are at work in the saga of Michael Vick.**

-- Dave Zirin



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# DEMOCRACY DEMOCRACY AND BIG PHARMA

ROBERT REICH

I'm a strong supporter of universal health insurance, and a fan of the Obama administration. But I'm appalled by the deal the White House has made with the pharmaceutical industry's lobbying arm to buy their support.

Last week, after being reported in the *Los Angeles Times*, the White House confirmed it has promised Big Pharma that any healthcare legislation will bar the government from using its huge purchasing power to negotiate lower drug prices. That's basically the same deal George W. Bush struck in getting the Medicare drug benefit, and it's proven a bonanza for the drug industry. A continuation will be an even larger bonanza, given all the Boomers who will be enrolling in Medicare over the next decade. And it will be a gold mine if the deal extends to Medicaid, which will be expanded under most versions of the healthcare bills now emerging from Congress, and to any public option that might be included. (We don't know how far the deal extends beyond Medicare because its details haven't been made public.)

Let me remind you: Any bonanza for the drug industry means higher health-care costs for the rest of us, which is one reason why critics of the emerging healthcare plans, including the Congressional Budget Office, are so worried about their failure to adequately stem future healthcare costs. To be sure, as part of its deal with the White House, Big Pharma apparently has

promised to cut future drug costs by \$80 billion. But neither the industry nor the White House nor any congressional committee has announced exactly where the \$80 billion in savings will show up nor how this portion of the deal will be enforced.

In any event, you can bet that the bonanza Big Pharma will reap far exceeds \$80 billion. Otherwise, why would it have agreed?

In return, Big Pharma isn't just supporting universal health care. It's also spending lots of money on TV and radio advertising in support. Sunday's *New York Times* reports that Big Pharma has budgeted \$150 million for TV ads promoting universal

**Perhaps the White House deal with Big Pharma is a necessary step to get anything resembling universal health insurance. But if that's the case, our democracy is in terrible shape.**

-- Robert Reich

health insurance, starting this August (that's more money than John McCain spent on TV advertising in last year's presidential campaign), after having already spent a bundle through advocacy groups like Healthy Economies Now and Families USA.

I want universal health insurance. And having had a front-row seat in 1994 when Big Pharma and the rest of the health-industry complex went to battle against it, I can tell you first hand how big and effective the onslaught can be. So I appreciate Big Pharma's support this time around, and I like it that the industry is doing the reverse of what it did last time, and airing ads to persuade the public of the rightness of the White House's effort.

But I also care about democracy, and the deal between Big Pharma and the White House frankly worries me. It's bad enough when industry lobbyists extract concessions from members of Congress, which happens all the time. But when an industry gets secret concessions out of the White House in return for a promise to lend the industry's support to a key piece of legislation, we're in big trouble. That's called extortion: An industry is using its capacity to threaten or prevent legislation as a means of altering that legislation for its own benefit. And it's doing so at the highest reaches of our government, in the office of the President.

When the industry support comes with an industry-sponsored ad campaign in favor of that legislation, the threat to democracy is even greater. Citizens end up paying for advertisements designed to persuade them that the legislation is in their interest. In this case, those payments come in the form of drug prices that will be higher than otherwise, stretching years into the

future.

I don't want to be puritanical about all this. Politics is a rough game in which means and ends often get mixed and melded. Perhaps the White House deal with Big Pharma is a necessary step to get anything resembling

universal health insurance. But if that's the case, our democracy is in terrible shape. How soon until big industries and their Washington lobbyists have become so politically powerful that secret White House-industry deals like this are prerequisites to any important legislation? When will it become standard practice that such deals come with hundreds of millions of dollars of industry-sponsored TV advertising designed to persuade the public that the legislation is in the public's interest? (Any Democrats and progressives who might be reading this should ask themselves how they'll feel when a Republican White House cuts such deals to advance its own legislative priorities.)

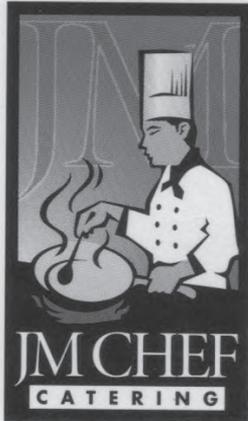
We're on a precarious road--and wherever it leads, it's not toward democracy.

Robert Reich was Secretary of Labor in the Clinton Administration.

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# THE FOG OF NUMBERS

JAMES HOWARD KUNSTLER

*There's something happenin' here  
What it is ain't exactly clear....  
-- Buffalo Springfield*

One of main reasons behind the vast confusion now reigning in the USA, our failure to construct a coherent consensus about what is happening to us (or what to do about it), is our foolish obsession with econometrics--viewing the world solely through the "lens" of mathematical models. We think that just because we can measure things in numbers, we can make sense of them.

**The number problems we face now are hopeless. America will never be able to cover its current outstanding debt.**

--James Howard Kunstler

For decades we measured the health of our economy (and therefore of our society) by the number of "housing starts" recorded month-to-month. For decades, this translated into the number of suburban tract houses being built in the asteroid belts of our towns and cities. When housing starts were up, the simple-minded declared that things were good; when down, bad. What this view failed to

consider was that all these suburban houses added up to a living arrangement with no future. That's what we were so busy actually *doing*. Which is why I refer to this monumentally unwise investment as *the greatest misallocation of resources in the history of the world*.

Even this interpretation--severe as it is--does not encompass the sheer damage done by the act itself, on-the-ground and to our social and cultural relations. Suburbia destroyed the magnificent American landscape as effectively as it destroyed the social development of children, the worth of public space, the quality of civic life, and each person's ability to really care about the place they called home.

It's especially ironic that given our preoccupation with numbers, we have arrived at the point where numbers just can't be

comprehended anymore. This week, outstanding world derivatives were declared to have reached the 1 quadrillion mark. Commentators lately--e.g. NPR's "Planet Money" broadcast--have struggled to explain to listeners exactly what a trillion is in images such as the number of dollar bills stacked up to the planet Venus or the number of seconds that add up to three ice ages plus two warmings. A quadrillion is just off the charts, out of this world, not really subject to reality-based interpretation. You might as well say "infinity." We have flown up our own collective numeric bung-hole.

The number problems we face are now hopeless. America will never be able to cover its current outstanding debt. We're effectively finished

at all three levels: household, corporate, and government. Who, for instance, can really comprehend what to do about the number problems infesting Fannie Mae and the mortgages associated with her? There's really only one way out of this predicament: to get ready for a much lower standard of living and much different daily living arrangements. We can't wrap our minds around this, so the exercise du jour is to play games with numbers to persuade ourselves that we don't have to face reality. We're entertaining ourselves with shell games, musical chairs, Chinese fire drills, Ponzi schemes, and Polish blanket tricks (where, to make your blanket longer, you cut twelve inches off the top and sew it onto the bottom).

Now that *Newsweek* Magazine--along with the mendacious cretins at CNBC--have declared the

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“recession” officially over, it’s a sure thing that we are entering the zone of greatest danger. Some foul odor rides the late summer wind, as of a rough beast slouching toward the US Treasury. The stock markets have gathered in the critical mass of suckers needed to flush all remaining hope out of the system. The foreign holders of US promissory notes are sharpening their long knives in the humid darkness. The suburban householders are watching sharks swim in their driveways. The REIT executives are getting ready to gargle with Gillette blue blades. The Goldman Sachs bonus babies are trying to imagine *the good life* in Paraguay or the archipelago of Tristan da Cunha.

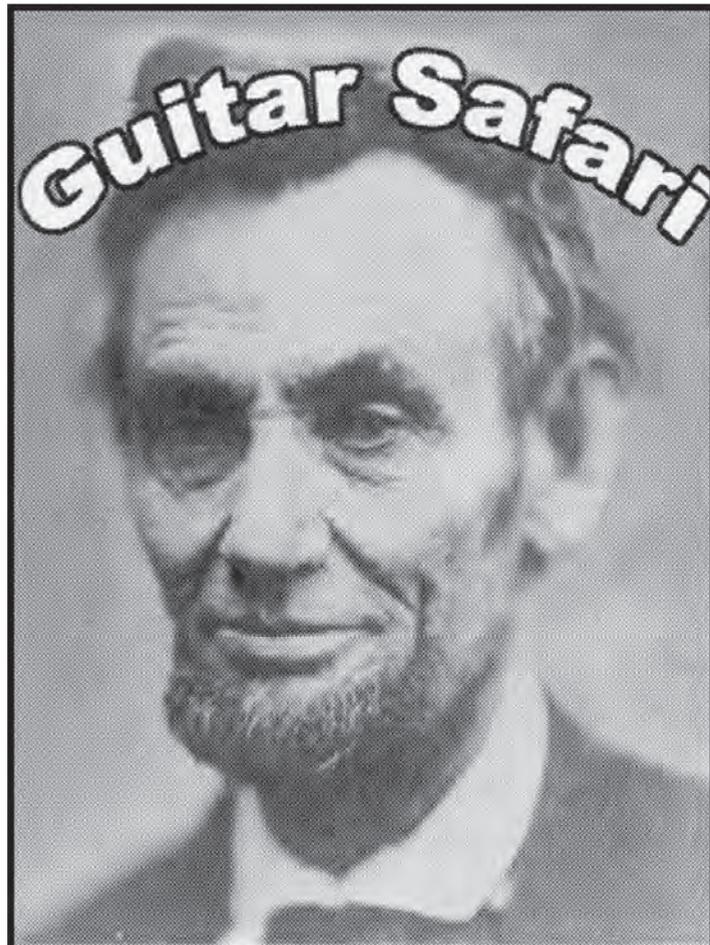
While extremely allergic

to paranoid memes and conspiracy theories, I begin to wonder about the impressive volume of World Wide Web chatter about an upcoming bank holiday--meaning that the US government might find itself constrained to shut down the banking system for a period of time to deal with a rapidly developing emergency that might prompt the public to make a run on reserves. God knows, there are enough black swans crowding the skies these days to blot out the sun. I hesitate to suggest that readers who are able to should consider stealthily withdrawing a month’s worth of walking-around money from their accounts.

The week past, some so-called “conservative” political action groups (read: *brownshirts* pimped by

corporate medical interests) trumped up a few incidents of civil unrest at “town meetings” around the country, ostensibly to counter health care reform ideas. The people behind these capers may be playing with dynamite. It’s one thing to yell at a congressman over “single payer” abstractions. It’ll be another thing when the dispossessed and repossessed Palin worshippers, Nascar morons, and Jesus Jokers haul the ordnance out of their closets and start tossing Molotov cocktails into the First National Bank of Chiggerville.

James Howard Kunstler’s novel, *World Made By Hand* (Atlantic Monthly Press, 2008), is now out in paperback. He is at work on a sequel.



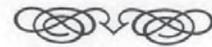
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# NOT EVERYTHING HAS TO MAKE A PROFIT

BILL MAHER

**H**ow about this for a New Rule: Not everything in America has to make a profit. It used to be that there were some services and institutions so vital to our nation that they were exempt from market pressures. Some things we just didn't do for money. The United States always defined capitalism, but it didn't used to define us. But now it's becoming all that we are.

Did you know, for example, that there was a time when being called a "war profiteer" was a bad thing? But now our war zones are dominated by private contractors and mercenaries who work for corporations. There are more private contractors in Iraq than American troops, and we pay them generous salaries to do jobs the troops used to do for themselves--like laundry. War is not supposed to turn a profit, but our wars have become boondoggles for weapons manufacturers and connected civilian contractors.

Prisons used to be a non-profit business, too. And for good reason--who the hell wants to own a prison? By definition you're going to have trouble with the tenants. But now prisons are big business. A company called the Corrections Corporation of America is on the New York Stock Exchange, which is convenient since that's where all the real crime is happening anyway. The CCA and similar corporations actually lobby Congress for stiffer sentencing laws so they can lock more people up and make more money. That's why America has the world's

largest prison population--because actually rehabilitating people would have a negative impact on the bottom line.

Television news is another area that used to be roped off from the profit motive. When Walter Cronkite died last week, it was odd to see news anchor after news anchor talking about how much better the news coverage was back in Cronkite's day. I thought, "Gee, if only you were in a position to do something about it."

But maybe they aren't. Because unlike in Cronkite's day, today's news has to make a profit like all the other divisions in a media conglomerate. That's why it wasn't surprising to see the CBS Evening News broadcast live from the Staples Center for two nights this month, just in case Michael Jackson came back to life and sold Iran nuclear weapons. In Uncle Walter's time, the news division was a loss leader. Making money

care. It wasn't that long ago that when a kid broke his leg playing stickball, his parents took him to the local Catholic hospital, the nun put a thermometer in his mouth, the doctor slapped some plaster on his ankle and you were done. The bill was \$1.50, plus you got to keep the thermometer.

But like everything else that's good and noble in life, some Wall Street wizard decided that hospitals could be big business, so now they're run by some bean counters in a corporate plaza in Charlotte. In the U.S. today, three giant for-profit conglomerates own close to 600 hospitals and other health care facilities. They're not hospitals anymore; they're Jiffy Lubes with bedpans. America's largest hospital chain, HCA, was founded by the family of Bill Frist, who perfectly represents the Republican attitude toward health care: it's not a right, it's a racket. The more people who get sick and need medicine, the higher their profit margins. Which is why they're always pushing the Jell-O.

Because medicine is now for-profit we have things like "recision," where insurance companies hire people to figure out ways to deny you coverage when you get sick, even though you've been paying into your plan for years.

When did the profit motive become the only reason to do anything? When did that become the new patriotism? Ask not what you could do for your country, ask what's in it for Blue Cross/Blue Shield.

If conservatives get to call universal health care "socialized medicine," I get to call private health care "soulless vampires making money off human pain." The problem with President Obama's health care plan isn't socialism, it's capitalism.

And if medicine is for profit, and war, and the news, and the penal system, my question is: what's wrong with firemen? Why don't they charge? They must be commies. Oh my God! That explains the red trucks!

**When did the profit motive become the only reason to do anything? When did that become the new patriotism?**

-- Bill Maher

was the job of *The Beverly Hillbillies*. And now that we have reporters moving to Alaska to hang out with the Palin family, the news is *The Beverly Hillbillies*.

And finally, there's health

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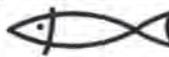
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