


# Center for Professional Ethics, Volume 3, Issue 4, [2002]

Case Western Reserve University

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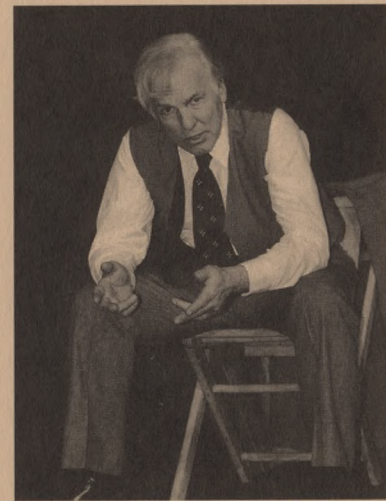
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## Theater and the Law

### Periaktos Productions Unites Them Again

Somebody doesn't recognize Graham Thatcher, one half of Periaktos Productions and the man who just played Clarence Darrow in *Clarence Darrow: Crimes Causes and the Courtroom*. That in itself wouldn't be strange if that somebody hadn't just watched Graham play Darrow — through his ups and downs, and victories and triumphs — for the last two hours. Finally, the audience member realizes he has been talking jury politics over lunch with "Darrow" and expresses his surprise at not recognizing him right away. While Graham attributes the wig and make-up to his ability to go incognito post-performance, his many fans and students know that it's more likely his uncanny and spot-on portrayals of characters and the depth with which he plays them on stage that makes him hard to recognize offstage in his modern street clothes. Graham's acting and the terrific writing makes one believe there's no acting involved, just Darrow visiting for a little while.

Darrow is just one of the characters Graham and his writing partner and wife Anna Marie (known together as Periaktos Productions) bring to life on stage for people around the country who want to learn about the law, justice and ethics through the entertaining and effective means of drama and the theater. In



Graham Thatcher as *Clarence Darrow*

her Producer's Note on *Drama and the Law*, Anna Marie Thatcher explains that drama and the law have been intertwined dating back to the 12<sup>th</sup> century; in her words, "Periaktos is just striving to create, once again, a happy marriage of the aesthetic and rhetorical arts with the practical study of law." And since 1994, Periaktos Productions has been doing just that. What started as Anna Marie's law school independent study project became a way of providing not only innovative Continuing Legal Education, but ethics education through drama at all academic levels. Basically, the two combined Anna Marie's J.D. and Graham's Ph.D. in Philosophy, tossed in their love of acting and writing, and drama that focuses on

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## Word of Mouth: A Workshop in Communication Ethics

"The theme for the day is: 'perception of appearance is reality.' Today we are going to be dealing with how we form our realities," began Graham Thatcher leading his Word of Mouth: Workshop in the Art and Ethics of Oral Communications for Lawyers on June 26, 2002 at the Cleveland Bar Association. At first glance, that introduction may sound a little too esoteric and metaphysical for a Continuing Legal Education (CLE) workshop, but when you think about it, that idea of 'forming realities' is at the heart of the legal profession.

Graham and Anna Marie Thatcher (known as Periatkos Productions) have been coordinating various CLE workshops since 1994. Their original plays coupled with their ethics workshops make them a CLE favorite around the country. This particular workshop looks at lawyers and their growing inability to communicate correctly or appropriately with their clients, and with other lawyers as well. "Legal practice involves two primary skills, talking and writing, yet forensic persuasion is not taught in our law schools and we trust to luck or talent to lead us through the communicative morass we meet in actual practice," reads the material that accompany the Word of Mouth workshop. Are lawyers really that ill-equipped when it comes to communicating with others?

Look at this some of the complaints to Disciplinary Boards of Professional Responsibility about lawyers:

- Doesn't return my calls, even when they are billable
- Can't or won't listen
- Never gets my story straight
- Speaks only in legal jargon
- Makes me change *my* story or wants me to say things that aren't completely accurate

These are just a few of the complaints listed in the workshop materials, but it's easy to see the pattern of communication breakdown. "Lawyers have three things they do: write, speak – and most important — they have to listen," said Graham. "70% of our communication time is spent in a 'listening attitude' which is taking something in from other people by listening, not in speaking or writing. Good communication should be the ethical duty of all lawyers." The list from the Disciplinary Boards seems to say otherwise.

But thanks to CLE and the Thatchers, there is hope for lawyers and their clients. In this workshop, they tackle the ethics of communication from every conceivable angle. They give insights, explanations and answers throughout their workshop that everyone, not just lawyers, will find useful. Perhaps the most memorable part of the workshop, besides the good advice, is the spirit in which it is given. Example? The Thatchers acknowledge that lawyers have fears, worries and insecurities, they are only human after all, just like the rest of us — something lawyers and non-lawyers alike need to remember.

If you are interested in contacting Graham and Anna Marie Thatcher about this or their other workshops, please call 1-605-787-7099 or email: [productions@periaktos.com](mailto:productions@periaktos.com).

"ethical issues in the practice of law" was born.

With the CPE's Director being a theater buff, and the already successful CPE program of *Drama Discussions: Voices Of Diversity*, the Center for Professional Ethics was well aware that drama offered great potential for an intriguing ethics discussion. As anyone who has seen a good theatrical production knows: live theater has a way of staying with you – watching, hearing, and thus feeling someone work through their problems in front of your very eyes is like nothing else so true to real life, and because of that, it is a natural, but not obvious arena for ethics presentation and discussion.

In March 2001, the CWRU School of Law and the Center for Professional Ethics invited Periatkos to bring Clarence Darrow to Cleveland. Periatkos and Darrow returned to Cleveland in June, 2002, to perform for the Cleveland Bar Association. Written by Graham and Anna Marie Thatcher, *Clarence Darrow: Crimes Causes and the Courtroom* follows Darrow (Graham Thatcher) through his life and many of his famous cases. As "Attorney for the Damned," he fought for those others would not. Almost 100 years later, the issues Darrow fought for and against are as relevant as they were in his time.

A highlight of this production is the Scopes "Monkey Trial" scene – Graham does a fantastic job of playing Darrow playing William Jennings Bryant!

In April, 2002, again through the sponsorship of the CWRU School of Law and the CPE, Justice William O. Douglas came to town in *Impeach Justice Douglas!* In this Thatcher-penned play, we watch Justice Douglas, a controversial figure, speak about his tumultuous life on the Supreme Court and his strongly held views on the Constitution and the Bill of Rights. Justice Douglas's life, while not as frequently documented as Darrow's, is still an absorbing one, which usually leads to good debate.

Periaktos uses a minimalist approach to stage design and props which compels the audience to concentrate on the excellent writing and acting. Because Periaktos doesn't just focus on the good deeds of each historical character – they are careful to include the eccentric side of the characters including their failures and mistakes – their shows shine a light on all aspects of a character's life. As well, a healthy dose of comedy is infused in each show. Tragedy and comedy artfully

combined makes good theater; and good theater is, as the CPE has discovered, a terrific springboard to ethics debate and exploration.

To contact Periaktos Production, please call or write: 1-605-787-7099 or productions@periaktos.com.

**Please see the rest of this newsletter for more stories on ethics discussion originating from two Periaktos Productions plays: *Clarence Darrow: Crimes Causes and the Courtroom* and *Impeach Justice Douglas!***

## Quotable Quotes

"Judging is not in general simply accepting one or two ready-made alternatives as the right one....It is seeing reason to think and act in a particular way. It is a comprehensive function, involving our whole nature, by which we direct ourselves and find our way through a whole forest of possibilities....Moral judgments, therefore, are, like other judgments, always *accountable*. We can reasonably be asked - sometimes by others and always by ourselves - to give reasons for them."

- Mary Midgley, Can't We Make Moral Judgements?

## A Panel Discussion on Ethics, Clarence Darrow and the Law

“One of the things I do when teaching ethics at the CWRU School of Law is ask my students to think of their lives intergrated into and with the law. They write papers on a famous historical figure, fictional characters or people they know, because it can be difficult to connect the study of ethics to real life,” said CPE Director Robert Lawry at the Cleveland Bar’s June 26, 2002 post-panel discussion of the performance of *Clarence Darrow: Crimes Causes and the Courtroom*. The panel moderator added, “The value of having something like this performance is it makes you think about how a man or woman’s life ties into how they operate, and the difficulties and the successes they have.”

The panel, consisting of CPE Director and Professor of Law, Robert P. Lawry; Judge Kathleen O’Malley, United States Ninth District Court of Ohio; Attorney Marvin Karp, Partner at Ulmer & Berne; and Attorney Steven Smith of the West Group, discussed matters of public debate in the court room, lawyering, and of course, ethics — ethics in the law and in the jury box.

In the performance, we see some of Darrow’s greatest speeches. These often focus on the great public controversies of Darrow’s day, and one of these is capital punishment which the audience sees via the Loeb and Leopold case. Professor Lawry wondered if the debate of “great public issues” belongs in the court room and if they do, how should they be discussed there?

“Well, what Darrow would do is go above and beyond the facts of the case,” said Mr. Smith. “He’d go to the over-arching concern, the general principles, the general rules without really arguing the facts of the case. This is an effective argument but you should be arguing the evidence, not bringing your personal feelings into the case.”

Judge O’Malley added, “Clearly, great public issues belong in court rooms, in fact, some are being played out right now. I don’t think in these instances if Darrow was trying to argue social issues to the exclusion of the law — I mean, he didn’t say these individuals weren’t guilty, he appealed to mercy, which is a fair argument in any court.”

Mr. Karp believes that society risks losing the chance to look at great public issues if they are not dealt with in court. “The traditional vein espoused by certain Supreme Court judges say, ‘well, great public issues are a matter for the legislature.’ If that were the case, school desegregation may have never occurred,” he said. “Look at products liability, that evolved through the courts; the way the country has evolved in terms of products liability, exposure, duties of manufacturers and rights of injured parties — everything.”

In the cases of “playing the race card” and/or jury nullification., the panelists gave insightful and differing views (Jury nullification is when a jury finds a defendant innocent because they believe the law the defendant is being accused of breaking is unjust, or unjustly applied).

“There are cases that I have seen where race is relevant to the overall picture and may even be relevant to the credibility of witnesses or to the credibility, generally, of the prosecution’s investigation and the presentation of their case and that’s not the same as pure jury nullification. It’s more that race is an overlay to whether or not there should be reasonable doubt,” said Judge O’Malley.

“A good example of jury nullification is the Scopes case,” explained Mr. Karp. “I don’t know how you handle that case without asking for jury nullification. The law is clear. The law said, ‘If you teach this, you are violating the law,’ and Scopes taught it. So what do you do? Get a verdict against you, then challenge the validity of the law through the appellate process, or persuade the jury that they should not find him guilty because the law is silly. The latter is jury nullification.”

“However,” added Judge O’Malley, “we all have roles and we all have functions. If I were a legislator would I vote to have the death penalty in my particular state? Probably not. As a district judge is it my obligation to enforce the death penalty if it is constitutionally imposed? Yes. The jury’s role is to apply the law and uphold the law. If a law is unconstitutional that is decided by the Supreme Court, and, ultimately, if the

law is constitutional, but a “bad” law, then there is the court of public opinion in which the legislature should act. It’s not the jury’s role to act as a Supreme Court justice and a legislator all wrapped up into one.”

However, there are cases of judges who feel, morally, they can not possibly apply or enforce the death penalty, or make other sentencing decisions that, to them, are morally abhorrent. Professor Lawry shared a story about a judge who resigned over the sentencing guidelines. The judge said, “I cannot do what the sentencing guidelines require me to do because I don’t think that’s where the proper locus of authority belongs — it’s a moral matter. I’m a judge, I should do the sentencing, but I can’t, so I must resign.”

A juror rarely finds him or herself in this moral quandary as lawyers dismiss jurors who seem to have certain prejudices, but once a juror is in the box, there are other ethical pitfalls to watch out for. Marvin Karp wondered if the more important issue for jurors and lawyers is: “what the lawyer may or may not do to in order to perhaps stimulate the jury regarding witness testimony and questioning.”

“An ethics question that pops up in the legal literature: is cross examining a truthful witness to make him/her out to look like a liar an appropriate thing for a lawyer to do? There is an awful lot of scholarly debate about it; whether or not it is permitted. Some people think it is required of a defense lawyer,” said Professor Lawry.

“I think the controlling viewpoint is: that type of cross examination is the obligation of the lawyer. But to do so in a valid and not improper or illegal way, of course,” answered Mr. Karp. “If you, as a lawyer, can ask a question that makes the other lawyer or the witness look befuddled, therefore destroying their credibility, it is your obligation as the lawyer in a criminal setting to do so. Criminal lawyers will maintain, quite uniformly, that is their obligation.”

Professor Lawry pointed out that within the legal community the meaning and the application of the word “obligation” has changed over the last 30 years. “25 years ago or so, the ABA standards on the criminal defense function told the criminal defense lawyers that not only were they not obligated (to make a witness look like a liar), they were not allowed to do that. Then the defense function rules began to change

and now there’s a statement that makes it look like the criminal defense lawyers have an obligation to do this,” said Professor Lawry.

“If I am not sure the witness is telling the truth, I have a duty to test him/her,” said Mr. Karp.

“In some cases, I think you can know for sure if someone is telling the truth. I know you’ve got an obligation as a lawyer to do the best job you can for your client, but does that mean destroying a witness whether that witness is, in your opinion, telling the truth or not? I think there is a moral issue there. It may be that your only response is ‘have I got to plead this one out?’ Sometimes you have a lousy case,” said Professor Lawry.

Judge O’Malley believes that the vast majority of criminal defense lawyers don’t destroy someone for the sake of the destroying. “However, I think we have a problem with the phrase ‘zealous advocacy’ being in *The Rules of Professional Responsibility*. I think the move to try to remove that language is appropriate. The problem comes when zealousness overcomes ethics and morality — that’s when you see lawyering that should not be occurring in the court,” she explained.

“We do have rules,” ended Professor Lawry. “You don’t tamper with the jury; you don’t put in false evidence; and you don’t deal in perjured testimony. We are all comfortable with saying those things, but is there any more we should be worried about?” Professor Lawry reminded the group that “the tough ethics questions are things like your own intentionality and the techniques you use to stave off some problems.”

*From the Impeach Justice Douglas! Performance***Perspectives on Mr. Justice Douglas and the Constitution**

Periakto's Production's *Impeach Justice Douglas!* portrays Justice William O. Douglas as a "stern moralist who loved the environment." Some have called his decisions controversial, yet sound, while others say his craftsmanship was sloppy, and yet others call him a radical revolutionary. A panel of CWRU Law School professors and a judge gathered to discuss the life, leanings and legend of this fascinating and distinctly American man during his time as a Supreme Court judge.

"The play last night, *Impeach Justice Douglas!*, talked about the man insofar as he approached his career, and the idea that he thought it was appropriate to talk publicly about public matters," began Professor Lawry, Director of the Center for Professor Ethics and CWRU Professor of Law, who moderated the panel. "In terms of judging, is it appropriate, and, if so, when, for judges to appear and talk in public?"

"I believe I am old-fashioned when it comes to this," said Melvyn Durchslag, CWRU Professor of Law. "Federal appointees for life have to be circumspect about the comments they make about certain public issues that are political, or are part of a significant political debate. Having said that, however, it has become more commonplace to have judges speak out more publicly." Professor Jonathan Entin of CWRU's School of Law added, "There is a school of thought that says, 'judges are teachers' in the sense that their opinions are designed, among other things, to guide people for the future, not just to resolve the issue at hand. Part of the reason we ask judges to explain their reasoning is precisely so other people can understand what the court is doing."

Professor Lawry wondered if there was a line which judges shouldn't cross when talking about certain issues. "For example, Justice Scalia wrote a book called *A Matter of Interpretation*," he said. "One way you could draw this line is by saying, 'Well, if you are going to talk about things, talk about judicial craft, judicial and general interpretation, and about systemic problems in the judiciary because these are the kinds of things that are somewhat non-substantive.' Is that a worthy line to draw?"

Using the line Professor Lawry drew, CWRU Professor of Law Michael Heise agreed, adding, "I would only be comfortable with sitting Article 3 judges discussing judicial craft as opposed to talking on the environment or Vietnam. They are perfectly free, as taxpayers, to engage in citizenship, but if they submit and receive an Article 3 commission, there are substantive issues that are out of bounds."

Judge Karen Nelson Moore, a former Professor of Law at CWRU who now sits on the U.S. Court of Appeals for the Sixth Circuit, said that she believed there are three areas judges should think about. "Judicial housekeeping is one, as it is informative to the Bar and promotes and improves advocacy," she said. "But then there is that gray area of 'academic commentary' on approaches to big areas of the law. That is a questionable area of judicial commentary which might point to how a certain judge would be deciding particular cases. It also has a possibility of involving a judge in an educational way – Professor Entin talked about the good way this can happen – and I wonder whether or not speaking about canons of statutory interpretation, for instance, should be done through particular cases where particular canons become appropriate, rather than, say, writing the definitive law review article on 'canons of interpretation.' Lastly, Justice Douglas spoke on political issues — I feel this was wrong."

It is obvious that a litigant coming before a judge after hearing about that judge's political leanings might make things not only uncomfortable, but unfair. So what about conformation hearings? Often these panels ask very probing questions about substantive issues.

"I don't think it is appropriate for the President or the Senate to ask questions about particular topics that may come before the judge because an oath that one takes as a judge is: to decide cases to the best of one's ability according to the Constitution and the laws of the United States," said Judge Moore.

Professor Durchslag brought up the point that judges are only human; to think they will not have leanings or opinions is unrealistic.

“According to some of Mr. Justice Douglas’s critics, he had two major flaws as a judge: one, he decided cases according to his political views; two, as result of that, he did not develop a coherent legal analysis in most of his opinions, thus not helping anyone to figure out where you go from there,” said Professor Lawry. He asked the group to talk about, in particular, Griswold v. Connecticut for which Justice Douglas delivered the opinion.

Describing the case Professor Entin said, “Connecticut had a statute that prohibited the sale or distribution of contraceptives. It had passed in 1879 and had not been credibly enforced for many years. Griswold was the head of the New Haven Planned Parenthood Association. The medical director dared the state prosecutor to file charges, the clinic had been violating the law every day.”

“In my opinion, I think Justice Douglas’s decision in Griswold was right,” said Professor Durchslag. “His mistake came when he tried to walk the line between Black’s textualism (Justice Hugo L. Black) and some other theories of interpretation. He would have been better off had he tried to adopt a Harlan-esque approach and said, ‘it’s none of the government’s damn business whether or not people use contraception.’”

“But the ‘how’ matters,” said Professor Heise. “Judicial craft matters. It matters less perhaps with respect to getting from point A to point B in the decision, but the ‘how’ and the journey and the craftsmanship matters because it educates and guides future litigants and Supreme Court doctrine. For better for worse, the ‘how’ does matter.” Professor Entin added, “I am not sure Griswold was correctly decided on the facts. The thing to remember about Harlan is how do we know this is our tradition; at what level of generality are we going to define ‘tradition.’ And if you are going to think about it from an academic perspective, it seems to me that the opinion might have been better crafted.”

Since the craftsmanship issue was being so closely examined, Professor Durschlag wondered why that issue wasn’t being brought up about Brown v. Board Of Education? “If you look at it in those terms, where in the world did we get the notion that separate means inherently unequal,” he said. “Justice Douglas gets criticized constantly about being a bad judicial craftsman, for being too political. The point is: we

have let Brown escape all of that criticism, but here we say, ‘where does this right of privacy come from?’ Privacy is there because it is in our understanding that there are limits to our government.” Professor Entin believes Brown is different than Griswold. “I think Griswold could have been resolved politically in the sense that the political process was already reasonably open,” he said. “There was no political alternative for Brown because the political system that existed in the United States, until well after Brown was decided, excluded African Americans. The reason Brown is not the best piece of legal craftsmanship is because Justice Warren felt it was more important to get a unanimous court than to get the most rigorous opinion that might have been written – that was a judgment call on his part.”

A student wondered what Justice Douglas would think of affirmative action. “We don’t have to wonder,” explained Professor Entin. “There was a case in 1974 called DeFunis v. Odegaard. While the case was declared moot, Justice Douglas wrote a separate opinion that DeFunis’s claim was valid, the Constitution was in fact colorblind and to the extent that he had been kept out of that law school because of the consideration of the race of other applicants, would have made a good equal protection claim.”

Rounding things up, Professor Durchslag brought the Douglas discussion to a fitting end by mentioning a case which originated locally, Lehman v. Shaker Heights. “This was a First Amendment case involving a man (Lehman) putting up political flyers in what is now the Shaker Rapid. The city did not want Lehman to do this, and demanded that he take the flyers down — even though the city did allow certain signs,” he said. So did Mr. Justice Douglas follow, what many have called, his tradition of staunch individualism?

“Justice Douglas is not as easy to predict as one imagines,” he said. “He wrote an opinion for the majority, and what the majority said is the city could indeed restrict this; to wit, ‘We shouldn’t subject people to visual clutter.’”



*The CWRU Law–Medicine Center presents:*

# Gaps and Inequity in America's Health Care System

According to the Law School's 2002 Schroeder Scholar-In-Residence and Executive Director of Families USA, Ron Pollack, the latest Census Bureau report shows that in the year 2000 there were approximately 39 million Americans who were uninsured. And in just two short years, our country has changed a great deal, and in ways that have driven that statistic up even higher.

"Families USA released an analysis in February 2002 which examined the year 2001 in terms of people losing health coverage as a result of layoffs," said Mr. Pollack. "Our report found more than 2.2 million Americans lost health insurance coverage in the year 2001 as a result — 2.2 million plus 39 million is more than 41 million Americans, and that figure doesn't even take into account the people that might have lost health coverage through other factors."

If that is not considered an epidemic, what is?

While that epidemic is Ron Pollack and Families USA's biggest concern, his talk on March 7, 2002 at the CWRU School of Law focused on the failure of America, both in the public and private sectors, in our refusal to deal with this now enormous problem of the uninsured.

And it could get worse. "With the lagging economy and increase in the cost of health care insurance, employers are more inclined to pass on these increased costs to their workers," he explained. Even more disastrous, what if a worker finds him or herself unemployed? "Here's where people usually say, 'What about COBRA?'," explained Mr. Pollack. "COBRA benefits are designed to help people who have been let go continue getting health coverage through their previous employer. But the COBRA catch is you have to pay 102% of enrolled provider coverage. An example of the costs? The average cost of a family health plan is \$7200."

People who are unemployed only make up part of the uninsured epidemic. As most know, the way our country provides health insurance coverage is typically through an employer. "90% or more people under

age 65 have their coverage through their employer," said Mr. Pollack. "However, when you look at who is uninsured in the U.S., they are typically working, but low wage earning families who are employed by small businesses." A low-wage worker is defined as earning \$7 or less an hour. Ron Pollack notes that these "low-wage workers" are suffering from what he terms triple jeopardy. "One: they are less likely to be offered health coverage through their workplace; two: typically, they pay more in premiums; and three, they have less discretionary income with which to pay for coverage."

There are multitudes of problems in our public sector as well. "The United States picked up the precepts of Elizabethan poor laws when we enacted the social welfare system in the 1930s," he explained. "Our public sector system of coverage says, 'if you are going to be receiving the benefit of the social welfare system you not only have to be poor, you have to fit a certain deserving category. Some of these deserving categories are: being a child, being permanently or totally disabled, or over age 65. Then, in 1965, Congress grafted onto our public health care system a category that did not render you eligible by need alone, but on the happenstance of certain characteristics," he said. This was how Medicaid came into being.

Looking at our public health coverage (Medicaid, State Children's Health Insurance Program) we see there are three categories of people served: children, parents of the children, other adults (non-parental adults). "The public doesn't understand that we treat these three types of people/groups differently from one another. The public wants to believe that we take care of the poor — all sections of the poor. However, if you are a single or childless adult in 43 out of 50 states, you can nearly be penniless and not qualify for public health coverage."

While many remember the failure of the Clinton Health Plan, Ron Pollack reminds us that President Clinton is not the only president who failed in the uninsured epidemic. The 20<sup>th</sup> century shows us that there are a number of presidents that tried to make progress on this issue, F.D.R., Truman, Lyndon Johnson, J.F.K., Richard Nixon and Jimmy Carter, and all failed.

Is this because health coverage is too complex an issue? Mr. Pollack believes the problems have more to do with money and politics. “In the U.S., the economy derives a substantial part of its income from health care and the health care system,” he explained. “This means there are very significant interest groups that derive their income and their resources from that system.”

Mr. Pollack believes it will be very difficult to achieve major, revolutionary health care reform, partially

According to Ron Pollack, President Bush and those who are allied with him want to change the employer-based health care system to individual-based system. “This would mean we would not get our health care coverage through our employers anymore. There are major problems with this idea. For example, it would be more expensive than the \$1000 voucher Bush has offered, and if you have a preexisting sickness or disability, it would be nearly impossible to find an insurance policy to cover you, and even then, very expensive.” There is room for optimism, however.

“In the U.S., the economy derives a substantial part of its income from health care and the health care system,” Mr. Pollock explained. “This means there are very significant interest groups that derive their income and their resources from that system.”

because of fear of losing that huge income, but also because “we are a much slower, more gradualist nation in making changes.” He also cited “a distrust of government that’s been nurtured in a variety of different ways like scandals, the Vietnam War” as a problem, adding, “there is a very different feeling about the role of government in the United States than in other countries in the Western world.”

So, what can we do?

In fighting for health care coverage, Mr. Pollack has learned a few things. “For one, it is imperative that any proposal cannot threaten, or be perceived to threaten, the coverage that is already in place,” he said. “We need to build on the existing structure.” While Mr. Pollack admits this is a controversial viewpoint, he believes it is the only way to get changes made. “If you undermine that current system, you have to be very careful about what you are going to get in its place.”

Mr. Pollack and Families USA believe the government should expand the SCHIP program (State Children’s Health Insurance Program); and do more for people who are temporary unemployed as well as for people transitioning from welfare to work — making sure all of these groups have, or do not lose, their health care coverage.

Mr. Pollack is thrilled that President Bush has put 89 billion dollars in the budget over the next 10 years to expand health coverage for the uninsured.

Mr. Pollack and Families USA have initiated with, among others, the American Medical Association and the AFL-CIO, a push for employer-based tax credits for health care coverage. You can read more on their plan at [www.familiesusa.org](http://www.familiesusa.org).

While Mr. Pollack and his group are enthusiastic about these new and strange partnerships made for the purpose of getting the uninsured insured, there is something more Mr. Pollack wants the group to remember. “At Families USA I like to say there are two camps: people who want universal health coverage last week; and the other camp, who wanted it earlier than that. But we are not going to see universal health coverage overnight. It will be a step-by-step process.”

But who knows what could happen? As Mr. Pollack said, “As the economy has soured, more people are beginning to identify that they could be the uninsured — I think people now understand that the uninsured are not a species apart, they are not ‘the other.’”

# Hard Questions for Dark Times

It has been a year since that infamous day, which is now simply known as 9/11. The war in Afghanistan is over; and al Qaeda has been mysteriously quiet, as the search for Bin Laden and his terrorist associates continues. Meanwhile, the senseless spiral of death continues in Palestine and Israel; and on the home front, corporate scandals and priest/pedophile cover-ups stagger us, blow after blow. The summer sun has been shining relentlessly; but it is a dark time. As usual, I get calls from reporters. Everyone knows we are in a moral mess. So they ask for instant analysis: what is wrong? And they ask for an instant fix: what needs to be done? My eyes roll and my head spins, as I try to say something intelligent, knowing full-well they will simply take a fragment of a sentence out of context and try to forge a quotable quote for a forgettable story. Sometimes I want to tell these journalists that they are part of the problem, feeding our anxieties with cotton candy answers when the questions themselves haven't been properly formulated. However, I am unfailingly polite, and unfailingly superficial. Moreover, issues of law and public policy are tied to the moral issues that are seemingly everywhere. We need at least to take stock at this juncture; and try not to assume any one answer fits all problems. Indeed, there are not clear-cut moral answers to any of the problems we face. At most, we should try to be careful to identify moral concerns as we struggle in the current darkness. Here is a partial list of concerns that I have. Think of them as a first draft of some questions that need to be asked.

**AFGANISTAN.** Now that we have reduced this country to rubble, what is our commitment going to be over the long haul to stabilize the country, and to insure that people have adequate food, shelter, clothing, hope for the future? If you read our last Newsletter, you will see that the "war" in Afghanistan has left us with a genuinely "tragic question" that we cannot avoid facing.

**THE MIDDLE EAST.** War drums are clearly sounding. We must invade Iraq and topple Saddam Hussein, so the conventional wisdom decrees. Would such a war be a "just war?" Who has made the case that it would? Who has even made the case that it is in our strategic best interests to invade that country? And if we do bring our bombs and destructive force to bear, as in Afghanistan, the tragic question looms: what are we prepared to do in the aftermath to stabilize that country? Will the war itself bring other Arab countries together to further hostilities against the U.S.A.? Moreover, are we pursuing Saddam because we are so baffled by what is (and is not) happening in Palestine and Israel that we would rather do the easy thing - go to war - than the incredibly difficult thing - broker peace and guarantee it?

**CORPORATE SCANDALS.** Passing new legislation is a typical "quick fix" for a problem that has deeper roots than a few "bad guys" who were greedy. It was only less than a generation ago when the notion that

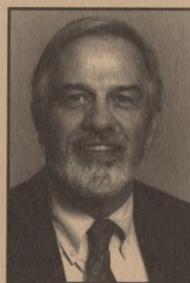
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“greed was good” seemed acceptable to Wall Street (and perhaps to Main Street.) When Enron joins the Savings and Loan debacle of the 1980’s as “history,” will we have faced up to the larger questions of greed and fiduciary responsibility on the part of corporate executives to all the “stakeholders” of an enterprise? Will lawyers and accountants become “professionals” in deed as well as word, remembering that the very definition of a “professional” requires a commitment to the public good over private gain either for self or for client? And: how do we accomplish these goals?

**CHURCH COVER-UP.** At least one of the frequently stated reasons why bishops and other Catholic Church leaders did not report the criminal acts of priest/pedophiles was to avoid scandal. Such a reason is hard to understand, given that hiding wrong-doing is at least as scandalous as the wrong-doing itself. What is much worse, however, and what clearly seems monstrous, were the repeated decisions to send these offenders back into parishes and other places where they could repeat their horrible acts against innocents - and often without disclosure to anyone. This is raw moral arrogance, and the place where the corporate scandals and the church scandals connect. What is at

the heart of both sets of problems are questions of structure and process? Are not these issues systemic? How can these systems be changed to insure that these kinds of things cannot happen on a massive scale? And what will the changes mean vis-a-vis other values and other good things that the systems protect and insure?

These questions are first-drafts of only some of the many questions that need to be formulated during these times. Only first-drafts. Only some. Of the hard questions for these dark times.



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