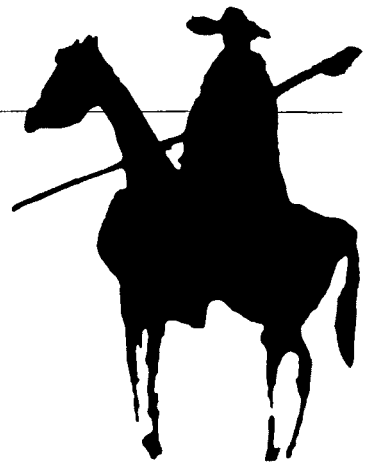


TILTING AT WINDMILLS



The saddest aspect of the Thomas hearings was the failure of the Republican senators to even seem interested in finding the facts as distinguished from making partisan points. The senators had a duty to determine the truth of Anita Hill's accusations. Yet I cannot recall a single Republican question that was designed to discover factual support for Hill's version of the story. Do senators have to behave this way? Of course not. All you have to do is remember Republican Warren Rudman and Democrat Lee Hamilton during the Iran-contra hearings or Republican Howard Baker and Democrat Sam Ervin during the Watergate hearings. None of these men let loyalty to the party keep him from making a reasonable effort to find objective truth. Remember how Baker kept asking, "What did the president know and when did he know it?"—a question that surely offered little comfort to Richard Nixon. . . .

As a born-and-bred Democrat—both my parents were active party members—I am not immune to partisan sentiments. I often find myself instinctively favoring liberal causes and liberal candidates. I understand why Republicans are similarly inclined to favor conservative causes and candidates. But something terrible has happened in recent years to transform these understandable feelings into a politics of self-righteous, one-sided attack in which no effort is made to

consider the other fellow's points, no matter how valid they may be.

What has happened to the spirit manifested by FDR, certainly no saint when it came to partisanship, when he named two prominent Republicans, Frank Knox and Harry Stimson, to his cabinet in 1940? Or that displayed by Dwight Eisenhower when he nominated William Brennan to the Supreme Court? When I worked for the Peace Corps in the sixties, my boss, Sargent Shriver, did not hesitate to hire outstanding Republicans such as Lewis Butler and William Saltonstall. When I served in my state legislature, there were several intelligent and concerned Republicans whose arguments I always listened to with respect.

Part of the problem is the success enjoyed by the Lee Atwaters. Another factor may be the explosive growth of the legal profession in the past 30 years and the adversarialism it fosters. Finally, there is the preponderance of single-issue lobbies such as the NRA, which have made issue adversarialism a greater threat to the republic than party partisanship. But whatever the cause, the time has come to restore civility and objectivity to our public discourse. We face problems too serious for us to scorn facts or legitimate arguments simply because they don't fit our case. . . .

Those whose patience was strained by the interminable jury selection process in the William Kennedy Smith trial might

consider California's Proposition 115, which took jury selection out of the hands of the lawyers and gave it to the judges. The result is that a judge can empanel a jury in as little as an hour. Speed isn't the only reason the California system is better. A vast jury selection industry has been developed in recent years, which gives an unfair advantage to the side that can afford the best psychologists. . . .

Let's say you were unpersuaded by our pitch for a modified version of the Canadian health plan ["Socialized Medicine Now—Without the Wait," October] and unmoved by Pennsylvania's tremendous response to Harris Wofford's call for universal health care—costs too much, you shrug. Then you should ponder this report from *The Washington Post* about a study commissioned by the Robert Wood Johnson Foundation:

"The United States could save \$241 billion on health care costs the first year and \$4.2 trillion over the next decade if it switched to a Canadian-style national health insurance system."

We'll take just part of the savings. Some of them should be invested in repairing defects of the Canadian system such as overly long delays for operations for painful, if not emergency,

As I watched emotions register on Thomas's face during his testimony, it seemed dramatically clear to me that the pornography question was the one he feared most. Another tipoff was that he tried to exclude the possibility of such questions. Witnesses often do this, trying to define issues in such a way as to make irrelevant any inquiry into facts they don't want to disclose. Take Thomas's statement Friday night, after Hill had testified:

What Leahy failed to grasp was that, although the workplace element was necessary to establish a record of sexual harassment in the office, it was not necessary to establish a prior interest in pornography. And a record of such interest would have been highly relevant to the credibility of Anita Hill's testimony. . . .

Another Democratic failure was Senator Biden's repeated assertion that the burden of proof rested with Hill. I nodded my head when he said this—it was the sensible, respectable line—until a friend of mine pointed out that it wasn't a courtroom. The senators were making an affirmative decision about a man seeking office, not passing judgment on someone accused of a crime and facing prison. *Any* doubt is

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important—you don't have to have conclusive evidence. Had Biden enunciated a different, higher standard for approving Thomas, a lot more senators would have felt a lot more comfortable voting against him. . . .

Speaking of the burden of proof, did you know that if you fit the profile of a criminal, law enforcement agents can seize your cash, car, or other property without even charging you with a crime? Then *you* have to sue to regain possession of what you owned. You have to prove you are innocent and the cases often take months or even years to try.

Andrew Schneider and Mary Pat Flaherty of *The Pittsburgh Press* recently investigated the results of this law and uncovered 510 cases of injustice, including the following:

"Willie Jones, a second-generation nurseryman in his family's Nashville business, makes twice-a-year trips to Houston to buy flowers and shrubs. He takes cash, which the small growers prefer.

"But this time, as he waited at the American Airlines gate in Nashville Metro Airport, he was flanked by two police officers who escorted him into a small office, searched him, and seized the \$9,600 he was carrying.

"A ticket agent had alerted the officers that a large black man had paid for his ticket in bills, unusual these days. Because of the cash and the fact that he fit a 'profile' of what drug dealers supposedly look like, they believed he was buying or selling drugs.

"The officers told Jones he was free to go. But they kept his money—his livelihood—and gave him a receipt in its place. No

evidence was ever produced. No charges were ever filed." . . .

If you don't think we have a monopoly problem in America today, all you have to do is look at how the major airlines are bilking the customer at the hub airports they occupy. For example, TWA recently offered special discount coupons for many of its flights. Where did the discounts not apply? St. Louis, the hub TWA dominates. . . .

What the *Monthly* calls the Slot Syndrome is the persistence of a job, or slot, on the government personnel rolls long after its original program has either disappeared or been reduced to the point where this job could easily be combined with one or two other jobs whose responsibilities have been similarly reduced. I recently asked a high federal personnel official if anyone in the government was dealing with this problem. His answer was no. Now you understand why the Department of Agriculture remains overstaffed even though the number of farmers has declined dramatically. . . .

A recent study summarized in *The New York Times* says the way to save New York is not by giving subsidies to manufacturers and companies that construct office buildings, but by "reinforcing the city's role as a center of brainpower and talent." This sounds right to me, although the *Times* account of the report did not mention the four factors that made the city attractive when I was a student there in the late forties. Plenty of cheap French and Italian restaurants like the Champlain and the old Barbetta's, where you could eat a good meal for \$2 to \$3; cheap balcony tickets (\$1.20 to \$2.40) for theater, dance, concerts, and opera; cheap, safe

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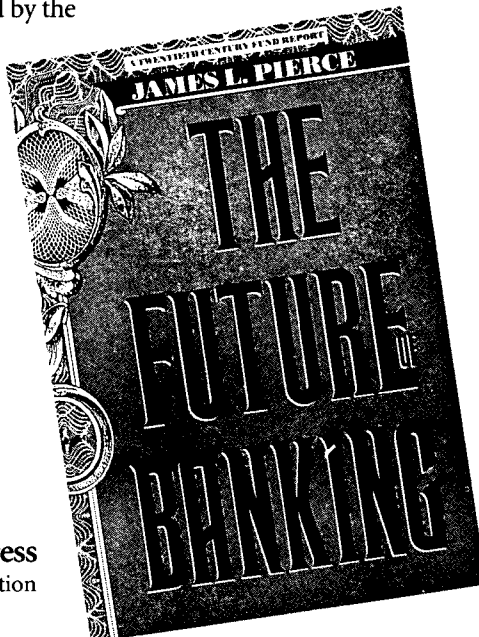
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transportation (10 cents for the subway and no fear about riding at 4 a.m.); and cheap rents for rooms and apartments. Even then the cheap rent wasn't easy to find, but it was still gettable—I lived in apartments that rented for less than \$65 per month in Greenwich Village, on West 92nd, and at 50th and 2nd.

All these things combined to lure thousands of the most brilliant young people in the country to New York. Sometimes they produced great art—as they certainly did in dance and theater in the New York of that era—and sometimes they found other outlets for their creativity. But the certain result of all that talent was a vibrant economy for the city.

I suspect that high rent is the number-one killer of youthful creativity. Indeed, not only in New York City but in Washington and other major cities, far too many of the young are forced by the cost of living space to forsake work that is interesting but unremunerative or give up the kind of goofing off that is intellectually and spiritually enriching but, of course, also unremunerative. . . .

Another reason New York may be beyond saving is the city's bureaucracy. Do you know what an expeditor is? He or she is someone hired to get permits for construction and renovation by figuring out, according to Sarah Bartlett of *The New York Times*, "which lines to stand in and what will satisfy a particular building examiner."

"That's right," Bartlett continues. "The process of getting a building permit is considered so complicated and time-consuming that an entire industry has been spawned to deal with it, even to the point where expeditors hire their own expeditors."

Does Bartlett's article strike a faint chord in your mind? Remember *The Washington Post* article I cited not long ago about how affluent Washingtonians were hiring standers-in-line at the local passport office? The bureaucratic state serves the bureaucrats first. But next to them it serves the rich, who can afford to hire all the expertise that dealing with the bureaucracy requires. . . .


Speaking of bureaucrats, are you aware of the righteous cause currently embraced by the Senior Executives Association, the elite of the civil service? It is to get frequent flyer credits given to them personally, even though we the people pay for the travel that gains the credits. Currently the credits are used to decrease the deficit by paying for other government travel. . . .

And speaking of bureaucracy again, did you know that the Federal Deposit Insurance Corporation and its affiliate, the Resolution Trust Corporation, have been paying \$177,000 for wall hangings in their offices, not to mention \$800 each for chairs. No wonder they keep telling us the bailout cost is rising. . . .

If you've got a yen for immortality, you can forget about having your corpse frozen. Not only is there the unsettling prospect of global warming, but there is clearly a better way: Move to Los Angeles and get elected to the City Council. There, members may die but their motions live on.

Due to a quirk in city laws, motions remain current until they are passed or defeated or otherwise disposed of. "There are more than 1,200 motions pending before the City Council," reports the *Los Angeles Times*, "with hundreds more than 5 years old

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and dozens more than 10 years old." In October, the council passed a motion filed by Howard Finn in 1983. Finn departed this world in 1986. . . .

A little-known talent of Harris Wofford is literary skill. Those who have read his book *Of Kennedys and Kings*—an excerpt of which appeared in these pages in our July/August 1980 issue—know he is an excellent writer. I have always suspected that Harris was allowed to leave the White House in 1962 because his talents as a speechwriter made him a threat to Theodore Sorensen, JFK's number one ghost, who was also said to have conspired to oust another of his speechwriting rivals, Richard Goodwin. But Sorensen may have been innocent in Wofford's case. Harris, who is an otherwise wonderful man, is occasionally a bit long-winded, and Jack Kennedy's impatience with the excessively discursive was legendary. . . .

The House has shut down that nice bank that kept cashing checks even when members didn't have a dime left in their accounts, but, as a recent Knight-Ridder story points out, a few other congressional perks remain.

►Garage parking on Capitol Hill that costs private citizens \$1,620 per year is free to congressmen.

►At National Airport, the public spaces closest to the terminals—just on the far side of the free ones provided to Congress—cost \$20 a day.

►Senators have free use of indoor tennis and basketball courts that private clubs charge \$1,500 a year for.

►Congressmen get free health care that costs the taxpayer \$2,794 for each member. And this doesn't

count the additional free care available at both the Walter Reed Army Medical Center and the Bethesda Naval Medical Center.

►Studios where senators can produce videotapes of themselves to send to television or radio stations cost the taxpayers \$17,000 per member and give incumbents an incalculable advantage over challengers, who not only have to pay for such facilities but rarely enjoy the convenience of having the studio just a few steps away.

►A club sandwich in the subsidized House and Senate dining rooms costs more than one-third less than it does at the closest comparable restaurant, which also happens to be considerably less spacious than the congressional restaurants.

►Congressmen (and executive branch VIPs) stay at bargain prices at four luxury resorts operated by the National Park Service. Here's how they were described in another recent article about perks from Scripps-Howard: "A dream vacation for many Americans would be a hilltop house in the U.S. Virgin Islands only a 100 yards or so from the white beaches of Little Cinnamon Bay.

"The same can be said about the former lightkeeper's cottage on pristine Bodie Island off Nags Head, North Carolina, or the secluded log house with a stone fireplace on the shores of Jackson Lake in the Grand Teton National Park, or the quiet cabin in the Blue Ridge Mountains within a stone's throw of two trout streams."

The three-bedroom Little Cinnamon house sits on a secluded 22-acre plot and has a private beach. Congressmen pay \$90 per day for up to four people. They would have to pay between \$310 and \$510 at nearby private resorts. . . .

Speaking of Congress, Morris Fiorina, whose review of David Mayhew's new book appears on

page 53, is the author of one of political science's more penetrating insights into behavior on Capitol Hill. He figured out why Congress tolerates an incompetent bureaucracy: Members know that a major factor in their reelection is the political credit they earn when they straighten out bureaucratic errors on behalf of their constituents. In so doing, they may earn the lifetime loyalty of each voter affected, and quite probably of his family and friends as well. . . .

Mayor Sharon Pratt Dixon left Washington on November 8 for what *The Washington Post* described as a "five-day business trip." Where was she going? Cancun, Mexico and Naples, Florida. She had spent November 1–3 in Pasadena, California. On November 4, she traveled to New York to receive a *Glamour* "Woman of the Year" award. She seems so sensible and nice, but with the city in terrible trouble, this behavior is frivolous to the point of stupidity. . . .

A few years back, Maury Maverick Jr., a columnist for the *San Antonio Express News* and son of a great liberal congressman, published a breakdown by religion of the men who died in the bombing of the Marine barracks in Beirut in 1983. A disproportionately large number of Catholics and Baptists was included, as was a disproportionately small number from more affluent religious groups such as the Episcopalians, Unitarians, and Jews. Now comes the list from the Gulf war, again compiled by Maverick, and it tells the same depressing story. Three Episcopalians, one Unitarian, and no Jews were listed among the 375 Americans who died. . . .

—Charles Peters

Soft-Boiled Regs

*What happens when
our corporate cops
stop walking the beat*

by Sheila Kaplan

Back in the days when the Occupational Safety and Health Administration (OSHA) kept itself busy by drafting directives specifying the height of the nation's fire extinguishers and the width of its toilet seats, it was easy for voters to be taken in when Ronald Reagan bemoaned the total cost of all federal regulation—"all waste," as he once put it, "due to regulatory overkill." It was easy for them to chuckle when he took a lighter tack: "If the federal government had been around when the Creator was putting his hand to this state, Indiana wouldn't be here. It'd still be waiting for an environmental impact statement."

These days, though, it's hard to live with the consequences. Maybe fire extinguishers come in all shapes and sizes, but so do the tumors in kids who grow up near areas like the Brio refining site in Texas, where Reagan's Environmental Protection Agency (EPA), less interested in freeing the hand of the Creator than that of big business, settled for a face-lift rather than an aggressive cleanup of toxic wastes left by corporate polluters. In the late eighties, outrage over failures like Brio and the \$500 billion S&L collapse revealed that Americans have a slightly more complicated view of regulation than Reagan may have thought: They might have wanted government off their own backs, but they sure as hell wanted it to stay on the backs of those who might steal their savings, wreck their health, or maim their kids.

In fact, it's astounding in retrospect that voters let Reagan get away with attacking all regulation, as though one could simply wipe the books clean. You don't have to be Ralph Nader to understand that people need rules. Just as laws define the bounds of society (you can't shoot your enemies), regulations define the bounds of the marketplace (you can't sell

Sheila Kaplan is a senior reporter at Legal Times. Research assistance was provided by Eric Konigsberg.