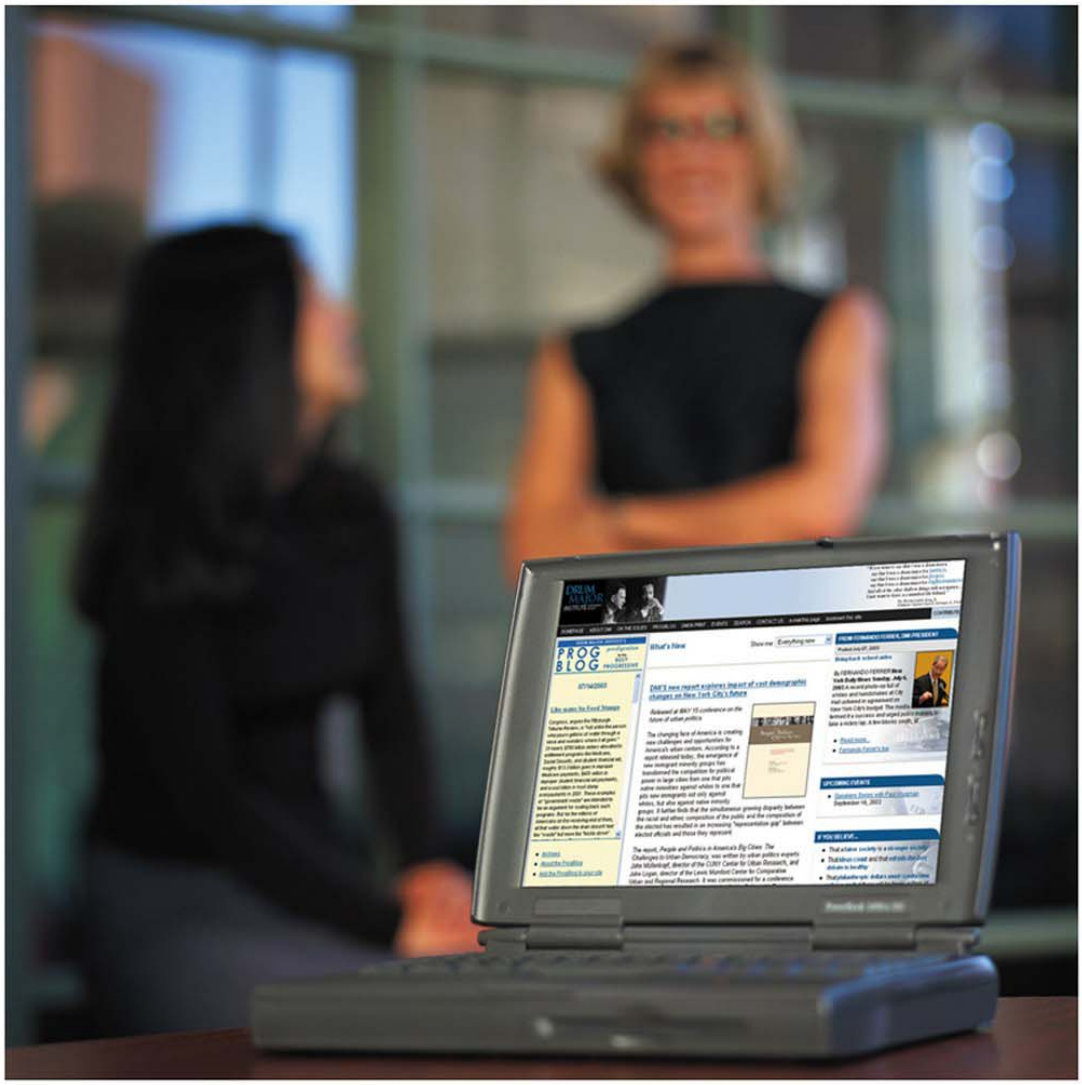
E-journal

FROM THE DRUM MAJOR INSTITUTE



DMI E-JOURNAL IN PRINT

WINTER 2003

E-journal
FROM THE DRUM MAJOR INSTITUTE

WINTER 2003

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*The Drum Major Institute E-Journal is an on-line hybrid – part public policy report, part op-ed – offered free of charge to the Drum Major Institute's several thousand registered online subscribers and visitors to our daily-updated website, **www.drummajorinstitute.org**.*

From non-citizen voting to the dangers of broadband politics and business outsourcing to indigent criminal defense, the DMI E-Journal tackles the issues Americans are talking about, offering a new progressive perspective on public policy-as-usual, in a style that is as informative as it is accessible. At the same time, DMI's E-Journal offers a critical platform to progressive thinkers and practitioners.

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Broadband Politics

BY ALONDRA NELSON /NOVEMBER 2003

Other than presidential aspirant Rev. Al Sharpton's sharp-witted quips, Campaign 2004 will remain memorable among recent contests for the Democratic nomination for the ascendancy of the Internet as a major feature of U.S. political culture. From the hotly debated prospect of e-voting to the demonstrated success of on-line fundraising, we've entered the era of broadband politics.

No presidential contender has been more successful with this new form of hi-tech campaigning—and more closely aligned with its ground-breaking potential—than former Vermont governor Howard Dean. Dean is a paragon of virtue to many on the political left: He has been among the few public figures to consistently condemn U.S. aggression in Iraq. As the governor of Vermont, Dean signed landmark civil union legislation into law that extended legal protections and benefits to same-sex couples in the state. More recently, the physician-cum presidential hopeful increased his standing as a progressive icon when he entered the realm of digital politics, marshaling tens of thousands of supporters from far outside the beltway.

In partnership with websites MoveOn and Meetup, the Dean campaign has succeeded in using the Internet as a fundraising and mobilizing tool—in the process besting even Democratic Party cash cows. In September, for example, Dean raised a staggering $4.8 million on the Internet in just nine days, bringing the campaign's total take to more than $25 million. In a political system overrun by corporate interests and $10,000 per plate dinners, Dean's coffers were, for the most part, filled with small contributions from individual Internet donors. Amidst the continued incursion of big money into all levels of American politics, this success using technology to shore up the backing *and* bucks of big D democratically-inclined everymen and -women—in an era in which politicians have concentrated on large donors—has been hailed as nothing short of revolutionary.

But even as the Dean campaign was patted on the back for being in the vanguard of 21st century democracy—and as the Wesley Clark and John Kerry camps imitated its broadband strategy—others cautioned that, despite the hype about the democratization of information, the potentially ubiquitous Internet still has a limited range. The enthusiastic but uncritical adoption of information technology as the *modus operandi* of American politics, skeptics claim, might have a more exclusionary than inclusionary effect on the democratic process. *Mother Jones* magazine, for example, suggested that the Dean campaign's preoccupation with technology has propelled the "digital divide" into a new domain of American life.

The term "digital divide" was coined in the mid-1990s to describe the new forms of social inequality that accompanied the technology boom of the time. While disparities in access to computer technology and the Internet has decreased, a recent Pew Internet and American Life Project report confirmed that significant gaps remain. The Pew study found the largest disparities in access were based on race: 60% of white Americans have Internet access compared to only 45% of blacks. This considerable inequality—as well as others that are based on class, age and region—are clear obstacles to the creation of the robust, inclusive grassroots constituency envisioned in the promise of a new era of broadband electoral politics.

Documentation of a black-white digital divide provides a meaningful measure of disproportionate access to the Internet, but it obscures the important fact that, according to the Pew study, a not insignificant percentage—more than 40%—of all Americans use the Internet irregularly or not at all. *Mother Jones* correctly diagnoses the "digital divide" as a serious ailment of the 2004 campaign season—because the current emphasis on Internet-driven elections disproportionately excluded African Americans, the elderly, rural citizens, and others without access to computer technology from the political process. Even, across and beyond these divides, the diffusion of Internet access is not as extensive as some technology boosters would have us believe.

Given the conclusions of the Pew report, the recent enthusiasm for Internet politics will only compound the "digital divide," and in the process have a disproportionately negative effect on some of the Democratic Party's core constituencies, as well as decreasing the participation of a significant swath of the larger American polity. These sobering facts make it all the more urgent that progressive politicians, activists and concerned citizens take a step back from the seductive promises (and admittedly flashy results) of broadband politics and critically assess its capability to exacerbate inequality and to stratify the electorate.

The Future of Voting

Recent debates about Internet voting have highlighted concerns about the convergence of the digital divide and the democratic process. On the heels of the controversial 2000 presidential election, during which the supposedly objective process of voting was laid open to subjective assessments of "hanging" and "dimpled" chads, many called for the rapid deployment of new voting technologies as a way to restore confidence in the electoral process and prevent similar crises in the future. It seemed logical that the answer to the problems produced by antiquated voting technology was the introduction of new and better tools.

Prior to the Florida electoral crisis in 2000, the Arizona Democratic Party sponsored the first official Internet election in the nation with a precedent-setting primary vote. In the days leading up to the historic Arizona election, several black and Latino/a voters tried unsuccessfully to block it in court on the grounds that e-voting extended convenience to some citizens and not to

others. The multiracial coalition also objected that Internet voting discriminated against minorities and the poor who were less likely than white and middle-class Arizonans to have access a computer or the Internet. The claimants failed to block the e-vote, but succeeded in having their concerns recognized: Although the presiding judge gave the go-ahead to the Arizona e-vote, he cautioned that the digital divide might have a discriminatory impact on the election.

In the end, Arizona voters were provided with three voting options. Members of the electorate with access to technology were able to log-on and vote from a location of their choosing at the Election.com website over a three-day period. Voters were also given the option of using interactive voting booths or conventional ballots at voting sites on the day of the election. This experiment in e-voting was dogged by technical glitches—many voters complained that they had difficulty loading or logging-on to the site. These problems notwithstanding, the 2000 Arizona Democratic primary became the nation's first binding Internet election.

The Arizona decision illuminates the ultimate irony of broadband politics. On the one hand, the court acknowledged that the digital divide currently militates against the democratization of the political process via technology. On the other hand, some progressives hold such blind faith in the Internet that they are willing to overlook discrimination against some of the people who have been their longest and most faithful supporters as a minor inconvenience on the path to democratic utopia.

The criticisms that dogged Arizona's shift to e-voting foreshadowed many of the concerns raised as the Internet became central to other aspects of U.S. electoral politics. In the intervening three years several other states have attempted e-voting. Perhaps most well known is the Michigan Democratic Party's plan to allow voters to cast their ballots in the state's upcoming presidential caucus election via the Internet. Al Sharpton, impassioned opponent of the plan, has argued that the Michigan proposal was inherently biased against citizens lacking access to the Internet and amounted, in effect, to a "high-tech poll tax." The stakes of the Michigan e-vote are high because the state holds a hefty number of delegates and thus will play a significant role in determining the Democratic presidential nominee.

Defining the Grassroots in the Information Age

How is it that the Democratic Party, which represents itself as the voice of the common man and woman, is in the forefront of incorporating technologies that are unavailable to the underprivileged and the underserved? And, what does this contradiction suggest for the future of progressive politics? Does the provision of diverse ballot formats meet the threshold of the constitutional right to vote if not all formats are universally available? Does the progressive turn to broadband politics promise to shift influence from large interest groups to middle-class, cyber-savvy elites at the cost of the Democratic Party's traditionally inclusive constituency? Does the

turn to broadband politics mean that the Democratic Party has begun to take for granted solid bases of support like African Americans?

One way to approach this complex of questions is to look more closely at how progressive office-seekers and strategists are re-defining "their grassroots" in the context of Internet politics to mean Internet users. The re-definition of the term grassroots gives the appearance of the overturning of politics as usual, even as segments of progressives' constituencies are marginalized.

Howard Dean's Internet mobilizing and organizing success is a watershed moment of grassroots politics. The origins of the Dean campaign's strategy—and its particular understanding of "the grassroots"—bear further scrutiny and can shed some light on the larger progressive shift to broadband politics. According to a recent *Wall Street Journal* article, Joe Trippi, Dean's campaign manager and the architect of his outreach efforts, was inspired in his hi-tech political strategy by his exposure to Internet culture while on hiatus from his job as a Democratic strategist in Washington. Trippi was particularly enthused by the example of the community of devotees, numbering in the millions, that sprung up around the computer operating system Linux. Unlike Microsoft Windows, the programming details or "source code" of the no-cost Linux operating system have remained available or "open" to a global network of users who can modify it and improve upon it since its creation in 1991. The Linux philosophy has become as significant as the software itself. Because the "open source" program proliferates through the volunteered expertise and labor of true believers, it quickly came to symbolize radical democracy and a critique of big business.

Dean strategist Joe Trippi envisioned similar possibilities for political organizing in the grassroots success story of the Linux operating system. Partnering with MeetUp and MoveOn, he devised a similar formula of common cause and connectivity to assemble backers for the Dean candidacy. But while Linux is a heartening counterbalance to the near monopoly of the Microsoft corporation—a David to Bill Gates' Goliath—the collaborations inspired by the software are not models for democracy, but for grassroots trust-busting, and an inadequate paradigm for the transformation of Democratic party politics to the Internet. Linux democracy is embodied by a rarified grass roots community comprised of a relatively small number of elites with leisure time, readily available technology, computer skills, and interest in refining the computer program. Unfortunately, the Linux democracy does not a *political* democracy make.

Seduced by information technology and the convenience it offers to their campaigns and some voters, politicians who rely excessively on Internet outreach confuse the democratic potential of information technology with the bigger task of reaching out to all constituencies and creating a democracy that includes those without access or interest in information technologies, who also deserve representation. Linux as a paradigm for the Dean campaign, and of broadband politics

more generally, demonstrates the danger of leaving behind liberal ideals of representative democracy and its concern for the common good and replacing it with the libertarian ideologies that still circulate in tech circles well after the decline of the Internet boom.

The underlying philosophy attendant to the tech revolution was an ideal of libertarianism, more specifically cyberlibertarianism. Langdon Winner, a scholar who studies the social impact of science and technology, defines cyberlibertarianism as "a collection of ideas that links ecstatic enthusiasm for electronically mediated forms of living with radical, right wing libertarian ideas about the proper definition of freedom, social life, economics, and politics in the years to come." As such, progressive broadband politics runs the risk of conflating radical democracy and concern for the common good that is its hallmark with a philosophy of freedom that values individual liberties—in this case the choice to vote or mobilize via the Internet is one has the resources to do so—above all else.

While the Linux paradigm does embody a limited conception of the larger social good, it remains a woefully inadequate political philosophy for progressives and is at odds with political ideals that include issues of access, inclusion and empowerment. The grassroots of progressive politics must continue to include all members of its base, it must be broader and more inclusionary in its vision. As Washington Post tech analyst J.P. Gownder reminds us, "the Internet can't become a substitute for the gritty, difficult work of true grass-roots campaigning in diverse ethnic and socio-economic communities." If progressives are truly to remain the voice for all of its constituencies, we cannot afford to let our conception of the grassroots slowly slip into one adopted from Internet culture no matter how seductive it's wrapping.

As the Dean campaign has successfully shown, broadband politics is a radically new and effective means of reaching out to, broadening, and energizing certain progressive constituencies. But excessive reliance thereon,--even more dangerous, a redefinition of "grassroots" politics in light thereof—means giving up the core values of the progressive movement—concern for and representation of all its constituents. If we are not careful, the shift will not just be one of old tools for new, but a change in the very concept of inclusive community that progressives hold dear.

Alondra Nelson *teaches African American studies and sociology at Yale University. She is co-editor, with Thuy Linh N. Tu, of Technicolor: Race, Technology and Everyday Life (NYU Press).*

Research assistance was provided by Malik Lewis, Drum Major Institute for Public Policy.

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The Fight for Fiscal Equity

BY MICHAEL A. REBELL AND STACY FELDMAN /NOVEMBER 2003

In June 2003 in an historic decision, the Campaign for Fiscal Equity (CFE) won a tremendous victory for the students of New York. The New York Court of Appeals—the state's highest court—ruled that all students have a constitutional right to a "meaningful high school education," ending a ten-year lawsuit and hastening the creation of a more equitable approach to funding New York's public schools. Children were being deprived of their right to a "sound basic education," the court held, and the reason was its inadequate funding system.

The CFE case adds its considerable weight to a mounting, nationwide trend of plaintiff victories in school finance cases. In the past three decades, we have witnessed a flurry of constitutional activity by state courts in rectifying the inequities in state education systems. Litigation has been brought in 44 out of 50 states so far, with plaintiffs winning approximately two thirds of the cases brought since 1989.

However, much works need to be done. While the June 2003 ruling secured for New York public school children the right to a "sound basic education," it did not correct or address the errant inadequacies in funding of public school systems across the country. It is our hope that CFE's experience and the potent legal strategy it pursued—promoting "educational adequacy" versus the earlier approach of "educational equity"—may prove instructive to similar efforts throughout the nation.

A History of Education Reform: From Fiscal Equity to Adequacy

For civil rights and education advocates, 1954 was an integral year. In *Brown v. the Board of Education of Topeka*, the United States Supreme Court ended segregation in public schools and set the stage for ensuing years of education litigation, holding that "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity for an education."[1]

Though the landmark 1954 ruling energized the American civil rights movement, attempts to implement it were often ineffective. Years after *Brown*, a vast majority of black and other minority students in the United States continued to attend segregated schools that were deprived of adequate resources. As a result, much of the optimism following *Brown* began to wane, and reformers had to seek novel political and legal methods for confronting persistent inequities. They directed their focus toward a shared problem of many poor and minority districts: inequitable systems of education finance hampered their ability to provide students with the basic resources needed for an adequate education.

[1] 411 U.S. 1 (1973)

At the time, local control of public schools and the use of property tax dollars to finance them had been an ingrained American tradition. But this system, by design, disadvantaged students attending schools in areas of low property wealth. Beginning in the late 1960s, educational reformers and legal scholars devised constitutional theories to equalize the funding capacity of local school districts and tested them in a spate of state and federal litigations.

One such case was *San Antonio Independent School District v. Rodriguez*, which challenged the stark inequities in the Texas education finance system. In 1973, the Supreme Court dealt a blow, albeit temporary, to education advocates seeking to reform unfair school finance systems when it held that education was not a fundamental interest under the United States Constitution.

Although it decried the blatant inequities in the Texas education finance system, the Court declined to order relief, shifting the burden from the federal to the state level. Implicitly though, the Court challenged state authorities to remedy their own entrenched and inequitable education finance systems that for years left poor districts underfinanced and inferior to wealthier ones.

Though initially disheartening, the decision would prove a watershed legal event, prompting legal reformers in the mid-1970s to initiate challenges to their education finance systems in state courts with great success. Plaintiffs won in several of these early cases, inspiring follow-up litigations and entrenching a new protocol that would later help secure major legal victories and substantial reforms: fiscal equity in education became a matter of the state rather than federal constitutional law.

Core concepts of fiscal equity emerged from these early victories, but the courts lacked the tools to implement them. Achieving equal educational opportunity through equalizing tax capacity was an elusive endeavor, and other states' courts were soon dissuaded from venturing down this path. In the 1980s, fifteen out of 22 cases decided in state supreme courts denied any relief to the plaintiffs.

As a result, the concept of ensuring fiscal equity soon gave way to the more strategic argument for educational adequacy, basing the legal claim for reform on allegations that large numbers of students were being denied an "adequate public education" due to their state's inequitable funding systems. The shift in strategy was significant; since 1989, plaintiffs have prevailed in roughly two-thirds of the major states' highest courts.

Why Educational Adequacy?

The educational adequacy approach has provided the courts with a compelling legal perspective and more practical tools to remedy problems than earlier fiscal equity concepts.

First: Whether framed as a "thorough and efficient," "ample," or a "sound basic" education—as is the case in New York—nearly every state has framed in its constitution an education clause that enumerates the state's duty to provide all students an adequate level of education. As a result, both attorneys and the courts have gradually adopted a core constitutional definition of adequacy, emphasizing preparation for civic participation and the competitive job market over more esoteric notions of equality.

Second: The resurgence of the powerful "democratic imperative" at the core of American political tradition has proven fertile ground for the claims of educational adequacy advocates to take root.[2] By the mid 1980s, civil rights advocates were being battered not only by defeat in state court fiscal equity decisions, but also by judicial retrenchment in federal school desegregation cases. With the blatant contradiction of an educational system that deprived students of equal educational opportunity on the one hand, and the nation's democratic ethos on the other, it became both necessary and practical for plaintiffs in the 1990s to devise new legal theories to galvanize courts around the stark disparity between American democratic ideals and American educational reality.

Third: In the mid-1980s, there was a widespread sentiment that the American education system was in serious disarray. Comparative assessments revealed that American students were faring worse than students in other countries, especially in science and math. United States Department of Education assessments revealed that few American students "show[ed] the capacity for complex reasoning and problem solving."[3] This reality compelled many states to develop rigorous academic requirements for all local school districts.

As a result, most states have embraced the extensive, state-level standards-based reforms, built around standards set at sufficiently high cognitive levels, and premised on the assumption that virtually all students can meet these high expectations if given the necessary opportunities and resources. The standards provided courts with the practical remedial tools that would allow them to provide workable criteria for defining a minimally adequate education. "Adequate education" was no longer a vague notion. The concept now had substantive content. Its underlying message was that most states —and certainly many serving poor and minority students—were providing

[2] See Michael A. Rebell, Fiscal Equity Litigation and the Democratic Imperative, 24 J. Educ. Fin. 23 (1998).
[3] In V.S. Mullis et al., *National Assessment of Educational Progress 1992 Trends in Academic Progress* (1994), 4-5; see also U.S. Department of Education, America 2000: An Education Strategy (1991).

educations that would lead to student achievement at levels below, and not above, the expectations set out in their own new standards.

Which brings us to the latest benchmark in legislative battles for fiscal equity, and a test of the efficacy of the adequacy claim: the *CFE v. State of New York* ruling.

A History of Education Reform: *CFE v. State of New York*

The impetus behind the historic *CFE v. State of New York* case was fiscal inequity in educational funding. It began in 1978 when a group of property-poor Long Island school districts, joined by New York City and the state's other four large urban districts (Buffalo, Rochester, Syracuse, and Yonkers), filed a lawsuit challenging New York's education finance system in *Levittown v. Nyquist*.[4] Like similar lawsuits at the time, the claim was based on inequities in how the state distributed aid to its various districts. In 1982, in a long-awaited decision, the Court of Appeals ruled that while the inequities in funding did exist, the New York State Constitution did not require equal funding for education—noting, that the state constitution entitled every student to a "sound basic education," despite the fact that none of the plaintiffs in the *Levittown* case alleged that students had been denied this right. It was this right—and the state's failure to provide it—that fueled the CFE lawsuit.

In 1993, the Campaign for Fiscal Equity, then a nascent coalition of advocacy groups, parent organizations, and community school boards, filed a lawsuit against New York State on behalf of New York City school children, charging that the state unconstitutionally underfunded the city's schools. CFE's legal approach was distinct: in contrast to the Levittown case, the CFE lawsuit sought to reform the state funding system by focusing on its failure to provide the children's constitutional right to a "sound basic education."

In a landmark June 1995 decision, the New York Court of Appeals distinguished its prior ruling in *Levittown* and upheld CFE's right to pursue a constitutional challenge to the state's education finance system. The court indicated that if CFE were able to prove that a substantial number of New York City students were in fact being denied the opportunity to a sound basic education, it would act to remedy the situation. To guide the trial court's gathering and review of evidence, it issued a "template" definition of a sound basic education, emphasizing the need to provide students the skills necessary to "function productively as civic participants capable of voting and serving on a jury."[5] When the case returned on final appeal, the court indicated that it would issue a final definition.

[4] 439 N.E.2d 359 (N.Y. 1982)

[5] *CFE v. State* 187 Misc. 2d 1, 14 (Sup. Ct. N.Y. County 2001).

The trial court gathered extensive evidence regarding the precise skills students would need to be voters and jurors, and to function productively in the competitive job market. In his January 2001 decision, Justice Leland DeGrasse issued a ruling in favor of CFE, finding that productive citizenship means more than being qualified to vote or serve as a juror, but to do so capably and knowledgeably, which would require "being able to understand complex issues such as tax policy, global warming, and DNA evidence."[6]

The intermediate appeals court, ignoring much of the evidence regarding skills actually need for employment and civic participation, held that 8th or 9th grade level skills would prepare students for menial employment and to read basic information in a newspaper—sufficient skills to meet the constitution's standards. In other words, New York State argued that an 8th grade education was enough.

In its historic June 26, 2003 ruling, the Court of Appeals soundly rejected the 8th grade standard, reversing, almost in its entirety, the decision of the intermediate appeals court. It did so by emphasizing that the constitution requires a "meaningful high school education" and affirmed the trial court's conclusion that students must be provided with the skills necessary to function capably as civic participants. To be prepared for employment in the 21st century economy, students require a more advanced level of knowledge than the 8th grade standard that was established in 1894. A "high school level education is now all but indispensable," the court ruled.

Although courts in New Jersey and Wyoming have indicated that, in modern times, an adequate education must be a high school education, no other highest state court has decisively rejected minimal middle-school literacy and calculating skills and emphasized the importance of a meaningful high school education.

Essential Resources

In addition to defining the extent of the opportunity for a sound basic education guaranteed by the constitution, the Court of Appeals held that essential resources must be provided. In short: *money matters* to children's schooling.

After reviewing the extensive evidence adduced at trial, the court concluded that tens of thousands of students are placed in overcrowded classrooms taught by unqualified teachers, and provided with inadequate facilities and equipment.[7] The court determined that the deficiency of inputs—of resources available to New York city children such as teacher quality, class size,

[6] Id.
[7] *CFE v. State of New York* 2003 WL 21468502 (N.Y. 2003).

overcrowded facilities, libraries, computers, and laboratories —fell short of what is required to provide all children the opportunity for a sound basic education.

The court specifically credited expert testimony that quality of teaching correlates with student performance, that smaller class sizes in the earliest grades correlate with better test results; and that some exposure to computers has become essential.[8] Opposing arguments put forth by Dr. Eric Hanushek, the state's expert who claimed that additional resources in many of these areas would not result in improved student performance, were rejected.

Perhaps the most pernicious such argument made by the state, and accepted by the intermediate appeals court, was the proposition that "poor student performance is caused by socioeconomic conditions independent of the quality of school…" In rejecting this argument, the Court of Appeals helped to discredit one of the great school funding myths of our time: that money spent on improving public schools for poor and minority students is akin to throwing money into a bottomless pit. It repeatedly emphasized that resources should be "calibrated to student need," ruling that the opportunity for a sound basic education must "be placed within reach of all students." The court implied that students who enter the public schools with substantial socioeconomic deficits are constitutionally entitled to "an expanded platform of programs,"—making it, at that point, New York State's duty to ascertain what it would cost to ensure that all public school students receive a "sound basic education."

Powerful Three-Part Remedy

Having closely considered remedies that worked well in similar cases, the Court of Appeals adopted a middle-ground, remedial approach that avoids detailed directives by the court on the one hand, and total deferral to the good faith of the legislature on the other. Specifically, the court ordered a three-part remedy that requires the State to accomplish the following by July 30, 2004:

One: Ascertain the actual cost of providing a sound basic education;

Two: Ensure that every school has the resources necessary for providing the opportunity for a sound basic education; and

Three: Ensure a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education.

[8] Id.

In other words, the state is charged with the responsibility of objectively determining how much money is actually needed to provide all students the opportunity for a meaningful high school education, for devising a fair funding approach that will ensure that each school obtain the requisite level of resources, and for developing accountability mechanisms that will ensure that the money is used effectively for the purpose of providing all students a meaningful educational opportunity.

Although the court order technically applies only to New York City, it does not preclude a statewide remedy. In fact, the governor and both houses of the legislature—as well as CFE—have called for a statewide approach.

A Growing Nationwide Movement

As the fiftieth anniversary of *Brown v. Board of Education* approaches, the opportunity for adequate education still eludes many children. At the present time, more than two-thirds of the black and Hispanic students in the United States attend segregated schools in which most students are also poor.[9]

However, with the education adequacy movement gaining momentum, the tides may be turning. Plaintiffs have won in most of their cases and a core constitutional concept of adequacy, which establishes the parameters for legislative and executive action in this area, is emerging. Ensuring adequacy entails guaranteeing equality in the basic resources that schools provide—and proving additional support for students with special needs or at risk of educational failure.

From a legal perspective, the adequacy claim carries great weight: it does not threaten the concept of local control of education, a main hurdle for defendants in the past, as it allows locals to augment funding programs above the state-mandated minimum. Politically speaking, the adequacy argument assuages the common dread, especially prevalent in wealthy districts, of shifting money from the rich districts to poor districts. Instead, it offers the possibility of increasing the pie for all, leveling up opportunities afforded to all students, not leveling down the opportunities available to affluent students.

Although courts cannot guarantee that all students eventually will be successful citizens and economic competitors, they can guarantee that all students are given a reasonable opportunity to succeed in these domains—not in accordance with the minimal standards of another century, but in accordance with contemporary levels of functioning. CFE's victory in the Court of Appeals is emblematic of a growing national movement that could potentially provide this guarantee to all children, at long last.

[9] Jay P. Heubert, "Six Law-Driven School Reforms: Developments, Lessons and Prospects," in *Law & School Reform*, ed. Jay P. Heubert (1999), 1, 2.

Michael A. Rebell *is the Executive Director and Counsel for the Campaign for Fiscal Equity; he is also an Adjunct Professor of Law at Columbia University.* ***Stacy Feldman*** *is the Public Engagement Associate at the Campaign for Fiscal Equity. For more information about CFE, please visit www.cfequity.org.*

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NOVEMBER 2003

Drum Major Institute Injustice Index: Children … Next

Number of New Yorkers that cited "the quality of public schools" as one of their major concerns**: 8 in 10**

Amount of taxpayer dollars spent in legal fees by New York Governor Pataki to challenge the Campaign for Fiscal Equity's efforts to fix a funding formula that was shortchanging New York City schoolchildren: **$11 million**

Amount spent annually by American public school teachers out of their own pockets purchasing instructional materials for use in the classroom: **$1 billion**

Average spending per pupil in New York City public schools: **$11,474**

Average spending per pupil in Peekskill (the hometown of Governor Pataki) public schools: **$14,663**

Amount raised by hip-hop mogul Sean "P. Diddy" Combs for New York City public schools in a charitable run of the New York City marathon this October**: $2 million**

Amount raised by New York Governor George E. Pataki for President George W. Bush's 2004 re-election bid in a marathon tour of New York State this November: **$1.3 million**

Number of Americans who, in the words of First Lady Laura Bush, are "*a*lliterate"—meaning they *can* read, but seldom do: **1 in 2**

American public school 4th and 8th graders not reading at grade level: **2 out of 3**

Percentage of New York City public schools that lack a full-time certified school librarian: **94 percent**

Time spent an American child each day with a book: **49 minutes**

Percentage of New York City public middle and high school students in "high poverty areas" being taught physical sciences by an "unqualified" teacher: **70 percent**

Number of predominantly Black and Latino schools where a plurality of students live in poverty: **9 in 10**

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Public Defense at the Crossroads: Listening to the Voice of Clients

BY JONATHAN E. GRADESS / SEPTEMBER 2003

Like a three-legged stool, the criminal justice system requires three basic components: the courts, the prosecution, and the defense. Tragically, today's system is lopsided, and it is defense that suffers. Fairness cannot rest on two sure legs and one faltering one.

Ensuring quality defense is not only a constitutional mandate, but a requirement for an efficient, fair system of justice.

The quality of defense representation in New York is now at its lowest level in 25 years. Without genuine, systemic transformation, it can only become worse.

Why is this so?

It is so because of the great disparity between the resources available to the prosecution and available to the defense. It is so because the courts have allowed the sacrifice of defense resources while preserving their own. It is so because years of legislative neglect have allowed the infrastructure for public defense services to be reduced to shambles.

The right to counsel became an unfunded mandate

Forty years ago, the United States Supreme Court decided *Gideon v. Wainwright.* As a result of one man's handwritten petition to the Court asserting that the Constitution and the Bill of Rights entitled him to a lawyer, people financially unable to obtain representation in criminal matters were now guaranteed publicly-paid counsel.

Soon thereafter, New York State delegated the federal constitutional obligation to provide public defense to 57 autonomous counties and the city of New York. Although accompanied by the initial burst of State revenue-sharing, the obligation to provide defense services to the poor soon became an unfunded mandate on localities.

President Richard Nixon made "law and order" the nation's new watchwords. Crime became a household topic and crime control became an electoral strategy. Vast infusions of cash came from Washington to fight crime in New York, but lawyers for the poor were relegated, along with their clients, to the back of the government bus. Police, prosecutors, courts and corrections were first at the trough. Nascent systems for providing public defense services quickly became resource starved. Lawyers who should have been trained, instead learned – often ineffectively – on the job. Salaries never grew to meet demand or, worse, shrank. Caseloads rose. As the Warren

Court's decisions applying federal constitutional requirements to state criminal justice took shape, the need for qualified vigorous defense advocates became more and more apparent. The organizational needs of public defense programs, however, remained unmet.

At the state level, despite the constitutional responsibility to manage this newly mandated right to counsel and assure its provision, no one was minding the store. State officials neglected public defense while lavishing resources and financial affection upon the judiciary and prosecution. Our system quickly became skewed in favor of law enforcement. Meanwhile, defenders, charged with vigorously defending those presumed innocent and securing freedom for those not guilty, received no such funding. Unequal distribution from taxpayer coffers resulted in a criminal justice system in which the resources for the three parts of the justice system – courts, prosecution, and defense – are out of balance.

Two DA's in the courtroom?

Every day, New Yorkers presumed innocent by law are subjected to outrageous indignities by a system in which their own lawyers have been made pawns in the game of resource allocation. This has had a deadly impact on the relationship between clients and court appointed lawyers. It has destroyed community trust in and support for the public defense function and the justice system as a whole. Lack of a strong public defense presence in criminal justice planning and performance has allowed courts to look the other way when confronted with obvious injustice.

Bad lawyering and lack of quality defense is the elephant in the middle of every courtroom in this state. Judges, prosecutors, and public defense providers daily avoid discussion of it. If a plea can disguise it or a waiver of the right to appeal can cover it up or the threat of harsh punishment as a penalty for trial can mask it, the system rolls merrily along. Lack of time and resources give lawyers excuses for not visiting their clients, for not answering letters, for not meeting with witnesses or even with clients before coming to court. Systemic justifications are offered for not investigating cases. Rationales for not sharing information, motion papers, or even thoughts with clients are fashioned from resource deprivation. Soon clients wonder whether there is one DA in the courtroom or two. As a result, clients back off, fail to trust their lawyers, bad-mouth public counsel, and file their own writs. Lawyers, in turn, withdraw, either figuratively or literally, in frustration and anger. A cycle of conflict is imposed on lawyer and client by a system that starves the defense. The trial courts allow this and prosecutors take advantage of it. Defense providers suffer with it and politicians ignore it.

While paid lawyers prize their reputations, solicit ongoing business from clients, and stake much on word of mouth referral from one client to another, public defense lawyers often hide from genuine client engagement, depriving both themselves and their clients of a meaningful relationship. While paying clients have the option of terminating the attorney-client relationship

when it is unsatisfactory, public defense clients must often take the luck of the draw. Clients represented by court-appointed counsel do not automatically have the luxury of firing even incompetent or racist lawyers and seeking to exchange appointed counsel simply because of incompatibility is nearly impossible in most parts of this state. Lucky clients get good lawyers who advocate for their rights in their individual cases; unlucky clients get lawyers who can't or don't. Some cases are well defended; others are not.

Matters are not made better by the appellate courts — the courts of "Last Resort" — where hundreds of cases of bad lawyering are masked by affirming convictions without opinion. This happens frequently when appellate attorneys file facially inadequate briefs in a continuation of defense failure. Appellate courts label as "strategy" inexcusably incompetent, inept professional decisions by trial counsel. They deem trial errors by ill-trained lawyers "unpreserved" for appellate review; trial counsel's failure to recognize error precludes review of that same error. No matter how great the injustice observed or how poor the appellate brief filed on behalf of a client, the appellate courts largely remain silent. The railroad runs.

Recognizing client needs

For the past twenty-five years, the New York State Defenders Association has, through its Public Defense Backup Center, provided support services to all the state's public defenders, legal aid lawyers, and assigned counsel practitioners. Through this work, we have been involved in every aspect of the defense system from helping handle murder cases to supporting adequate defender budgets, from writing and filing appellate and amicus briefs to delivering community legal education, from answering simple questions about the Penal Law to drafting requested legislation on discovery, sentencing, and public defense services, from consulting with lawyers mid-trial to running the state's only entry-level trial skills course.

Our Association, founded in 1967, has consistently tried, through the terms of five governors and nearly twice as many legislative leaders, to improve the quality of public defense services in this state, and to do so by remaining client centered in all that we do. But as the disparity of resources grows ever worse, the voice of clients has been all but silenced. Their role as consumers in the public defense system — critiquing, overseeing, and recommending — has never been valued and has usually been ignored. Their satisfaction is not a routine measure of defender performance. They currently lack the political power to effectively demand accountability, fair treatment, and quality lawyers.

What clients want and need is currently not advocated for systemically. Time constraints on public defense attorneys make efforts at client-attorney solidarity a laughable suggestion. Almost nowhere are clients the focus when administrative decisions are made. Yet, in many concrete ways, clients are experts. They are experts about their cases, about the communities from which

they come, about the nature, scope and content of the services they, as consumers of legal services desire. All across New York, decisions are made about designing, operating, and funding public defense systems without any formal recognition or consideration of the opinions of clients and their communities. At best, this is paternalistic, based on the assumption that professionals in the system know better than clients what clients need. At worst, it is a deliberate and successful effort to further marginalize poor people and people of color so that they continue to fill the state's prisons and jails.

We have a long way to go.

Tinkering at the edges

This conspiracy of injustice — judicial silence, disproportionate executive funding of law enforcement, and prosecutorial advantage-taking — is exacerbated by periodic legislative tinkering that applies surface patches to a system broken to the core.

An example of such tinkering occurred this spring. After 17 years of neglect during which the infrastructure for the State's assigned counsel system collapsed and hundreds of competent lawyers quit representing poor people, the Legislature raised assigned counsel fees, the money paid to private lawyers for representing indigent people accused of crime. The amount of the statutory fee increase was $15.00 per hour less than the amount constitutionally required by two court decisions. The increase is twice delayed - the fees don't go into effect until January of 2004, and the State supplies no money to pay for the increase until 2005. Counties across the state are discovering that the eventual state payment will not equal the increase.

As a result, counties are looking to change their systems. The office they call for help is mine. Yet because of the ongoing budget battle in Albany, our Backup Center, cut by the Governor in his 2003 budget, is slated to close October 1st.

Fiscal tinkering doesn't work well. "Fixes" like the increase in assigned counsel fees this year, with its minimal future state funding to localities, are tokenism unworthy of the label "reform".

What can be done?

A great deal can be done. Doing it needs people from all walks of life and all vocations, from every profession. It needs the rich and the poor and those, who in conscience, can no longer remain silent. It needs lawyers and clients, defenders and private practitioners, teachers and unions and cops, court clerks and stenographers. It needs everyone who has spied the elephant of incompetence but remained silent to now speak; everyone who has turned their back to resource disparity needs to turn back and challenge it. Every person who has gained personal or political

advantage by stepping on the backs of the poor who struggle for justice needs to step down into that struggle.

There needs to be common recognition that the system lacks standards, oversight, and accountability. The State provides little direction to localities; a few sentences in this spring's bill increasing assigned counsel fees gives a nod to the need for improving quality, but it is only a nod. The State continues its failure to adequately fund defense services. The entities that fund public defense – counties and the city of New York – focus on cost containment and never make quality of representation a priority. No one is accountable to anyone for providing poor service. Judges do not monitor poor performance, they disregard it. Defenders are hard pressed to make demands because their jobs in very real measure hang at the end of a political tether.

A Client-Centered Process for Public Defense Reform

Accountability has become a buzzword for many of our most important public systems, paid for and supported by taxpayers, but not the public defense system. In this system, accountability would mean giving voice to genuine client/consumer demands and allowing those demands to shape the future of the design, scope and nature of a reformed public defense system. It would mean using the experience of clients to identify shortcomings of the system and to remedy those shortcomings. And it would require assuring an even playing field for public defense lawyers and public defense programs so that the legitimate minimal expectations of clients – jail visits, answers to questions, returned phones calls, collegial strategy development, confidential communications, and respect – can be fulfilled.

For the last six months, with funding from the Gideon Project of the Open Society Institute, The New York State Defenders Association has employed a client community organizer to help us capture the energy of the client community: those who have been served by public defense attorneys, the families of such clients, and others from the communities serviced most frequently by public defense attorneys. Standards for Client-Centered Representation have been drafted in cooperation with our Client Advisory Board and submitted to client community scrutiny and refinement. Three focus groups on the standards have been held in New York City, and the standards have been shared with public defense clients in prison.

We have also held three public hearings at which invited members of the client community and client community advocates testified either about the standards or about their own personal experiences with the public defense system. Listening sessions have been held with dissatisfied and underserved clients in rural New York. Problem courts identified by allies have been observed. Over a four month period, our organizer spent time working with migrant workers in northwestern New York and recently held two days of private hearings and a public hearing in Albion.

In this process, we are experimenting with ways to allow clients to be heard and to influence the scope, design, and content of a reformed public defense system. In September, two Town Meetings – one in a church and one in a housing project – are scheduled in Albany. In our work among farm workers, we found ourselves at migrant camps speaking late at night in kitchens and living rooms. In Brooklyn, plans are underway to do street video interviewing. In late September, we will be meeting with New York Native Americans whose representation frequently leaves much to be desired. In seeking input on the client driven standards, we are able to hear the stories of clients in a whole new way and to derive immediate positive suggestions for system improvement.

We are interested in building a clear alliance with those who have been consumers of public defense services and those who provide them. So far, public defenders have reacted positively. One office has sought to be evaluated pursuant to the standards. We have been asked by one public defender to help establish a client advisory board. We have also used our field work to identify client members for our board and for other programs' boards.

In the months ahead, we intend to continue holding listening sessions, Town Meetings, and public hearings. We want to hear from clients whose experience can help shape a new system and whose involvement can help bring one into being. We also would like to see interested clients form their own interest group to make demands within the community. Our Client Advisory Board has been invited to the National Legal Aid and Defender Association Convention in Seattle to report on our project and inspire its replication elsewhere. If our efforts are successful, some form of public defense client council will emerge.

One of our reasons for working directly with the client community is to promote the idea of an Independent Public Defense Commission empowered to promulgate standards, conduct oversight and require accountability. We have recommended such a commission to the state legislature (See www.nysda.org/ResolvingtheAssignedCounselFeeCrisis_01.pdf). The Committee For An Independent Public Defense Commission subsequently proposed a bill to create one. Bills to create a commission have since been introduced in both houses of the Legislature (A.5394/S.1894). Such a commission functioning at the state level would ultimately develop a quality public defense system.

Today, in New York, more than a hundred plans for representation exist in 62 counties. No two of them are the same: they differ in size, scope, staffing, salaries and ability. Some offices have lawyers with caseloads of more than 1000 clients. Some offices are full-time; others are part-time operating essentially out of private law offices. Some have investigators; others do not. The quality and scope of public representation provided to eligible clients varies widely depending on where in New York State they are. In too many counties across the state, people are arraigned

alone, held without lawyers, and subjected to onerous eligibility inquiries that lack standards. By the time counsel is assigned in many places pressure is already being exerted on the client to plead guilty.

In addition to establishing standards designed to overcome these problems, an Independent Public Defense Commission would also act as the conduit for state funding of defense services. Receipt of money would depend upon meeting the standards. Experts and investigators would have to be available in criminal cases. Lawyers would be trained. Caseloads would be controlled. There would be an expectation and requirement of quality representation that is too often lacking now.

Recognizing the elephant

The work to mobilize the client community and to support and encourage the establishment of an Independent Public Defense Commission is only a piece of the solution. More is needed. It is time for us – all of us – to stop allowing poor people to be treated as second-class citizens in our courts. Each client charged with a crime, presumed innocent, deserves to have a competent qualified lawyer provided by the state if the client cannot afford counsel. Supplying young, inexperienced lawyers who want to learn at the expense of the poor cannot fulfill this constitutional obligation. It cannot be fulfilled by allowing callous pleameisters to monopolize assignments. Constitutional representation cannot be supplied by lawyers whose own personal problems and addictions prevent them from working in supervised practice. If the recent fee increase helps bring competent lawyers back to public defense work, terrific, but we need standards, guidelines, and training for all public defense lawyers to be sure quality is achieved. We cannot leave it to the many bar committees and judges who have conflicted loyalties when it comes to acting on client centered criticism of incompetent lawyers.

Once a year, we come to Law Day, the legal profession's celebration of itself. On May 1, system actors wrap themselves in our flag and declare the goodness of equal justice and the wonder of the legal profession. Maybe, briefly, they acknowledge the need for greater resources to serve the poor in the system, asking lawyers to do more pro bono or support some tinkering fiscal change. I have lived through 34 of these glad-handing self-congratulatory days, usually avoiding them by spending my time advocating for clients who would be very puzzled by the content of the glowing bar association speeches. It would be so refreshing just once to hear a full-blown confession about our unmitigated failure to provide justice to the poor and our ongoing conspiracy not to talk about it. Maybe, if we finally talk about the elephant in our courtrooms and in our public defense system, we can begin the long journey to justice.

Jonathan E. Gradess *has been the executive director of the New York State Defenders Association for 25 years. He began his career as a paralegal, thereafter graduating cum laude in 1973 from Hofstra Law School's charter class. He has worked as a criminal defense lawyer, a private investigator, and a law professor. He serves on the Board of New Yorkers Against the Death Penalty and Chairs the Restorative Justice Commission of the Roman Catholic Diocese of Albany.*

E-journal
FROM THE DRUM MAJOR INSTITUTE

SEPTEMBER 2003

Drum Major Institute Injustice Index: Rich Man's Justice, Poor Man's Justice

Percentage of American prisons filled with non-violent criminals who committed a crime in order to "get money to buy drugs": **19**

Percentage of American prisons filled with "corporate criminals" who committed a crime in order to get more money: **less than 1 percent**

Amount received by Halliburton, a company formerly headed by Vice-President Dick Cheney, in "no-bid" military contracts to build "prisoner of war camps" in Iraq: **$28 million**

Amount spent nationally every year on indigent legal services per US resident: **$10**

Amount spent in 1995 by O.J. Simpson on his criminal defense: **$6 million**

Number of Austin, Texas-based U.S. Technologies factory workers fired in 2001, only to be replaced six weeks later by state prison inmate laborers: **150**

Ratio of the difference in nation spending on prisons in 2000 compared to 1980: **4:1**

Ratio of the difference in the number of inmates in federal, and state prisons in 2000 compared to 1980: **4:1**

Number of American criminal defendants that require publicly financed counsel: **7 in 10**

Ratio of the increase in NYPD funding provided by Mayor Giuliani in 2000 to the proposed cut to the Legal Aid Society's operating budget in the same year: **5:1**

Average sentence served by someone convicted of committing burglary valued at $300 or less: **55.6 months**

Average sentence served by someone convicted of stealing $100,000 or more in the savings-and-loan scandal of the early 1990s: **36.4 months**

Number of state's that meet the American Bar Association's national indigent defendant case disposition standards: **0**

Outsourcing, Offshoring, and L1 Visas - The Flip Side

BY ERNIE NOUNOU / SEPTEMBER 2003

Introduction

In early May, I coauthored an article for the Drum Major Institute -- "The Impact of Outsourcing on the American Worker" -- of which the salient points were:

1. The "jobless recovery" of the past three years and loss of close to two million jobs in the United States economy is more than casually linked with the growth of jobs in low cost centers offshore, and the increasing use of L1 visas to bring foreign workers to take American jobs.
2. This trend is an unstoppable outgrowth of globalization and will only increase. It has benefits and consequences that must be realistically addressed.
3. Response to it should not be the erection of barriers, but rather sensible policies emanating from reasoned dialogue. The article called for that dialogue, especially among government policy makers.

Reactions were, on the whole, very positive, with the exception of those from economists, who were (to put it charitably) skeptical:

> "Since all kinds of numbers do this or that for the first time, you'll have a very busy career wondering about implications. On the other hand, if you have some kind of conceptual analysis showing that the number is the beginning of a trend, then you might be worth listening to. Forgive me, but what you have to say conceptually is just another repetition of an old economic cliché." *Economist at weekly business publication*
>
> "I cannot agree that outsourcing is a zero sum game. If outsourcing leads to higher specialization and moves factors of production into the most efficient use, then total output and production will increase. I do not think there is that much difference between the white-collar jobs that are being exported and the blue-collar jobs that were exported in the past." *Bank Economist*
>
> "You may have a point, but I am sympathetic to the raising of the economy and standard of living these jobs create in various third world countries. This benefits us in the long run." *Economist and editorialist for major daily publication*

On Further Reflection

What if these economists are actually right, and yours truly is a latter day Chicken Little? Maybe this is a good thing, a current example of creative destruction that impacts an economy from time to time, making it more efficient and productive. If so, it stands to reason that more of it will be even better, and this paper will show how increased use of offshoring and L1 visas can achieve these positive results.

Let's assume the American economy is one giant corporation, currently lacking pricing power for its products – sales/the economy is not growing fast enough – while some components of its cost structure are rising, healthcare and education in particular. What to do? You do what companies are doing -- cut costs and hold spending -- with the savings resulting in greater profits.

Healthcare Industry

Fact: Few United States hospital systems can function without nurses from the Philippines, India, and other countries producing wonderfully trained nurses. They enter via L1 or H1b visas and contribute significantly to our healthcare delivery. Building on the success with nurses, let's expand the L1 visa program to bring in one million doctors to start. Even a cursory look at average salary differentials of comparable American and Indian doctors reveals the scope of available opportunities:

Medical Cost Comparisons in US$ *

Doctors – Avg. Salary	**US**	**India**	**Difference**
Family Practice	145,121	90,000	55,121
Pediatric	141,676	65,000	76,676
Cardiology	300,073	65,000	235,073
Urology	301,772	65,000	236,772
Ave. Salary	**222,161**	**71,250**	**150,911**
Procedures			
MRI	326	148 – 170	156
Chest X-Ray	40	2 – 3	37
Vaginal Birth (Doctor Only)	3,000 – 7,000	200 - 300	2,700

Insurance companies with medical networks (HMOs, PPOs etc.) already outsource business processes, so this will pose no great challenge. If they haven't already, they can easily incorporate a subsidiary in India, hire well-trained and already English speaking doctors, and bring them to work in their U.S. network at 40% - 50% cost of their American equivalent. Certification and accreditation is a largely academic procedure, and easily administered; so these doctors, from primary care to specialists, would have no problem qualifying.

Given the salary and cost differentials between Indian and American doctors, along with outsourcing various procedures such as X-Ray and MRI interpretations offshore, greater productivity and efficiency at lower cost will permeate the healthcare system. **Based on the average salary difference per doctor of $150,911 alone, one million doctors on L1 visas would achieve a savings for the economy of at least $150 billion (give or take).**

Benefits include:

- Significant dent, if not elimination, of rise in medical costs for the general population
- Medicare/Medicaid projected deficits shrink, if not eliminated completely
- A sounder footing for Social Security with influx of productive workers to shore up the ratio of retirees to workforce
- The increased demand for middle-incoming housing by incoming doctors will underpin the housing market and assuage concerns of a real estate bubble

To be sure there will be some temporary dislocations as displaced American doctors retrain and move to more productive work, but the combined net benefits to the economy of great savings and productivity increases mentioned above are clearly worth it.

* Note: Statistics for U.S. doctors and procedures were obtained from "Compensation Monitor" in the December 2001 Edition of *Managed Care*. Indian expatriates provided a range of estimates for Indian equivalents. Where ranges were provided, I selected the highest value for India and the lowest for the US. Although the exactitude can be quibbled with, the general magnitude of the differential (hence opportunity) is a fair representation.

Education

For decades the cost of higher education, both at private and state universities has been growing faster than the rate of inflation (choose your index). A comparison of tenured and associate professor salaries and tuition at four-year universities in the United States with their counterparts in India reveals logical opportunities:

Education Cost Comparisons in US$ *

Avg. Salary	US	India	Difference
Professors - Tenured	70,000	11,000	59,000
Professors – Non-Tenured	50,000	9,000	41,000
Ave. Salary	**60,000**	**10,000**	**50,000**
Avg. Tuition + Board			
Private College	35,000	2,000	33,000
State University – In State	12,000	2,000	10,000

American universities can take advantage of the differentials in professor salaries by using the L1 visa route to bring large numbers of professors from offshore to reduce their salary cost structure. In doing so, they will also arrest the escalation of tuition expenses.

Based on the considerable differential in tuition costs, American parents should seriously consider sending children abroad to attend college. From the perspective of the parents and students, the benefits are considerable:

- Lower tuition costs, with savings of $40,000 - $130,000 available for other purposes including retirement.
- Better cost/benefit returns of a foreign education, given there are few jobs available on graduating. Note the experience of graduates in the Class of 2003, as documented in the *New York Times* and elsewhere.
- Cultural experience and benefits to four years abroad – not just "junior year abroad."
- Better positioning at graduation; graduating from a college in India positions American graduates closer to where job growth is occurring. Note also:
    - Lehman Brothers is opening an office in India for 1000 business analysts, at the same time as Smith Barney and other banks are laying off analysts in the US.
    - An AT Kearney survey of financial institutions states they plan to export over 500,000 jobs to offshore locations within the next five years.

The combined impact of large numbers of foreign professors and students attending four-year universities in low cost centers will no doubt take some air out of the tuition inflation bubble of the last few decades. The economy will not only benefit from greater productivity as resources

move up to higher value added work; but financial resources will be freed, increasing the national savings rate, and reducing the burdens on social security to provide for retirements.

And the US Military

An article in the June 2003 edition of "Wired" documents in fascinating detail examples of the technology's transformation of military command and control, underpinning the swift capturing of Iraq. Tanks and other military vehicles download their daily orders via Internet technology on built-in computers. An officer responsible for technology proudly mentioned the Army's "Premier" tech support contract with Microsoft for live technical assistance.

Logical industry questions:

- If Microsoft tech support were offshore (best rates in Pakistan), would Military Intelligence permit that? (Consider what havoc an unsympathetic local techie could wreak.) Note, Microsoft recently announced layoffs in the US, and is establishing operations offshore.
- Was the 1 ½ day delay in US troops drive to Baghdad really due to sandstorms, or was there a problem with Windows? Too much rebooting?

The military has experience with offshore outsourcing. In November 2002, a group of Russian technology companies were introduced to the New York business community, and one of them proudly referred to work performed for the United States Air Force. (Amazingly, not one question regarding national security came up!) Of course, not all forms of military outsourcing have happy endings. When they outsourced responsibility to local and Pakistani soldiers in Afghanistan to prevent enemy escape, it seems that among the hundreds that did escape was the 6'4" leader, his wives, children, entourage, and a dialysis machine.

Conclusions

- Outsourcing/Offshoring and L1 visa usage to date has been small potatoes; opportunities abound for more extensive usage.
- Significant savings will result with greater use of "offshoring" and L1 visas, producing a more productive and cost-effective US medical and education sectors. Displaced doctors and professors will move on to higher value added jobs, benefiting themselves and the US economy.
- Health care and education costs, to name a few areas hitting the middle class wallet, will actually go down, and the national savings rate will go up.
- Medicare/Medicaid and Social Security deficits will shrink dramatically, if not totally eliminated.

- Expanding the program to other areas will inexorably follow, such as outsourcing CEOs – which will bring sanity to compensation, if not performance as well.
- Finally, Third World countries will express their heartfelt gratitude to us for increasing their standard of living, better positioning us internationally.

Note to the reader: You are encouraged to think of other sectors of the economy where similar opportunities exist for these processes.

Ernie Nounou *is a graduate of the Wharton School at the University of Pennsylvania, and a Founding Partner of The Catalytic Group, Inc., a New York based Technology consulting and execution firm. Prior to that he was with the International Division of Manufacturers Hanover Trust (now JP Morgan Chase) and a member of the Board of Directors of UMB Bank and Trust in New York. He can be reached at ernie@catalyticgroup.com.*

E-journal
FROM THE DRUM MAJOR INSTITUTE

For Richer, For Poorer: Same-Sex Couples and the Freedom to Marry as a Civil Right

BY EVAN WOLFSON / JUNE 2003

On the historic, horrific morning of September 11, 2001, John kissed his wife, Rosa, goodbye before heading to his job as an office-cleaner in the World Trade Center's North Tower. Rosa never heard from her husband again. After searching frantically for days, Rosa accepted the reality of his disappearance. She filed for a death certificate and arranged her husband's memorial service. Rosa received Workers' Compensation from the state and a small Social Security death benefit from the federal government. She contacted John's former employer, who arranged for receipt of his pension. Because John and Rosa had few assets, they had never seen the need for a will, nor did they have the financial means to hire a lawyer to prepare one. Nonetheless, John's assets, which included a small savings account, their home and a car, were given to Rosa by law.

That same morning, Juan kissed Ryan, his partner of 21 years, goodbye and headed to his job as a file-clerk in that same North Tower. Like Rosa, Ryan never heard from Juan again. Ryan applied for Workers' Compensation and Social Security, but, unlike Rosa, he was told he was not eligible for those benefits because he was not Juan's legal spouse. Even though Juan and Ryan had taken some precautions to protect their commitment -- such as registering as domestic partners, designating one another as beneficiaries on insurance policies, and executing health care proxies and powers of attorney -- and even though Juan paid the same taxes as John, Ryan was not automatically entitled to any of the compensations given to Rosa. In addition to his emotional devastation, Ryan was financially devastated as well.[10]

Why did Rosa have an economic safety net, while Ryan did not? The answer can be summed up in two words: *"I do."*

By getting married, John and Rosa gained access to critical legal protections and benefits for couples and their children that provided for them in their time of need. Married couples are entitled to literally hundreds of rights and protections that permeate their financial relationship, both in extraordinary circumstances such as the one mentioned above, or in everyday matters, like simply renting a car.

A 1996 government study found that there are at least 1,049 such protections, rights, and responsibilities that come with marriage under federal law alone. These protections include

[10] John, Rosa, Juan, and Ryan are representative of the experiences that real-life people, gay and non-gay, have had in the aftermath of the September 11, 2001 terrorist attacks. For true and detailed stories of the hardships and discrimination experienced by gay 9/11 survivors, see www.lambdalegal.org.

access to health care and medical decision making for a partner and children, parenting and immigration rights, inheritance, taxation, Social Security and other government benefits, rules for ending a relationship while protecting both parties and the ability to pool resources to buy or transfer property without adverse tax consequences.

Juan and Ryan, however, like all same-sex couples, were denied the freedom to legally marry and were eligible only for the limited protections they could arrange privately.

Throughout the United States -- regardless of how long they have been in a committed relationship, no matter how much they and their loved ones, often including children, need the protections that come with marriage -- same-sex couples are denied the safety net that is automatically in place for couples like Rosa and John.

Exclusion from the protections that come with marriage, and the attendant social and legal inequality, affects all gay people, regardless of sex, race, religion, ethnicity, or physical ability. Like with most civil injustices, marriage inequality falls particularly hard on those living on the margins: the poor, less educated, immigrants, the elderly, the ill, and those otherwise most vulnerable.

A landmark study of African-American lesbian, gay, bisexual, and transgendered people in the U.S., *Say It Loud: I'm Black and I'm Proud*, released in March 2002 by the National Gay & Lesbian Task Force Policy Institute, found that marriage/family protections rank among the three most important issues facing LGBT communities of color alongside HIV/health care access and protection against violence. Ending the exclusion of same-sex couples from civil marriage would provide especially significant protections to LGBT people of color.

Although the struggle to win the freedom to marry is at least as much about love and equality as it is about law and economics, let's take a closer look at the important protections, benefits, and responsibilities that come with civil marriage.

Marriage Makes Life Together More Affordable

Marriage makes almost every aspect of a relationship less expensive. Without money, a lawyer or any forethought, married couples receive the benefits of a complex set of legal rules that create default choices most couples would select anyway. Thus:

- Spouses are allowed to make life-saving decisions for each other without drafting powers of attorney or other complicated legal documents;

- Spouses presumptively inherit each others' estates without the need for intricate wills;

- Spouses may cohabitate in public housing units;

- Divorce laws protect both members of the relationship and minimize the power of one partner to keep the other in a situation of domestic violence;

- The spouse of a U.S. citizen may obtain residency in the United States without a long legal battle;

- Married people may adopt the children of their spouses easily and cheaply;

- Dependent health benefits are tax-free for a married couple, whereas an unmarried couple is taxed;

- By filing jointly, married couples in which one partner has a much higher income pay significantly less tax than similarly situated unmarried couples.

Ending sex discrimination in civil marriage is the only means of providing same-sex couples equal treatment by our own government. Beyond that, inclusion in civil marriage is an important step to assuring the benefits that the private sector offers to married people. Some of these are lower insurance rates; availability and lower-cost of loans from banks; employer-sponsored events; free and reduced tuition for spouses of university employees; and family discounts.

Marriage Discrimination Harms Poor and Otherwise Disadvantaged Couples

Compared with the relatively cheap option of marriage, the creation of a legal web meant to simulate some of the protections of marriage is an expensive and time consuming project that simply cannot serve as a viable alternative for people of lesser means.

Working and middle-class same-sex couples who cannot afford legal services are therefore without the ability to properly plan for:

- Medical emergencies – Living wills and powers of attorney are intricate and expensive legal documents to draft. Doctors can leave same-sex partners out of critical decision-making processes without these documents. Marriage eliminates the need for any legal documents because spouses are not only allowed, but indeed expected, to make these important decisions for one another;

- Divorce – Unmarried partners cannot take advantage of the benefits of the forum of the divorce court to "wind-up" their relationships. Even without substantial assets to divide, issues of child support, childcare, and partner support arise that poor people will not have been able to plan for in advance through sophisticated legal mechanisms;

- The death of one partner – Even the lowest wage workers, if legally employed, pay to support the Social Security system. Unmarried partners, though, cannot receive the Social Security survivor benefits that married partners do, and may therefore be left without any means of supporting themselves.

In addition to important tax benefits, other governmentally provided rights and privileges are simply unavailable to same-sex couples because they are unable to marry, disproportionately impacting the poor. These include:

- Healthcare available to married couples – Allowing same-sex couples to marry would extend Medicare and Medicaid spousal benefits and would allow for the tax-free provision of benefits by an employer to the same-sex partner of an employee;

- Housing Benefits – Same-sex couples do not receive the protections of joint rental leases with automatic renewal rights. In highly competitive public housing slots, families can lose their homes.

- Immigration Benefits – A foreign-born national has a presumptive right to a green card when married to an American citizen or legal permanent resident. The spouse may then obtain a work permit and eventually become a U.S. citizen. Spouses of U.S. citizens and lawful permanent residents also face a far shorter waiting period. These spousal rights even trump the United States' ban on immigration for HIV+ individuals. Same-sex partners are denied the family respect that otherwise governs immigration law.

- Social Security Benefits – No spousal benefits, including survivor benefits and disability benefits, are available to same-sex couples.

Marriage Discrimination Harms Children

Marriage protects the economic interests of children by providing an economic safety net to their families, and the kids themselves.

- The children have automatic and undisputed access to the resources, benefits and entitlements of both parents.

- Married couples do not have to incur any expenses, legal or otherwise, to ensure that both parents have the right to make important medical decisions for their children in case of emergency.
- The children of legally married couples are automatically eligible for health benefits from both parents, as well as child support and visitation from both parents in the event of separation.
- If one of the parents in a marriage dies, the law provides financial security not only for the surviving spouse, but for the children as well, by ensuring eligibility to all appropriate entitlements, such as Social Security survivor benefits.

This economic safety net is critical for children in families of lesser means. However, the children of same-sex couples, whose marriages are unrecognized by law, do not have such a safety net. They suffer from their parents' lack of access to all the rights and entitlements that maximize their economic well-being. They are deprived of economic protection in case of death, disability, divorce, or other life-changing events. These disadvantages have a disproportionately high impact on children in families of lesser means. A 2000 report out of Stanford University surveyed the legal and economic landscape and concluded that because same-sex couples are denied the freedom to marry, "the children living with same-sex partners are made to suffer." These and other significant disadvantages for the children of same-sex couples prompted the prestigious American Academy of Pediatrics, in February 2002, to issue a strong call for full legal recognition of same-sex relationships.

Beyond Legal and Economic Concerns, Ending Marriage Discrimination is a Matter of Civil Rights, Equality, the Pursuit of Happiness, and Love

During the lifetime of many Americans, there were major and hotly contested changes in the institution of civil marriage, including the legal declaration of women's equality in marriage, the allowance of married and unmarried people to make their own decisions regarding contraception and reproduction, and divorce reform. Each of these steps toward inclusion and respect was fiercely contested, often with the same arguments we see today against allowing gay people to marry.

During the congressional debate on the federal anti-marriage law, the so-called "Defense of Marriage Act," aimed at shutting down the emerging civil rights discussion around marriage equality, civil rights movement hero John Lewis, now a Congressman from Georgia, decried the right-wing's attacks on gay people's freedom to marry. Congressman Lewis noted that the exclusion from marriage "denies gay men and women the right to liberty and the pursuit of happiness," and declared:

> Marriage is a basic human right. You cannot tell people they cannot fall in love. Dr. Martin Luther King, Jr. used to say when people talked about interracial marriage and I quote, "Races do not fall in love and get married. Individuals fall in love and get married."…. Mr. Chairman, I have known racism. I have known bigotry. This bill [the proposed federal anti-marriage law of 1996, adding an overlay of federal discrimination against same-sex couples] stinks of the same fear, hatred and intolerance. It should not be called the Defense of Marriage Act. It should be called the defense of mean-spirited bigots act.

Despite this attack measure and the well-organized opposition of right-wing organizations, the landscape has begun to change dramatically. A 2001 Kaiser Family Foundation poll found that more than two-thirds of the American public has come to support extending "marriage-like" inheritance rights (70%) and Social Security benefits (68%) to lesbian and gay couples. More than two-thirds of the American public believes gay people will win the freedom to marry. A June 2002 poll in California showed that opposition to the freedom to marry for same-sex couples had dropped below 50% for the first time ever, and in April 2003, the front-page of the *Boston Globe* reported that a majority in Massachusetts now supports ending discrimination in civil marriage with huge majority support among young and middle-aged voters.

In June 2002, a landmark lawsuit for marriage equality was filed on behalf of seven gay and lesbian couples in New Jersey – the same state where, in another high-profile lawsuit, the state's highest court ruled in favor of a gay scout leader's challenge of the discriminatory policies of the Boy Scouts of America. Meanwhile, the Massachusetts high court has before it now a case involving seven couples denied marriage licenses -- *and could rule as soon as this summer!*

A victory in either court will mean same-sex couples can get married, but the United States will still be far behind countries such as the Netherlands and Belgium, and most likely Canada, which seems poised to end marriage discrimination within the next few months.

Marriage, of course, is not the only form of relationship or family deserving respect, and not every same-sex couple should or would choose to marry, just as not every heterosexual does. But lesbians and gay men willing to take on the commitment and responsibilities of civil marriage should not be denied the opportunity to build a life together and pursue happiness with the partner they love. Nor should their children and families suffer the economic hardships and disadvantages that come with exclusion from marriage.

We all hope to never again experience any semblance of tragedy like September 11th and we cannot alter the damage of what has already occurred. What we can do, however, is change the way families like Juan and Ryan are protected and treated in the future by ending discrimination in civil marriage.

Allowing same-sex couples to marry would in no way destabilize or devalue marriage for other couples, nor would it tell any religion or person what marriages they must themselves celebrate. Rather, ending discrimination in civil marriage would properly hold America to its commitment to be a country where everyone has the right to be both different and equal – and where no one has to give up her or his difference to be treated equally.

Evan Wolfson *is Executive Director of Freedom to Marry, a new gay and non-gay partnership working to win marriage equality nationwide. Before founding Freedom to Marry, Mr. Wolfson served as marriage project director for Lambda Legal Defense & Education Fund, was co-counsel in the historic Hawaii marriage case, Baehr v. Miike, and participated in numerous gay rights and HIV/AIDS cases. Citing his national leadership on marriage equality and his appearance before the U.S. Supreme Court in Boy Scouts of America v. James Dale, the National Law Journal named Mr. Wolfson one of the 100 most influential lawyers in America. For more information on the fight for marriage equality and Freedom to Marry, please visit www.freedomtomarry.org or call 212-851-8418.*

E-journal
FROM THE DRUM MAJOR INSTITUTE

JUNE 2003

Drum Major Institute Injustice Index: The Gay and Lesbian Family

Number of states that allow same-sex couples to marry: **0**

Percentage of new marriages that end in divorce: **60**

Prior to the 1967 *Loving v. Virginia* Supreme Court decision, number of states that prohibited the marriage of interracial couples: **16**

Number of Supreme Court Justices who, if not for *Loving,* may not have been able to wed**: 1**

Ratio of the amount of money spent by the US government dealing with the social costs related to divorce to the amount of money spent by the government to strengthen the bond between American married couples: **1,000:1**

Number of foster children each qualified foster parent would have to adopt to ensure that every American child was placed in a home: **4**

Number of foster children former Education Secretary Bill Bennett could have raised to adulthood with the alleged $8 million he lost gambling in Las Vegas Casinos: **48**

Number of federal rights and protections conferred upon married couples in the U.S: **1,049**

Average monthly monetary incentive given to welfare recipients in W. Virginia who stay or get married: **$100**

Number of US states that prohibit “discrimination in public employment based on sexual orientation”: **7**

Ratio of the number of US firms offering domestic partnership benefits to their employees today versus in 1990: **125:1**

Fine imposed in Arkansas for committing a C-class same sex sodomy misdemeanor "aimed at [criminalizing the behavior of] weirdoes and queers who live in a fairyland world and are trying to wreck family life": $**1,000**

The Impact of Outsourcing on the American Worker

BY STUART YASGUR AND ERNIE NOUNOU / MAY 2003

"IS YOUR JOB NEXT? A new round of globalization is sending upscale jobs offshore. They include chip design, engineering, basic research – even financial analysis. Can America lose these jobs and still prosper?"
Cover, **Business Week**, February 3, 2003

A Jobless Recovery?

Common knowledge says that we are in the midst of a "Jobless Recovery." After all, while the United States economy recovered statistically from the "mild" recession in 2001, unemployment has risen from 4% to 6%-- a whopping 50% increase. Urban centers like New York City, which had a January unemployment rate of 8.6%, have been particularly hard hit.

What is not commonly known, however, is that jobs *have* been created during this recovery, just not in places like New York City, San Francisco, or even Flint, Michigan. Jobs have been created in places like India, Jamaica, the Philippines, and even Sri Lanka. The National Association of Software and Service Companies (Nasscom), an association of software and IT-enabled services companies, estimates that India's IT-enabled services industry grew by 70% during 2001-2002.

This is largely due to the widespread use of Cross-Border Business Process Outsourcing (BPO), the practice of outsourcing business functions to subsidiaries or vendors overseas. Research by John C. McCarthy of Forester Research illustrates the magnitude of the effect this will have on the economy, suggesting that at least 3.3 million white-collar jobs and $136 billion in wages will leave the United States to lower-cost centers offshore by 2015.[11]

Changes to the American economy over the past three decades have led to a similar exporting of manufacturing jobs. Recall that, as the workplace became increasingly more high-tech, the American worker was promised greater rewards in higher skill, higher value, higher paying jobs, if they continued to work hard, learn the new skills required of them to adapt to the needs of an information economy, and accept greater job insecurity and longer working hours.

American workers responded to that call by changing their lifestyles and re-entering the American educational infrastructure, which had quickly adapted to help American workers remain occupationally relevant. A wealth of private classes sprung up in short time, and courses offered in community colleges were touted as a bridge to the information economy.

[11] Business Week February 3, 2003: "Is Your Job Next?" by Peter Engardio, Aaron Bernstein, and Manjeet Kripalani (Pages 50 - 60)

In the end, however, the bridge was too short, and the promise of high paying jobs on the other side of the tech wave was not kept.

Despite the price paid by the American worker to participate in the information economy, many have never had the opportunity to do so. While the job preparation infrastructure still performs its key function, the kinds of jobs that it is readying people for are increasingly being exported overseas.

Certainly the recession, lingering effects of 9/11, and other geo-political uncertainties have taken their toll on the domestic economy and go a long way towards explaining current conditions in the American labor market. They don't, however, paint the full picture. Government has a crucial role to play in facilitating the growth of the domestic economy. Without government intervention, pure market forces are only likely to exacerbate the white-collar job loss in the United States.

Government must lay the groundwork for a national economic recovery that promotes the competitive posture of the American worker through the advocacy of fairer policies like the elimination the regressive payroll tax and the decoupling of healthcare insurance from employment status, as well as smarter policies like reforming the temporary work visa system. These policies will also help stem the tide of quality jobs leaving this country, strengthening our economy for the future.

Broken Promise to American Workers

Why is the outsourcing of jobs overseas today different from the exporting of manufacturing jobs during the 70's and 80's and the 'great sucking sound' heard as many United States factory jobs were permanently lost to "Maquiladoras" just across the Rio Grande border in Mexico due to NAFTA?

The current exporting of American jobs through Cross-Border BPO is significantly different than it was in the 70's, 80's, and 90's because: 1) the jobs that are leaving now are qualitatively different than the jobs that left earlier, and 2) there are no natural barriers to limit the extent to which American jobs will be exported due to cross-border BPO.

The exporting of American jobs through the 70's, 80's, and 90's was largely concentrated in the manufacturing sector. Corporations closed inefficient factories and laid-off workers in a bid to take advantage of the lower costs and higher quality achieved by moving production overseas. This was generally seen as a painful yet unavoidable part of the movement into a post-industrial information economy. In return for giving up "blue collar" jobs, and accepting greater job

insecurity and working longer hours, the information economy promised higher value, higher paying jobs that would remain accessible to qualified American workers.

Characteristically, American workers responded by accepting those sacrifices, paying the costs to learn required new skills with the promise of filling the very positions that are today, through Cross-Border Business Process Outsourcing, being exported overseas.

This is a Job for the United States Government

We should not expect the economy to return to normal when the current geopolitical uncertainties clear. The rationale for employing Cross-Border BPO will only be reinforced by competitive pressures as it gains momentum. The risks for not addressing the inevitable consequences are too great to accept. The scope of the current problem suggests that there will be no easy answers, but a quick look at those involved makes clear who is best positioned to respond.

It is well documented that the American worker is working longer and harder, under increased pressure just to maintain his/her standard of living. There is little chance that he/she will be in a position or have the resources to address this problem.

In the United States system, corporate managers have one overriding responsibility: to maximize returns for shareholders. As long as Cross-Border BPO makes an economically compelling case, an individual corporate manager would be remiss not to use it. So there is little reason for corporate managers to address this problem.

While it is individual American workers who will feel the direct impact of jobs being shipped overseas, the widespread damages of this phenomenon will accrue to national and local economies. Therefore, it is most appropriate to turn to government on the city, state and federal levels. Governments are in the position to respond effectively because any effective response is likely to include systematic and regulatory changes.

Here it is important to note that this is not an issue of free trade versus protectionism. This is not a call for a return to "Beggar Thy Neighbor" policies of the past. Rather it is a question of how the United States uses the resources at its disposal to position itself in the competitive landscape of a globalized economy and the value we as a society place on making it possible for American workers at all levels to maintain a reasonable and viable standard of living.

This is a complicated problem, and it is unlikely that any single silver bullet response will address it. But by employing progressive policy solutions conducive to improving the

competitive posture of American workers, millions of quality jobs, once irreplaceably lost overseas, may be preserved.

First, Government Should Employ a Smarter Tax Cut

How can American workers compete against low cost providers overseas without sacrificing their economic situation? One obvious candidate for helping them to do this is reducing the payroll tax. The payroll tax is regressive and for many workers makes up a larger portion of their overall tax burden than income tax. Payroll tax is widely seen as a cost born by the worker and creates a competitive disadvantage for the American worker. Lowering it would enable the American worker to decrease the 30% to 50% cost gap between hiring domestic and overseas workers, helping to achieve the strategic policy objective of securing quality American jobs.

If Congress is set on passing a massive tax cut, there is ample reason to believe that lowering the payroll tax would be more productive than eliminating the tax on corporate dividends. Putting aside the dubious arguments about the claim that eliminating the dividend tax would create incentives for good corporate behavior, there are three other good reasons why we should prefer a reduction in the payroll tax to the elimination of the dividend tax.

First, as Nobel Prize winning economist Joseph Stiglitz noted in a recent article in *The New York Review of Books*, since many middle class households already hold the majority of their equities in tax protected vehicles such as 401ks, the benefits from eliminating the tax on corporate dividends would only accrue to the very wealthy, making it a poor stimulus or growth plan.

Second, by lowering payroll taxes, the federal government will ensure that the benefits of a tax cut would stay in the United States and contribute to the our economy. The elimination of the tax on corporate dividends offers no such assurances, as corporate expenditures and the extra income for the wealthy can easily flow out of the United States.

Third, even if Congress wisely feels uncomfortable passing a massive tax cut, a reduction in payroll taxes could be compensated for by extending the upper limit of payroll affected. This would not only help the competitive posture of the American worker, but would also ameliorate one of the most regressive elements in current United States tax policy.

These three reasons, plus the strategic benefit that would accrue to the American worker in helping to reduce the 30% to 50% cost gap, make this is a concrete policy suggestion that is worthy of careful consideration.

Second, Decouple Health Insurance from Employment Status
Because health insurance in the United States is typically tied to and offered by one's employer, job loss results in eventual loss of health insurance. For the nation as a whole, and particularly for major metropolitan regions such as New York, Chicago, San Francisco, Dallas, and Boston, where the cost of health care is among the highest in the nation, the absence of health insurance alternatives represents a ticking time bomb that requires attention.

An understanding of Cross-Border BPO suggests an additional reason for looking at this closely. All other things being equal, the fact that employers in the United States are required to offer their employees access to health insurance increases the costs of hiring a worker domestically, effectively a disincentive. This policy has a negative impact on the strategic objective of assisting American workers in achieving a sustainable competitive advantage vis-a-vis their counterparts overseas.

Far from simply suggesting that the problems associated with Cross-Border BPO present solid reasons for leaving individuals to their own devices in securing health insurance, we believe that decoupling insurance from employment status would improve the strategic positioning of the American worker.

Third, Give Americans a Fairer Chance by Reforming the Work Visa System
An enduring strength of the United States has been its policy of taking in people from all over the world and benefiting from their traditions, cultures, intellect and energy. In fact, with demographic studies showing that the United States population is aging and growth is slowing, there are many reasons to believe that robust immigration will be necessary for future prosperity. However, we distinguish between immigration policy, which should likely remain untouched or broadened, and the policy of granting working visas such as H-1B and L-1, which should be closely reviewed.

In the late 1980s and early 1990s, serious shortages of critical skills in the United States economy, such as technology and nursing, prompted the expansion of these programs. H-1B visas were regularly used by United States corporations to sponsor and import foreign expertise for stays of various lengths, sometimes resulting in permanent "Green Card" status or immigration. There is abundant anecdotal evidence that these workers significantly helped create and sustain the boom of the late 90's. In fact, the prevalence of nurses in urban area hospitals working under H-1B visas from India or the Philippines suggests that there is an enduring need for skilled workers in certain areas. However, the softening of the domestic job market for technology related workers suggest tightening of the number of H-1B visas is in order.

The L-1 visa is a different story altogether. An article in the March 10, 2003 issue of *Business Week* titled "A Loophole as Big as a Mainframe" chronicles how many outsourcing firms use L-1 visas to bring in low-cost workers from overseas to replace higher cost American workers.

L-1 visas are available to persons who are being temporarily transferred to the United States to work in an executive, managerial or specialized knowledge capacity for a business. The person must have been employed in that position for one of the last three years before being transferred. The work must be for the same company, an affiliate or subsidiary for intervals up to three years.

The abuse of L-1 visas by importing lower wage workers to the United States weakens our already soft domestic labor market, and further disadvantages the competitive posture of American workers. A serious review of this policy is warranted.

Final Word

After reviewing all the evidence it becomes necessary to question the prevailing wisdom that we are currently in a "jobless recovery." After all, jobs are being created, just *not* in the United States. Cross-Border Business Process Outsourcing is a significant factor in the exporting of American jobs to lower cost centers. Progressive government policies such as the elimination of the payroll tax, decoupling health insurance from employment status for a suitable alternative, and changing the nature of work visa laws will improve the competitive stance of American workers. Further, enlightened government action should be guided by open and frank discussion of the current job losses. We invite you to join us in that conversation to discover solutions and restore the promises made to the American worker.

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*Until recently, **Stuart Yasgur** was a partner of pOpform, a boutique web consultancy in New York City. He left to continue graduate studies focused on the role of business in society. Stuart is a graduate of Columbia University and Cornell University. He can be reached at sy179@columbia.edu.*

*A graduate of the Wharton School at the University of Pennsylvania, **Ernie Nounou** is a Founding Partner of The Catalytic Group, Inc., a New York based Technology consulting and execution firm. Prior to that he was with the International Division of Manufacturers Hanover Trust (now JP Morgan Chase) and a member of the Board of Directors of UMB Bank and Trust in New York. He can be reached at ernie@catalyticgroup.com.*

E-journal
FROM THE DRUM MAJOR INSTITUTE

MAY 2003

Drum Major Institute Injustice Index: The American Worker

Maximum number of weekly workable hours proposed by the United States Congress in the 1933 Black-Connery "Share the Work" Bill: **30**

Average length of the modern work week: **40 hours**

Number of American workers who put in more than 50 hours a week on the job: **one in five**

Average length of the modern American "lunch hour": **29 minutes**

Percentage of Americans in an ABC News poll who feel that "working long hours is worth it because it produces prosperity": **46**

Amount of time American parents spend each week engaging in "meaningful conversation with their children": **40 minutes**

Number of American high-school students who work part-time while in school: **two in three**

Number of New York City high school students who graduate "on time": **one in two**

Ratio of the average incomes of U.S. CEOs to manufacturing industry workers in the 1970s: **41 to 1**

Ratio of the average incomes of U.S. CEO's to manufacturing industry workers in the 1990s: **419 to 1**

Number of Americans, according to a May 2003 Gallop poll, who said they would endure "significant economic hardship" if they were unemployed for one month: **four in ten**

Value of the severance package paid to disgraced former TYCO CFO Mark Swartz in 2002: **$44 million**

Number of "paid vacation days" taken by the average American worker every year: **13**

Number of continuous vacation days spent by President Bush last year at his Crawford, Texas horse ranch: **30**

Average retirement age of the United States' "Top Ranking CEOs": **58**

The current retirement age for Americans born after 1960: **67**

About the Drum Major Institute for Public Policy

History
Originally called the Drum Major Foundation, DMI was founded by Harry Wachtel, lawyer and advisor to Rev. Dr. Martin Luther King, Jr. during the turbulent years of the civil rights movement. DMI was relaunched in 1999 by New York attorney William Wachtel, Harry's son, Martin Luther King III, and Ambassador Andrew Young. Today, energized by the nationally recognized leadership of Fernando Ferrer, DMI is committed to adding a rigorous progressive voice to compete in the marketplace of ideas.

Mission
The Drum Major Institute for Public Policy is a non-partisan, non-profit organization dedicated to challenging the tired orthodoxies of both the right and the left. The goal: progressive public policy for social and economic fairness. DMI's approach is unwavering: We do not issue reports to see our name in print or hold forums for the sake of mere talk. We seek to change policy by conducting research into overlooked, but important social and economic issues, by leveraging our strategic relationships to engage policymakers and opinion leaders in our work, and by offering platforms to amplify the ideas of those who are working for social and economic fairness.

Why DMI?
Conservative think tanks and foundations spent $1 billion to influence public opinion and thought from 1990 to 2000.[12] Their investment has clearly paid off. From tax cuts fueled by trickle-down economics to disinvestment in public institutions to the silence that remains the norm on the poverty crippling our society, conservatives have redirected this nation. Progressives remain on the defensive, communicating their ideas only to the choir or resigning themselves to caring for victims of unjust policy instead of also changing bad policy. The institutes that do exist produce research and analysis that too rarely reaches the policy makers who could act on it, the advocates who could use it to support their agendas, or the public whose opinions could be informed and energized.

The Drum Major Institute, an organization with a rich legacy in the civil rights movement, has a very present-day approach. We borrow the successful elements of the rights' strategy to promote *progressive* public policy. We unite the best ideas with the best research and the best messages and messengers to convey them. We measure our success exclusively by our impact on public policy.

[12] National Committee on Responsive Philanthropy.

Drum Major Institute for Public Policy

110 East 59 Street, 28 floor New York, NY 10022
Phone 212-909-9663 Fax 212-909-9493 drummajorinstitute.org